

Paying it Forward



General Counsel Make Pro Bono a Priority

By Mary Swanton

In recent years, corporate pro bono has gone from an ideal espoused at conferences for general counsel to a reality in legal departments across the country. Esther Lardent, executive director of Corporate Pro Bono (CPBO), a partnership of the Association of Corporate Counsel and the Pro Bono Institute, describes an “explosion of interest.” Her organization has helped nearly 200 legal departments get their pro bono programs off the ground in the past two years alone (see “Overcoming Obstacles,” p. 61). And more than 80 legal departments are signatories to CPBO’s Pro Bono Challenge, pledging to involve at least half of their legal staffs in pro bono work.

Lardent attributes the change to the fact that in-house lawyers usually come from law firms, where pro bono work is institutionalized.

“Because legal departments tend to hire from law firms, they are getting people who have been doing pro bono at firms who miss the pro bono experience,” she says. “Some of those people are general counsel and some are line lawyers, so you have people at both the top and bottom who are interested.”

Another factor is the growing focus on corporate social responsibility. In companies where top management promotes giving back to the community, lawyers see pro bono work as a way they can contribute to that corporate objective.

On the following pages, *InsideCounsel* looks at how four legal departments tackled the pro bono challenge and the lessons they have learned from the experiences.

PR Newswire

Productive Partnership

Right before Christmas, the legal department at PR Newswire Association got a holiday gift from the Department of Homeland Security: A Pakistani journalist they are representing in a pro bono partnership with Baker & McKenzie was granted “recommended approval” for asylum in the U.S.

“Needless to say, our client is overjoyed, as are we,” says PR Newswire’s general counsel Sherri Felt Dratfield. “What a wonderful way to celebrate the holidays.”

It was the culmination of a year during which Dratfield’s department, in its first ventures into pro bono, also partnered with Baker & McKenzie on a divorce case for a legal services agency for low-income women and with The Family Center, a non-profit family support organization, on copyright and trademark issues involving their training materials and brand.

Dratfield decided to take Robert Lewis, chair of Baker & McKenzie’s New York office pro bono committee, up on his offer of a partnership after the new CEO of PR Newswire’s parent company, United Business Media, began emphasizing corporate social responsibility.

The case of the Pakistani journalist had particular relevance to her team. As employees of a media company, they felt a strong commitment to help the man, who had been the victim of violence and death threats after writing articles about government corruption and human trafficking.

PR Newswire’s six-member legal team partnered with four Baker & McKenzie attorneys and a paralegal. The in-house team researched journalist persecution in Pakistan, assisted in interviewing the client and preparing affidavits, helped prepare him for his asylum hearing and helped find him support resources in New York. The fact that he was recommended for asylum is remarkable because 85 percent of asylum requests are denied, according to Dratfield.

“To help someone who has exposed corruption in his country, to protect him and to foster that kind of reporting, which could be chilled totally, is a matter of pride,” she says.

Once skeptical about how her small department could find the time for pro bono, one year later Dratfield is an enthusiastic champion.

“I was very concerned because we have an enormous workload, and in a corporate environment, things always have to be done yesterday,” Dratfield says. “I was concerned whether adding additional workload would be viewed by the team as an onerous requirement.”

Instead, they have found a sense of gratification in helping people and organizations in need. In fact, they far exceeded



Robert Lewis and Sherri Felt Dratfield

their goal of 25 annual pro bono hours per staff member, racking up a total of more than 200 hours in 2008.

But she points out that tackling diverse projects, some of them time-intensive and time-sensitive, would have been impossible on their own.

“Partnering with Baker & McKenzie has made it possible for us to do all of these because they have the resources, and we don’t,” she says. “Knowing there is a safety net and being able to distribute responsibilities in a way that makes sense has been key.”

Madeleine Schachter, former deputy general counsel for Hachette Book Group USA, now heads Baker & McKenzie’s global pro bono initiatives. Having experienced legal department-law firm pro bono teaming from both sides, she sees it as a win-win.

“Teaming affords [legal departments] the opportunity to add staffing, share workload and supplement substantive expertise,” she says. “For the law firm, it makes it possible to get more pro bono done and it broadens perspectives, something in-house counsel often add.” And it brings Baker attorneys closer to their clients. “Because teaming on pro bono is so collaborative,” she adds, “it tends to foster a sense of collaboration in commercial matters as well.”

