

Special Pull-out Section

The Law Firm Pro Bono Challenge: Law Firm Performance in 1996 and 1997

Editor's Note: With three full years of reports from Challenge Signatory law firms, the Law Firm Pro Bono Project now has available a wealth of comparative data on the pro bono activities of the nation's major law firms. To enable the Project's staff to most effectively and comprehensively analyze and report that information, the Project has solicited, and has now secured, pro bono assistance from an entity with the technical statistical capacity to generate a variety of detailed comparative analyses of the data. (Note that, to preserve the confidentiality of individual law firm reports, that information was first entered and categorized by the Project and provided in coded form that does not permit linkage with or identification of individual firms by anyone outside of the Project staff.) That analysis is currently under way. In addition, our pro bono statistical expert is working with the Project to develop computerized programs that will enable us to generate similarly complex information and analyses on our own in the future. The report below, while not fully inclusive of such comparative information, summarizes the information provided to the Project by law firms and offers some limited comparisons between law firm performance in the first three reporting years of the Challenge. It will be augmented in the future by the additional data analyses that are currently under development.

Introduction

The implementation phase of the Law Firm Pro Bono Challenge is still in its infancy. Most Challenge firms now have more than three years of experience in implementing the Challenge principles and in developing reporting formats that efficiently generate the informational reports required of all Challenge Signatory firms. However, three years is still too limited a time frame to permit an accurate assessment of long-term trends and definitive identification of those factors that are clearly linked to success in meeting Challenge goals.

The period between 1995 and the close of 1997 was, for many larger law firms, a time of unparalleled busyness and extraordinary financial success. Overall revenues for the top 100 grossing law firms in the nation, for example, rose by 13.7% in 1997, with many firms' revenues growing by more than 20 percent in that year. In coping with heightened client demands for services, however, many law firms were initially reluctant to substantially increase their attorney population, fearing that a downturn would result in another round of "rightsizing" as happened in the late 1980's and early 1990's. This cautious approach to additional hiring by major law firms is reflected in the data provided to the Project – in 1996, the number of lawyers at the 135 Challenge firms that reported that data actually dropped, despite the very robust legal economy that year.

The combination of more commercial work and a static attorney workforce resulted in a substantial increase, in virtually every city in the nation, in average billable hours per lawyer within major law firms in 1996 and 1997. That increase was particularly notable in firm offices located outside of New York City which had previously enjoyed a less pressured work environment. In a number of firms, average attorney hours substantially exceeded billable hour targets and expectations, as the same or fewer lawyers struggled to meet the demands of new client business. That level of pressure clearly had an impact on law firm *pro bono* performance in both 1996 and 1997 (despite the fact that the Challenge firms' attorney population did increase in 1997), with *pro bono* hours dropping at a number of firms and overall Challenge hours decreasing somewhat. However, initial 1998 data and anecdotal information from law firms indicate that 1996 and 1997 may have been anomalous years, due to the unanticipated volume of commercial work and the absence of compensating mechanisms to preserve *pro bono* activity. Many firms report that, having now hired additional attorneys to handle the volume of business and having adapted firm policies and procedures further to encourage and promote *pro bono* service even in these busy times, their *pro bono* performance improved in 1998 and will likely continue to improve in future years.

The experience of the past few years provides several important lessons for law firms striving to institutionalize and enhance *pro bono* within their firms and for the Project, in its efforts to support these firms. First, the fast-breaking changes – in economics, practice, and structure – that now confront major law firms clearly have an immediate and direct impact on *pro bono*, for good or for ill. When the Project first began operations, it focused its

