The Pro Bono Hustle

Law firms need to pretend that their over-paid young lawyers aren't really buying into boring lives. Here's how they do it.

by Liza Mundy

Some time or other you've probably heard a lawyer friend speak in glowing terms about a *pro bono* case he's taken on as part of the work he does for his firm. In a fit of pride and excitement, that lawyer may even have used the full Latin phrase—pro bono publico—which means "for the good of the public." It refers to legal work performed without charge for a worthy individual or cause, in order to guarantee everybody fair and equal access to the courts.

Over the past several decades, large law firms have been using the opportunity to do such work as a lure to attract and keep the thousands of bright young men and women they need to protect corporate America from the legal consequences of its misdeeds. There is of course some good in this approach, and worthy cases do get taken on. But along with the good there is also a generous portion of hot air, not to mention deliberate self-deception on the part of both firms and attorneys.

First, though, why do these big firms have to use a lure at all? Because a sample of their *paying* work is the last thing that would bring young lawyers to a big firm. Here. See for yourself.

Imagine for a moment that you're a first-year associate at one of the biggest law firms in Washington. You already make more money than your father, more than most businessmen. But imagine, too, that it's a hot Wednesday in August and that, feeling a little drowsy after lunch, you're reading through a motion you drafted yesterday. By now the motion has been red-lined by three different partners and returned to you, to re-draft, in barely recognizable form.

At this precise moment—pen in one hand, coffee mug in the other, diplomas from Berkeley and Yale hanging neatly on the wall— you're flipping idly through the *Uniform System of Citation* to solve the pressing and momentous and socially useful question of whether you should introduce a new footnote with "See," or "See Generally."

For this, you're being billed out at $150 per hour.

Suddenly your phone rings. You jump five inches out of your chair, awakened from a stupor in which you dreamed you were practicing domestic relations law out of a storefront office in Little Havana. Without warning, the Tap has come from above. Billy Bluechip—one of the most important partners, the kind you never even see, never meet; the kind whose existence has been confirmed to you only by rumor—has declared a red alert. Emergency. All hands on deck. He wants you, Teresa Mudd (let's give you a name), second in your class, editor of the law review, to meet with him right away.

Along with another nervous first-year and the

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obnoxious, obsessively driven fifth-year associate who works directly under Bluechip, you herd into a nearby conference room. There you hear that Bluechip's client, Company X, which owns a set of cotton mills in the Southeast, has decided to do a "line sale"— that is, to sell its operations in one state. This is not public news yet. Nor is the fact that they've drawn up a contract without ensuring that the purchaser, Company Y, which is non-union, will continue to employ the men and women who already work there. Since this is illegal, it's expected that tomorrow the union will file a motion to enjoin the sale.

Your job, Teresa, is to find out whether the union will be able to demand only damages for breach of contract; or whether they will, in fact, be able to enjoin the sale. This is resting on your shoulders, your thin shoulders alone.

Bluechip wants your memo to him first thing tomorrow morning.

So, as the sun sinks behind the skyscraper across the street, you spend the evening researching in the dark—literally and figuratively. Bluechip did not reveal the state in which the sale was taking place, and the fifth-year associate doesn't know either. Boldly you take a chance and guess that it's North Carolina. This means researching cases in the North Carolina State Reporters; however, your firm's library only carries the Maryland volumes. Georgetown is closed by now. So, yawning already, you log onto the Lexis machine, which you hate because it spits out hundred of pages of computer printouts and doesn't give you citations in the right form.

Working on the machine beside the other associate, who is chewing aspirin to chase away a headache that he's had ever since he started at the firm, you ask Lexis to look for any cases containing the word "line sale." But since Lexis inputters tend to be enemies of the English language, you try "lien sale" and "ling sale, too." You also type in "union" and "employer," just in case. Lexis obligingly regurgitates its maximum of one thousand cases.

By midnight you've plowed through two hundred cases, each one more boring than the last. Bleary-eyed and depressed, desperately trying to prop open your eyelids, you search for those that are on point and arrange them in something resembling an order of relevance.

Four hours later you've eaten a corned beef sandwich and written a draft in longhand. You give it to the night-shift word-processors. Too tired to research any more, you continue to rework the memo, trying to ensure that the language is comprehensible. At eight AM you messenger your memo to Billy Bluechip, presumably sitting at his breakfast table enjoying a glass of freshly-squeezed Florida orange juice.

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Then you go back to your desk and try not to think about whether this was actually the way you'd envisioned spending your life.