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Microsoft

Leading the Way

It certainly wasn't the best time for Horacio Gutierrez to take on more responsibility. The Microsoft deputy general counsel, who leads the intellectual property group, was up to his neck in work. At home, he and his three school-age children were coping with his wife's breast cancer diagnosis and treatment.

But when Gutierrez read the story of Lupa, a 16-year-old girl from Mexico who fled to the U.S. alone after being raped by her mother's boyfriend, he felt compelled to help. Lupa, who was pregnant, had been detained by U.S. authorities and faced deportation. Volunteer Advocates for Immigrant Justice (VAIJ), Microsoft's "signature" pro bono program, was looking for pro bono attorneys to handle her asylum request.

"Somehow I felt this is what I needed to do," Gutierrez says.

That response was exactly what Microsoft General Counsel Brad Smith had in mind in 2001 when he decided to create a pro bono program that would entice Microsoft lawyers to donate their time. Assisting immigrants seeking asylum was a good fit for the company: With one-third of its workforce coming from 140 foreign countries, Microsoft had an in-house team of immigration lawyers. And the ABA's Commission on Immigration Policy, Practice and Pro Bono was seeking Microsoft's help in addressing the issue of unrepresented detainees.

"All of these things made this the right issue for us," Smith says.

The result was VAIJ, launched in 2003 in Seattle with the support of the ABA and several law firms. Since then, more than 100 volunteers, including 40 attorneys and 40 paralegals and nonlegal professionals from Microsoft's legal department, have represented more than 250 detainees, including more than 20 children. Statistics show that the success rate of a detained asylum seeker who has legal assistance is up to eight times greater than that of an immigrant without representation. Yet in Washington, only 20 percent have lawyers.

In 2006, at a recognition program for VAIJ volunteers, a representative of a non-profit agency from Southern California mentioned that as a result of VAIJ, Washington was the only



Horacio Gutierrez

state in which every immigrant child was represented in the immigration process.

"I started to think about what it would take to make this program national," Smith says. "I saw an opportunity to take pro bono to a higher level and think about it in a much different way."

Two years later, Smith was at a press conference in Washington, D.C., launching Kids in Need of Defense (KIND). Starting this year in seven cities with the backing of 37 law firms, two other corporations and actress Angelina Jolie, KIND's long-term goal is to assure counsel for all 8,000 unaccompanied children who go through the immigration process in the U.S. annually—only about 50 percent have lawyers now.

Lupa was one of the lucky 50 percent. Gutierrez recruited two other Microsoft lawyers and an administrative assistant to work on her case. They met with VAIJ staff members who walked them through

the process. Gutierrez made several trips to see Lupa, using his Spanish language skills to interview her. He recruited a colleague from Microsoft's Mexico City office to track down police records from Lupa's hometown. His 10- and 13-year-old daughters got involved too, collecting their toys and dolls for the baby and closely following the case. "In a sense they became part of the team," he says.

Gutierrez thought Lupa had a strong case. But he admits being frightened about presenting it to an administrative law judge—something far outside his comfort zone of IP.

"To stand up before a judge and be the difference between a kid being able to live her dream or going back to a place hostile for her is a daunting responsibility," he says.

At first, it seemed that Gutierrez's worst fears might be realized: After a hearing, the judge denied Lupa's asylum request, allowing the deportation process to proceed. The team didn't give up, however, and with the help of one of VAIJ's law firm partners they filed an appeal. Eventually they prevailed, and Lupa is now in the process of getting a green card.

"For someone who is not a litigator, whose failures and successes are hard to prove, to say my work contributed to this person having a bright future in a much safer environment than if she had gone back to Mexico gives me a great sense of pride,"

PHOTOS COURTESY OF MICROSOFT

Gutierrez says. He is volunteering for another pro bono case this year.

That doesn't surprise Lydia Tamez, Microsoft associate general counsel, who leads the U.S. immigration group and heads the company's pro bono initiatives.

"I hear over and over again that attorneys who volunteer want to do it again," she says.

Tamez says it's critical to VAIJ's success that every volunteer has a great experience. Doing that requires careful training and mentoring for the attorneys, giving them confidence to take on an unaccustomed role, and creating project teams with varying roles that suit varying skill sets and time availability. Those kinds of lessons will shape KIND as it gets off the ground this year in New York; Boston; Philadelphia; Washington, D.C.; Los Angeles; Houston; and Seattle.