efforts on assisting firms in continuing to support *pro bono* work in the midst of an economic downturn. Now, the Project's efforts are directed at working with law firms to ensure that *pro bono* continues to flourish despite unparalleled demands on attorney time. Major firms and the Project must continue to remain alert and responsive to shifts and changes in the law firm environment. The second lesson is that law firm *pro bono* structures and policies that are highly effective today may be less effective and even counterproductive in future years, as firms continue to change and evolve. These programs cannot be static. They must be constantly reevaluated and revamped. For example, the current trend toward greater formality in *pro bono* governance and oversight is working well to insure more efficient, productive, and widely-supported *pro bono* efforts within firms. It is possible, however, that changes in the culture and economics of major law firms may, at some point in the future, require rethinking and retooling. Globalization, mergers, changes in practice, multi-disciplinary practice, the state of the overall economy-- are all factors that, though difficult to predict, will inevitably shape the law firms of the next millennium. Law firm *pro bono* leaders and the Project must remain vigilant and be willing to re-invent their firm's *pro bono* efforts to accommodate and take advantage of these changes.

Although it is somewhat risky to generalize from only three years of information, particularly since these years may prove to be unique, the most significant overall trend that emerges from the 1995-1997 reports is the variability of firm *pro bono* performance. Although a minority of firms have reported *pro bono* hours that vary little from year from year, most firms typically experience significant variations in *pro bono* activities and hours from year to year. In discussions with law firms that have experienced these annual swings in performance, the potential causes for such noticeable variations included the downturn in *pro bono* hours that results when a major, time-consuming case or project is concluded, or, conversely, a dramatic increase that reflects the substantial start-up investment of time in a major new *pro bono* matter. Other causes may include sharp increases or decreases in attorney population, due to merger, opening of new offices, or loss of an entire department or practice area, implementation of new *pro bono* initiatives, such as rotation programs, that steeply increase *pro bono* time, and, for Challenge firms that are undertaking individual low-income *pro bono* work for the first time, an initial decrease in hours due to the lower time requirements per case for these types of *pro bono* matters (which is, in many firms, addressed over time by an increased volume of individual cases). If these distinct, and sometimes dramatic, annual varia-

tions in the overall level of *pro bono* activity within firms are, in fact, typical and likely to continue in the longer term, it is possible that in the future the Project should, in assessing law firm Challenge performance, take an "income-averaging" approach that looks at firm *pro bono* percentages and hours over the course of several years.

Challenge Performance in 1996

As noted above, for many law firms 1996 was the first year in which firm commercial activity rose to a new level, as both firm revenues and individual attorney hours increased dramatically. The pressures of commercial practice clearly had an overall, but limited, detrimental impact on the level of *pro bono* activity. Total *pro bono* hours reported by Challenge law firms decreased somewhat from the 1995 level of 1,594,537 hours, as firms reported 1,567,871 hours in 1996. However, as noted above, the number of attorneys, including partners, associates, and counsel, employed by the Challenge Signatory firms actually dropped by 500 lawyers in 1996. As a result, the overall average number of *pro bono* hours per firm attorney among Challenge Signatory firms reporting in 1996 was 53 hours, the same overall average as in 1995.

Other indicia of *pro bono* performance, consistent with the Challenge principles, actually improved, albeit slightly, in 1996. While 66% of the total *pro bono* hours performed by firms in 1995 reflected *pro bono* work on behalf of low-income individuals or organizations, that figure rose to 66.5% in 1996 (or 1,1042,966.85 hours). In both years, that overall performance was substantially greater than the standard of a majority of hours spent on low-income *pro bono* work required by Principle 3 of the Challenge, although a number of law firms failed to meet the Challenge low-income *pro bono* goal.

Breadth of participation among partners and associates, litigators and non-litigators, a key element of the Challenge (see Principle 4), also improved slightly in 1996. In 1995, on average, 51% of partners in reporting firms participated in *pro bono*, while in 1996 the average rate of participation among partners was 52%. Similarly, in 1995, on average, 67% of associates participated in some form of *pro bono* work as defined by the Challenge, while in 1996 that average increased to 68% *pro bono* participation by associates.