But that's not the end of the story. At five o'clock the next afternoon, the fifth-year associate gives you a call. Quivering with fatigue and anticipation, you wait to hear what Billy Bluechip thought of your memo.

"Billy was too embarrassed to call you himself," the associate says. "The company and the union settled the case late last night. Billy didn't need to read your memo."

Bright eyes, warm bodies

No wonder you want to do pro bono work. Because this is not a far-fetched scenario. It happens all the time at big firms, where entering associates—seeking security—have bartered away many of the good things traditionally associated with the practice of law. Good things that pro bono promises to restore, like: interesting work, client contact, trial experience, emotional satisfaction, a feeling of real contribution to a case (not to mention society at large), regular exposure to fresh air and ordinary people.

What the *smart* firms know is that to keep these warm bodies, they must convince them that they haven't really bartered all these things away. Discreetly, seductively, they murmur in the associates' ears: "Look. We brought you here mainly to make money for us, but because we like you we'll

also give you the chance to do good." They dangle before these bright-eyed, well-heeled young souls radiant visions of winning justice for those who can't fight for it themselves. Before long the imaginative associate will picture himself singlehandedly keeping the Grand Canyon from being turned into a toxic waste dump.

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To be sure, not all young associates want to do pro bono work. It would be unfair to say that all big-firm associates hate what they're doing, or that all big-firm work is boring and soulless. There are people who genuinely like anchovies. Similarly, there are people who enjoy research, legal writing, tax law, corporate deal-doing. They probably also like (who wouldn't?) having Fax machines; efficient secretaries; reception areas with original art and vast oriental rugs; messenger services; rest rooms with marble countertops; expense account lunches; the deference of family members, friends, and people they meet on the street; nice houses; the chance to make partner someday and, in the meantime, keep their other options open.

There are also people who don't like the work, but will put up with absolutely anything to get the bucks: even brain-deadening, excruciatingly dull 18-hour workdays.

But it does seem fair to say that being a warm body in a big firm is not a happy fate for so many sharp and well-nourished minds—minds of people who have seen reruns of *Inherit the Wind* and, probably more to the point, "L.A. Law," and formed wildly inaccurate notions of what the practice of law involves on a day-to-day basis. At 22, they imagine themselves defending the poor, arguing cases of global impact, or hurtling, Porsche-propelled and fabulously dressed, through the streets of Los Angeles—only to find themselves, at 26, making dubious distinctions about debentures.

And because of "L.A. Law" and *Inherit the Wind,* the figures keep mounting, as more and more college students willingly sell themselves into indentured servitude, amassing huge student loan debts that will leave them little flexibility when they graduate. This is the reason that only 2 percent will go into public service law, taking relatively low-paying jobs with "legal services practices, consumer activist foundations, and organizations such as the American Civil Liberties Union and the NAACP Legal Defense and Educational Fund Inc.," as reported recently in the *National Law Journal.*

As for the rest, according to the National Association for Law Placement's figures for 1987, 7.9 percent go into business and industry, 12.1 percent sign on with the government, 12.5 percent accept judicial clerkships, and 1 percent go into academe. The substantial majority—63.5 percent—take their first job with a private firm. And 15 percent—in many cases, the best and the brightest—are lured into big firms with over 100 attorneys, where they'll find themselves drafting memos and poring through files. Some will be satisfied. Many more will find themselves, in the words of one associate I talked to, "deliriously unhappy."

Sugar-coating the bitter pill

Enter the pro bono solution. Paul Reidinger, assistant editor at the *ABA Journal,* calls it "the sugar coating on the bitter pill of selling out." For a lot of first-, second- and third-year associates, one key thing that pro bono offers is relief from the stunning tedium of their paying work: relief from endless hours of discovery and "due diligence," from the mind-numbing frustration of researching codes and producing the first drafts of motions, oppositions, answers, briefs, memos, replies and surreplies. It offers the chance to have a live, red-blooded *client,* a "real person with real problems."

Witness the popularity of Covington & Burling's 6-month stint at a local Neighborhood Legal Services office. Witness the associates lined up for the 4-month rotation into the Community Services program at Hogan & Hartson. This much sought-after slot—which lets an associate work on pro bono cases full-time is one of Hogan & Hartson's real plums because it lets a person litigate right away. "Historically, almost all our fast-track people managed to" rotate into Community Services, according

to Jack Keeney, the partner in charge. Landing the 18-month senior associate spot at Hogan & Hartson is like being touched by God. Suddenly you're no longer a nobody, a schmoe; suddenly you're being listened to, depended on; suddenly you're in front of a judge and, great balls of fire, only a year or two or three out of law school, you're actually *arguing a case!*

The second major thing that pro bono offers, *or seems to*, is the opportunity to do the kind of work that actually led a fair (but perhaps dwindling) number of people into the law in the first place. Whatever truth there is to the "sugar coating" remark, it lies in big firms' awareness that, given the right proportion of sugar coating to bitter pill, they can retain some remarkably committed people who also happen to be excellent lawyers; people they'd have trouble keeping without the pro bono solution.