"We will take the best practices from VAIJ and replicate them on a national level," Tamez says.



David Heiner, Microsoft deputy general counsel (left) and Greg McCurdy, Microsoft senior policy counsel (right) helped Basilio (center), an Eritrean refugee, win asylum in the U.S.

Pro Bono Champion

Microsoft's commitment to detained immigrant children has its roots in General Counsel Brad Smith's early professional experience. As an associate at Covington & Burling in Washington, D.C., Smith participated in several pro bono projects involving refugee matters.

At Microsoft, he saw championing pro bono as an important part of professional responsibility, and he soon became an advocate for corporate pro bono nationwide.

"As inside counsel became a larger part of the profession, we had to recognize that with larger stature came larger responsibilities," he says.

Smith, who has been a leader in Corporate Pro Bono (see "Overcoming Obstacles," p. 61), has witnessed rapid growth since he helped launch the Corporate Pro Bono Challenge three years ago.

"GCs are recognizing that this is something lawyers like to do," he says. "It's positive for morale, it's positive for team building, it promotes collabora-



tion, and it's good for recruiting and retention. They also recognize that it fits

in well with their company's corporate social responsibility agenda."

GCs look to Smith for help in convincing their CEOs that pro bono is an appropriate use of corporate resources. He advises explaining the legal profession's pro bono tradition and the fact that every state's rules of professional conduct include the expectation of pro bono service.

"It's important to comply with our professional responsibilities," he says. "Think of it as compliance for lawyers."

Smith advises other companies to start much as Microsoft did: by picking a project that is a good fit. Then he recommends looking for partners.

"The model that is emerging is a three-sided triangle—the company, law

firms and a non-profit," he says. Case in point: Microsoft's KIND (Kids in Need of Defense) project uniting in-house lawyers, law firms and non-profit organizations to represent unaccompanied immigrant children.

"We've scaled the program so smaller companies can get involved easily," he says. "That creates new opportunities for other companies to get involved."

While most legal departments don't have Microsoft's resources, Smith thinks his department is showing the way for others.

"People at a small company can look at Microsoft doing something with three dozen law firms and Angelina Jolie and it may not seem relevant," he says. "But I remind people that five years ago we were just starting out. Even three years ago we couldn't imagine doing what we are doing today. The most important thing is to take the first step. Then it's important to keep taking additional steps."

Sara Lee

Expanded Perspectives

In a cramped cubicle in Chicago's Daley Center, home to the Cook County Courts, a 38-year-old woman on public assistance pulls out her rap sheet, detailing old arrests for prostitution, theft and misdemeanor drug possession. She wants the offenses expunged from the public record, hoping that will lift a barrier to finding a job so she can support her two school-age children.

Helen Kaminski, assistant general counsel at Sara Lee Corp., listens patiently but moves quickly through the paperwork for a waiver on the \$60 fee for an expungement petition. She is buoyed by helping someone who seems to fit the criteria for expungement: The woman's last arrest was more than eight years ago, she has no convictions and she has passed the requisite waiting period after completion of court supervision.

"It gets frustrating because everyone else I had today I couldn't help," Kaminski says. "Either not enough time had passed, or they had convictions."



Rob Acton and Helen Kaminski

Nearly 4,500 people a year seek help at the Cabrini Green Legal Aid (CGLA) Expungement Help Desk, where Kaminski and two other pro bono attorneys share a bare-bones cubicle with CGLA staff attorney Paul Haidle. They interview petitioners and chart their arrest records to see if they meet the complex criteria to have their records expunged or sealed, and help the eligible process the paperwork. For Kaminski, it's a far cry from her daily routine in the suburban offices of Sara Lee, where she is a securities and corporate governance attorney.

Sara Lee took the plunge into pro bono work last year, after its North American legal staff—13 lawyers and four paralegals—relocated to the company's new headquarters and felt the need for team building. After researching opportunities in the Chicago area, a pro bono committee selected two that met its criteria for limited time commitments and opportunities to involve the entire team. They picked a project teaching legal principles in inner city schools because it provided opportunities for the paralegals and administrative staff. The other choice was CGLA, where Kaminski was on the advisory board. It provides family law, housing law and criminal defense services for low-income people. CGLA offered the opportunity to spend three-hour stints on the Expungement Help Desk or in the agency's office conducting intake interviews, without the time commitment of following a case to trial.