A firm-by-firm comparison of performance with respect to the 3% or 5% Challenge *pro bono* goal (Principle 2) reflects the volatility of firm performance noted above. In 1996, 54 law firms undertook more *pro bono* work (defined in terms of total firm *pro bono* hours) than they had in 1995. In that same year, 48 firms did less *pro bono* work, while only 33 law firms did

approximately the same level of *pro bono* work as in 1995 (defined as total *pro bono* hours that were within 500 hours of 1995 reported *pro bono* time).

Despite these indicators of steady or even increased law firm performance in 1996 on a number of the factors identified and measured by the Challenge, the sharp increase, at many firms, in total billable hours (even as attorney numbers dropped) resulted in fewer law firms meeting or exceeding the Challenge in 1996, since the Challenge goals of 3% or 5% of billable hours increase as billable hour totals climb. In 1995, 47 law firms met or exceeded their Challenge goal of 3 or 5 percent of total billable hours, with an additional 41 firms coming within one percentage point of their goal. In 1996, by contrast, only 43 law firms met or exceeded their Challenge goal, with 32 additional firms performing within one percentage point of their Challenge goal.

Challenge Performance in 1997

In 1997 the full impact of a robust legal economy upon *pro bono* was felt. Total reported *pro bono* time fell to 1,524,912.1, a drop of more than 40,000 hours from 1996 when the *pro bono* time reported was 1,567,871 hours, while *pro bono* time spent on matters involving low-income individuals and organizations fell from 1,042,966.85 hours in 1996 to 1,024,653.46 in 1997 (although, as a percentage of total billable hours, low-income *pro bono* time increased slightly to 67% of total *pro bono* time in 1997). Conversely, total attorneys at the Challenge reporting firms increased from 29,449 lawyers in 1996 to 30,102 lawyers in 1997.

As a result of the decrease in hours and increase in number of attorneys, average *pro bono* hours per attorney in 1997 fell to 50.7 hours, still a very credible amount, but less than the 1996 average of 53 *pro bono* hours per lawyer. As overall attorney hours continued to rise, the decline in *pro bono* hours was amplified by the percentage goals of the Challenge. As many Challenge firms have noted, the percentage approach taken by the Challenge may understate firm achievement and actual increases in hours during a period when virtually all attorneys are working at a frantic pace well above prior years and billable hour targets. That distortion is evident in the statistics on compliance with the Challenge's percentage goals in 1997. While 43 law firms met or exceeded their 3% or 5% Challenge goal in 1996, only 35 firms did so in 1997, with an additional 27 law firms coming within one percentage point of their goal in that year. As in 1996, there was considerable volatility in firm performance from year to year. Even though

1997 was a difficult year in terms of percentages, many firms, in terms of hours of *pro bono* service, actually improved their overall performance, with 52 firms reporting more *pro bono* hours in 1997 than 1996. However, 36 law firms reported fewer hours in 1997, and 39 firms achieved approximately the same level of *pro bono* performance in 1997 as in the prior year (with the same level defined as within 500 hours, more or less, of the previous year's total).

The good news for 1997 is that overall *pro bono* participation rates for both partners and associates remained high. In that year, 55% of all partners at Challenge reporting firms, on average, undertook *pro bono* work, an increase over both 1995 and 1996, when the overall percentage for partners was 52%, while associate participation, though it remained quite high, dropped somewhat from 68% in 1996 to 64% in 1997. And, in a conscious or unconscious effort to compensate for the diminution in *pro bono* resulting from an unbelievably busy year, those law firms that reported their financial contributions to legal services and public interest groups serving low-income persons increased their contributions from \$6,800,903 (81 firms reporting that optional information) in 1996 to \$7,552,659 in 1997, with 78 firms providing financial information. The average amount contributed by law firms jumped from \$83,962 in 1996 to \$96,829 in 1997.