I've encountered a number of such souls—who, on top of, say, the 1,800 billable hours they put in per year, contribute a substantial additional chunk of time to pro bono work: writing *amicus* briefs, drafting wills, and going to court on behalf of those who are homeless, indigent, sick, alien, imprisoned, even sentenced to death. They care about representing those voiceless multitudes whom the Bill of Rights assures representation, without simultaneously providing them with the means. In some cases, the chance to "level the playing field" of society may actually have been what led them to law in the first place.

Ed Wolf happens to be one: a gregarious, charismatic, Sixties kind of guy who is an associate at Arnold & Porter. Wolf says that for him, pro bono work "comes closest to the reasons I went to law school." And he knows that it also makes it easier, psychologically, for him to stay at the firm.

"I never thought I'd find myself in private practice," Wolf confesses, "and when I was in private practice I never thought I'd be there more than two years. I'm now in the 7th year of a two-year stint. A large part of that is because this firm allows you to put on the white hat occasionally." The senior partners at Arnold & Porter are no dummies; not only do they encourage pro bono , but they facilitate it by allowing associates to count it toward 15 percent of their billable hours. "It keeps people here," Wolf says.

Eve Dubrow is another. Three months after starting work in the toxic torts department at Akin, Gump, Strauss, Hauer & Field, Dubrow—a profoundly committed first-year associate—founded a tutoring project for homeless children. She currently spends probably half her time on the program, and has galvanized other attorneys, paralegals and secretaries into helping out. Needless to say the firm holds her up—and rightly so—as an example of the kind of work that associates are allowed to do.

Dubrow admits frankly that, like Ed Wolf, she never thought she'd go with a big firm; that people at the firm didn't think she would, either. She's always been a public interest type of person, but whoops, here she is. She also acknowledges that the firm is a sort of emotional safety net for her: "Sometimes you look beyond the horizons of the tutoring, and you see the overwhelming problems that exist for these children and I guess for society at large. And that's when you crawl back to your desk and want to do discovery."

Joking about life and liberty

And indeed, here is one of the beauties of the pro bono solution: simultaneously enjoying the emotional satisfaction of having a client whose case really matters, while resisting the burnout from having *only* clients whose cases really matter. You may suffer through a death penalty case where your defendant is

actually executed, but you won't have to suffer through nine or ten.

In fact, it's possible to spin a persuasive argument (and many do) that a big firm is really the best place to practice public interest work; you have the prestige, the resources, the staff, the money, the wherewithal to barrage a judge with documents. You have weight, heft, influence. You can select, from the memo they send around, the pro bono work that interests you: you don't have to do all divorces, all wills, all landlord-tenant disputes. And when it's all over, you can crawl back to your desk and do discovery.

But if you buy those arguments, then you've bought the hustle. First, you're ignoring the fact that there's not nearly enough of the ideal kind of pro bono work to go around. Some pro bono work is deadly dull, too; even if an associate is doing something immensely worthwhile like writing a will for a person dying of AIDS, the actual drafting of the document will be tedious simply because so much of the law is tedious. Other cases might be exciting, but your client isn't quite as "worthy" as you'd hoped.

But that is a modest deception compared to most of the others employed by big firms in the pro bono game. Probably the most cynical is what Ed Wolf calls "letting us practice on life and liberty before they cut us loose on property."

Wolf is joking, of course. He hastens to add that the firm oversees all pro bono work, that pro bono is accorded the same status as all paying cases. He calls back to point out that all associates have been fully licensed by the bar. But he doesn't withdraw the joke. The same point is made with more polite indirection by senior partners like Tom Williamson of Covington & Burling who says "pro bono provides [associates with] opportunities to have greater responsibility than they would in a commercial case." Translation: The big firms are letting the associates practice on life and liberty before cutting them loose on property.