Corporate legal departments most often get involved in CGLA through one of their outside law firms, says Executive Director Rob Acton. He cites Exelon, whose legal department contacted law firm Morgan Lewis about ways to create a legal component for the corporation's Day of Caring. CGLA designed a project for 15 Exelon attorneys, working in partnership with 15 Morgan Lewis attorneys, interviewing potential clients seeking clemency petitions and presenting their cases to the CGLA staff.

"They also got to vote on which cases we accepted," Acton says. "One or two got so interested that they asked to handle the clemency matter before the [state] review board."

At Sara Lee, Kaminski and another attorney serve as a pro bono committee, encouraging participation in the two designated projects and screening requests to get involved in other pro bono work. "It has to be consistent with Sara Lee's values, and we have to make sure there is insurance to cover legal malpractice (CGLA has malpractice insurance for all volunteers)." Participation is voluntary, but the response has been enthusiastic.

"It's easy to get caught up the corporate world, and it's important to have a perspective in life and what is really important," Kaminski says. "And the teambuilding aspect has been really fun. To work on a project where we are all out of our comfort zone has been great."

Caterpillar

Something for Everyone

When it comes to successful pro bono programs, there is no one-size-fits-all solution. Some large legal departments, such as Microsoft's, focus their efforts on one "signature" program that complements their mission and strengths. Small legal departments, like PR Newswire's, often rely on their law firms to identify and manage pro bono opportunities for them.

Caterpillar Inc.'s legal department takes yet another approach—something Corporate Counsel J.P. Kumar calls a cafeteria-style program. Launched in November 2006, the program aims to offer something for each of the 120-plus attorneys who work at corporate headquarters in Peoria, Ill., and in four other offices around the country.

"We have established partnerships with a variety of non-profit organizations to provide as wide an array as possible of options for people to get involved in pro bono," Kumar says. "We ask people, 'What are you interested in?' If we can make it work, we will try to find an opportunity that fits that interest because we believe that once people try pro bono work, they will have a positive experience and will want to do more."

The "cafeteria" serves up opportunities in several formats. Prairie State Legal Services funnels cases to Caterpillar's Peoria-based legal staff. Their low-income clients need help in the areas of family law, debt collection and foreclosures.

Caterpillar's pro bono coordinator, Gale Grant, maintains a database with staff members' preferences so she can quickly match potential volunteers with the cases. She puts together teams including attorneys, paralegals and support staff to handle individual cases, and has no problem finding recruits from all levels.

"We recently received four matters from Prairie State all at once, and we were able to get those placed very quickly," she says.

A second type of opportunity provides legal services to non-profits, including drafting or reviewing real estate leases, employment agreements and by-laws. Some Caterpillar attorneys sit on the boards of non-profits, too.

One-day clinics where attorneys and paralegals draft wills, living wills and health care powers of attorneys are a particularly popular pro bono opportunity because of the contained time commitment. Caterpillar has offered aid to the clinics at local nursing homes, AMVETS chapters and a cancer clinic.

Last year, in partnership with some of its outside law firms and Chicago non-profit groups, Caterpillar took its clinic program to the Windy City, providing one-day sessions on immigration law, due diligence for non-profits and "wills for heroes"—drafting wills for the staff at a firehouse.

"We've tried to be innovative with the options we make available," Kumar says. "We don't want people to get burned out doing living wills."

As an added incentive, the company paid for a night's lodging in Chicago so the attorneys could enjoy a weekend in the city in addition to working at the clinic.

The Chicago clinics, as well as other partnerships with outside counsel on major pro bono litigation, offer professional advantages as well.

We create an environment in which it's easy to step forward and say, 'OK, I'll do that.'

"It's an opportunity to build relationships and collaboration with our outside counsel," Kumar says. "You meet lawyers you don't deal with in your day job."

Kumar points out that it's important to provide training for attorneys working in unfamiliar legal areas, and logistical and technical support makes it easier to integrate pro bono activities into a busy work schedule.

"We provide what they need," he says. "We create an environment in which it's easy to step up and say, 'OK, I'll do that.'"

The pro bono projects have strong support from General Counsel Jim Buda, who participates in pro bono activities himself and promotes pro bono work at legal department meetings. All participation is voluntary, not mandated, but pro bono time is tracked.