Trends to date in 1998

Although the due date for 1998 Challenge reports from law firms was June 30, 1999, the Project has received information from only 76 law firms as of August 20, 1999. That information, however, indicates that, as firms have reported anecdotally to the Project, many law firms have taken concrete and effective steps to neutralize, or at least minimize, the impact of heightened demands of commercial work on law firm *pro bono* commitments. To date, with only 56.7% of law firms that reported in 1997 having provided information to the Project, total hours reported in 1998 are already at 78% of the final 1997 Challenge hours. If the improvement in hours reflected in Challenge reports already received is matched by the law firms that have not yet filed their reports, total *pro bono* hours reported by Challenge law firms in 1998 will exceed two million hours – a very significant increase and the highest Challenge hourly total in the Project's history.

The preliminary Challenge data for 1998 reflect strong trends, as well, with respect to other principles of the Challenge. For example, low-income *pro bono* hours reported to date are more than 69% of total *pro bono* time, an all-time high commitment of *pro bono* resources to low-income persons and organizations. Partner participation, as reported in the prelimi-

nary data for 1998, is also at an all-time high, with firms reporting that, on average, more than 64% of firm partners participated in *pro bono* work. The 1998 data shows substantially increased associate participation as well, with almost 79% of associates reported as doing *pro bono* work. Overall, the firms providing information to date for 1998, on average, provided an astounding 87 hours of *pro bono* work per lawyer. In addition to *pro bono* performance, these firms were unparalleled in their financial contributions as well. With only 55 law firms reporting financial contributions to date, those contributions totaled an all-time high of \$8,732,198, an average of \$158,767 donated per law firm – an amount almost twice the average contribution amount in 1996.

The preliminary 1998 reports are highly encouraging, clearly indicating that a substantial number of law firms, having struggled in prior years to maintain and enhance *pro bono* service in these busy times, have now developed the policies and practices that will enable *pro bono* to flourish. In addition, these law firms have, more than ever, shared their economic good fortune with their colleagues at financially hard-pressed public interest and legal services programs. The Project congratulates these law firms and thanks them for providing their Challenge information so promptly.

Possible Changes in the Challenge

During the past year, and particularly at a session at the Project's annual seminar, a number of firms have proposed a variety of amendments to the Challenge definition or goals. While the leadership of the Law Firm Pro Bono Project is wary of undertaking changes in the Challenge at this early stage in its implementation, the Project's Advisory Committee will, this fall, take under consideration a few possible changes in interpretation of the Challenge and Challenge reporting that may be appropriate in light of changes in current law firm structure and environment. The Project will keep Challenge Signatory law firms advised of any changes that are finalized for the 2000 reporting year no later than December 1999, so that the firms have the lead time to incorporate these changes into their reporting systems for that year. To avoid confusion, any changes will be prospective in nature. Please do not contact the Project yet for more information on the possible changes. You will receive detailed information after a final determination is made. We appreciate your restraint.



We implore all Challenge firms to submit their 1998 Challenge reports as soon as possible. While you will receive reminders from the Project, the process of additional solicitation and reminders is extremely time-consuming for the Project's very small staff. We want to spend our time providing Challenge Signatory firms with the latest and most useful information on building and maintaining successful law firm pro bono programs, rather than tracking down errant Challenge reports. Your timely cooperation will enable us to do so.

Mark Your Calendars . . . February 25-26, 2000

The **Tenth Annual Law Firm Pro Bono Seminar** will be held in **Washington, DC** at the Willard Inter-Continental on **February 25-26, 2000**. We are fortunate to be able to offer seminar attendees a **reception** in the **Great Hall** at the **U.S. Supreme Court** on **Friday, February 25, 2000**.

Please note that because the seminar is a month earlier this year, deadlines for early registration discounts are also earlier. Registration materials will be mailed in November with registration deadlines as follows:

Early Registration Deadline:	January 14, 2000 (postmarked)
Housing Deadline:	January 29, 2000

Remember, if your firm is a Member firm, you will receive a 25% discount on registration fees for the seminar. Please check our web site (www.probonoinst.org) for an updated list of Member firms for the year 1999-2000. Additional information about the seminar will also be posted as it becomes available.