In short, with pro bono *you're* the one being conned. For example, despite the firm's promises, an associate could very well end up spending 5 percent of his time working for the Grand Canyon, and the other 95 percent defending the rights of the toxic waste dumpers (or the Tobacco Institute). That 5 percent is the firm's way of keeping him safe and happy and anesthetized. And finally, pro bono is a con because firms don't value it enough to require it, and certainly don't value it enough to consider it as a factor when they're selecting the lucky few anointed ones who will make partner.

Which raises the thorny question of what actually constitutes pro bono work in the first place. There are narrow definitions and there are broad ones. It can refer to individual cases for poor clients, or to large, high-profile "impact" cases that the firm expects will set a new precedent in the law. It can even include political fund-raising and free consulting for family members.

It might mean, for example, that a partner with experience in the housing industry has done free consulting for HUD or that an associate is working for an ABA committee, doing recruitment for the firm, or even representing a family member in a traffic case.

Which makes it all the less impressive to hear Steptoe & Johnson report that 5 percent of its practice is pro bono; to hear that Skadden, Arps, Slate, Meagher & Flom figures that, on average, its attorneys devote 3 to 4 percent of their time doing pro bono work that fits within their "broader definition": one that includes serving on the board of directors of a hospital or university. Not exactly assuring indigents their day in court. (Of course, serving on the board does permit the attorney to rub shoulders with community leaders who are potential clients of his firm.)

Do the math

Ultimately, the percentages are pitiful—even at Hogan & Hartson, universally acclaimed as the "model" for a big firm pro bono commitment. Jack Keeney will tell you proudly that *total* pro bono hours logged for the first half of 1989 were 9,757. But do the math (120 partners who put in an average of 1500 hours each per year, 160 associates at something like 1800) and you find that this pro bono leader devotes a whopping 4 percent of its total resources to the public good.

Four percent. In other words, it's probably a whole lot cheaper and more efficient than hiring a public relations consultant. Who needs a PR person when, thanks to a suit Hogan and Hartson filed against D.C. cab drivers who reject black fares, *The Washington Post* plugs them for free?

And speaking of PR, let's look at the cases that don't get taken at all. Given firms' lofty talk about taking "unpopular" clients—in particular, prisoners on death row in the South—you'd think they'd be dying to take on a prisoner's rights case. Not so.

Lois Bloom, senior staff attorney for the U.S. District Court, Southern District of New York, says that of the 90 big firms on the counsel list, only 20 are really "active." Confront them with an ordinary case involving a poor person charged with larceny and they'll react with the enthusiasm most people feel for a day-old sandwich.

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Unless, of course, it happens to be a convicted larcenist with AIDS. In that case, you have a new issue in the law: what constitutes "cruel and unusual punishment" for a prisoner with AIDS? So a firm will take that particular case, just as it will take any cutting-edge case that involves the First Amendment, and just as it is eager to take homeless cases and political asylum cases. Tragic as these issues are, they are also timely—consequently they're the ones that firms want to handle. (The newest issue will be lobbying for legislation to allow Chinese students to remain in this country after their visas expire. You can bet plenty of firms will jump at that. What could be politically safer, what more current? But what, on the other hand, if these students were Arab?)

Who's in charge?

Worth considering, too, is who these firms put in charge of the pro bono program. A partner? A committee? A paralegal? Hogan & Hartson has a full-time partner in charge of its pro bono cases, but most other firms have only non-partner attorneys or paralegals administering pro bono.

Covington & Burling, for example, has a paralegal who acts as the clearinghouse for pro bono cases. Akin, Gump recently brought in as "so-called coordinator" of its pro bono program Stark Ritchie, an attorney who describes himself as "neither fish nor fowl" and speculates that "they thought I was too old to be intelligent."

Crowell & Moring hired Susan Hoffman as the pro bono chief at a fixed salary with no option for making partner. And Neal McCoy, managing partner at Skadden, Arps' branch in Washington, gropes for words to describe Ron Tabak, the man in charge of their pro bono office in New York. "A very experienced lawyer," McCoy says, "who is not a partner but a very senior, uh,. . .lawyer."

We get the message.

No firm except Hogan & Hartson is willing to say that a substantial pro bono commitment might actually help an associate make partner. At H & H, the 18-month senior associate spot currently occupied by Craig Hoover is known as the "fast track to partnership." But even then it's not because you're helping poor people. It's because you get intensive litigating experience on high-impact cases.

Everywhere else, partners hastened to say that pro bono would never actually count *against* you.