"It's a way for people to demonstrate they are doing something above and beyond their standard duties," Kumar says. "If they are being evaluated, people can say, 'Here is an example of what we are doing that is above and beyond'—[and it] is appreciated and acknowledged."

But the biggest reward is the sense of satisfaction that comes from helping a person or organization that needs help, he adds.

"Lawyers get a bad rap for being a drain on society, so it's nice to be able to counter that by doing work that is really needed," Kumar says. "The cost of legal services is way out of proportion to what people can afford. This service is our way of giving back."

Overcoming Obstacles

CPBO helps legal departments take the plunge into pro bono work.

Since 2000, Corporate Pro Bono (CPBO), a partnership of the Association of Corporate Counsel (ACC) and the Pro Bono Institute, has provided legal departments with pro bono resources including technical assistance, online services, training and consultation. Executive Director Esther Lardent talked to *InsideCounsel* about the growth of corporate pro bono and the obstacles that still remain.

Q. *What role has CPBO played in the recent surge of interest in corporate pro bono?*

A. We have raised the visibility of pro bono, shown people examples of successful programs and linked them with each other. This has created a sense that corporate pro bono is doable. We have brought solutions for the special problems that legal departments face—malpractice insurance or moving outside their comfort zone or not knowing how to evaluate public interest partners. We also created the Corporate Pro Bono Challenge, and more than 80 legal departments have signed on.

Q. *How have you addressed the malpractice issue?*

A. If the legal departments work with public interest groups, we encourage the groups to get malpractice coverage for the pro bono attorneys. We also helped create a couple of very inexpensive [malpractice] policies that companies can purchase.

Q. *How do you overcome the fear that corporate lawyers don't have the legal expertise needed for pro bono work?*

A. One way to address that is training, mentoring and partnering. We also have worked with public interest groups to expand the pro bono opportunities that

meet the skill sets of in-house counsel, such as transactional work.

We also have many examples of people in legal departments doing a variety of things [outside their area of expertise]. There are now patent lawyers out there doing family law. There are communications lawyers doing representation of kids. There are even legal department lawyers doing death penalty work. I think people are beginning to realize that good lawyers are good lawyers. And if they have passion for a particular area, they can, with a reasonable amount of effort, get up to speed and do that kind of work.

Q. *What is the "clinic in a box" program at CPBO?*

A. The basic model is a four-hour time commitment. The clients are community-based non-profit groups that face compliance issues and don't have the legal skills to understand if they are OK. A law firm puts together a training program and manual for the law department or an ACC chapter. The [in-house] lawyers spend one-and-a-half hours being trained and then in two-and-a-half hours they do a legal health checkup to determine whether the non-profit is in compliance on issues such as human resources, tax and governance.

Q. *What other suggestions do you have for small legal departments?*

A. We spend a lot of time creating partnerships. Sometimes it is finding the right public interest organization to work with. Sometimes it can be a three-way partnership among a legal department, law firm and public interest organization. These days lots of law firms have structured pro bono programs in which smaller legal departments can play an important role.

Q. *What roadblocks to corporate pro bono still remain?*

A. You may have an attorney in a corporate office in Chicago who was admitted in California and is not a member of the Illinois bar. In some jurisdictions, he or she would be engaged in the unauthorized practice of law doing pro bono legal work. We are going state by state trying to change the law so people can undertake pro bono work with a designated agency, even if they are not licensed in the jurisdiction. We have a multijurisdictional practice group working on it. We've seen progress in Illinois, Oregon and Colorado, but it is a slow process.

Q. *What else are you working on?*

A. Outside the U.S., pro bono is very challenging. The more developed countries look to government to provide a lot of what we look to foundations and charities to provide. And less developed countries are struggling to create transparent legal systems and [the concept of pro bono] seems so far beyond that. But GE is starting a pro bono project in Mexico, and there are legal departments in Australia and the UK starting to look at this.

Q. *Do you think the economic crisis will curtail corporate pro bono?*

A. Even in those legal departments that have undergone a reduction in force, we have seen a continuation, even a growth, of pro bono. When you feel most under the gun, you want to remind yourself who you are. You want to have a connection with your colleagues and a chance to take a breath and get away from the big headline in the Wall Street Journal that affects your company. ■