At all big firms, paying work will take precedence over pro bono. In 1987, an end-of-the-year article in the *Legal Times* headlined "Pro Bono Gets Squeezed by Economic Pressures" found that while pro bono work had increased at big firms over the course of the past decade, it hadn't increased nearly as much as their profits or their size. Some weren't doing it at all. Sure, if business is down a bit and your firm's associates are hard-pressed to find 40 hours of paying work a week, then pro bono rises to the forefront. If, on the other hand, business is hot and the market is competitive—well, you can't forget why you're there in the first place.

Hanes vs. Fruit of the Looms

Lawyers love nothing more than to talk in solemn and self-serving tones about "looking outward," about "professional obligations," about "giving something back to the community." On the other hand, they were also talking about "slavery" when the New York Bar recently recommended that all firms commit 20 pro bono hours per year, per attorney—which translates into 24 minutes per week, or 4.9 minutes per day, not enough time to bother recording on the billing sheet for a paying client.

Law is a business—and nowhere is it more of a business than at the big-city mega-firms. Firms may woo summer associates with pro bono opportunities, but in four or five years when that one-time summer associate has matured professionally and developed ongoing relationships with paying clients, he'll be stuck representing Hanes in its case against Fruit of the Loom.

Nor is the question simply one of private firm vs. public interest. The real question is whether somebody like Eve Dubrow should be in the law at all when her heart is clearly elsewhere. Remember, the pro bono work that excited her was tutoring children, which had nothing to do with the law. The same goes for thousands of other young associates who spend their lives serving morally marginal causes when they could be devoting 100 percent of their energy and talents to work they find rewarding. It's a sad scenario when together, money and pro bono work serve as the shot of novocaine that goes straight to the brain, so that what you end up with really *is* a lot of warm bodies obediently doing what they're told, coming alive to talk on the record about how rewarding they find pro bono work—and, off the record, about how bored and miserable they feel.

Imagine what would happen if these people simply abandoned their posts; abandoned the law; left behind the security, the money and the perks. Of course that's a silly, inconceivable thought. It couldn't happen. Because the world would turn topsy-turvy—and when the picture finally cleared, it might actually be the toxic tort offenders who have to go begging for a lawyer.

Oh, brave new world, that has such people in it. ❑

What is the Air Force Really Worried About: National Security or Job Security?

Maybe the Pentagon wants the new stealth planes because they are technological marvels that will revolutionize air warfare. Or maybe it's just because without them, the pilots might lose their jobs.

by Gregg Easterbrook

"It is difficult at this remove to view dispassionately the short-sightedness of the prevailing official attitudes towards the new weapon," Peter Young, a British general has written of the decade following the invention of the airplane. "In 1912 the American colonel Isaac Newton Lewis fitted his famous air-cooled machine gun to a Wright Biplane. Official reaction was tepid."

That attitude did not last. As tenaciously as military officialdom once opposed the notion that the airplane's time had come, it now resists the possibility that its time is about to pass.

The Pentagon is about to commit itself to three new manned aircraft of record-setting expense: the B2 bomber, the Advanced Tactical Fighter (ATF), and the A12 Advanced Tactical Aircraft. (If Congress lets it; the House defense bill minimized B2 funds and cut the ATF altogether.) Though information about the B2 is slowly becoming available, hardly anything has been published about the ATF and A12, which combined will likely cost more than the stealth bomber program. ATF, intended to be the world's hottest "air superiority" fighter, is being designed by the Air Force. The A12, intended to attack land targets from carrier decks, is being designed by the Navy. Both will be stealth—that is, radar-eluding—aircraft incorporating features similar to those of the B2.

Because unusual hierarchies of secrecy cloak stealth programs, it is difficult to estimate whether these aircraft will succeed from a technical standpoint. For some time the military refused to confirm the existence of the B2 or the F117, a limited-edition stealth fighter built principally to determine whether radar-evading jets could be aerodynamically controllable. Today the Pentagon says precious little about ATF; even less about the A12. Both are black programs, meaning many references blacked out of public documents. (The Pentagon now shuns that term, preferring Special Access Required. Slang had mutated to the point that public-record programs were called "white;" work areas referred to as "the white world" and "the black world.") Assessing whether the new aircraft can fly from the standpoint of cost effectiveness may be a different matter. The planes will incorporate so many costly features—some focused more on career security for the pilots' guild than on military necessity—that the world's richest country will be able to afford only a comparative handful.

Current plans call for 132 B2s and 750 ATFs. During World War II the U.S. fielded aircraft in quantities like these: 16,494 B24 bombers, 13,586 P51 fighters. The advent of the jet age did not immediately alter this equation: in 1951 the Air Force

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