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PRO BONO

A GOOD DEED EVERY DAY

Law firms' support of pro bono projects has seen a slow, steady rise. But this year could be boom or bust.

BY SCOTT FLAHERTY



AFTER DROPPING OFF THE TOP SPOT LAST YEAR, Jenner & Block ranked first among Big Law firms in 2016 for U.S. pro bono commitment, while Dechert again beat other firms for its international pro bono efforts, The American Lawyer's latest Pro Bono Survey shows.

The top 10 spots in the U.S. pro bono rankings contain many returning names. Hughes Hubbard & Reed came in second place after leading the pack last year. Irell & Manella and Patterson Belknap Webb & Tyler stayed in the top five. But Dechert, Shearman & Sterling and Debevoise & Plimpton upped their game enough to make the top 10, and Robins Kaplan and Arnold & Porter fell out of the top five to 16th and 12th, respectively.

The American Lawyer's list aims to assess The Am Law 200's commitment to pro bono, ranking firms on a metric based on the average number of pro bono hours worked by each of their lawyers and on the percentage of lawyers at the firm who spent at least 20 hours on pro bono matters in 2016. The domestic pro bono rankings relate to work done by lawyers in the United States, while the international rankings focus on pro bono work by lawyers at U.S. firms who are based in offices outside of the country.

Here are a few key findings from the 2017 survey:

- Am Law 200 lawyers dedicated slightly more time to pro bono matters last year than they did the year before. The firms that responded to the survey logged a total of more than 5.3 million hours on domestic and international pro bono in 2016. The percentage of lawyers who contributed more than 20 pro bono hours was also up, even though last year's survey saw that figure at its highest level since 2009.

- Pro bono work in 2016 touched on a wide range of issues, with firms working to combat human and wildlife trafficking, stepping into death penalty cases and advocating for children in foster care. While there was a great variety of individual projects handled, a few core themes emerged, with firms spending a significant portion of their pro bono hours on matters in three categories: immigration and asylum work, clemency petitions and criminal justice reform, and voting rights cases.

- Law firms also increased the amount of time their lawyers outside of the U.S. spent on pro bono in 2016, but international pro bono still falls short of domestic efforts. The average international pro bono score was roughly 40 percent of the average U.S. score.

- Almost all firms have a dedicated pro bono coordinator in-house and allow associates to count pro bono work toward their yearly billable hour requirements. And more than half of firms—

NATIONAL PRO BONO

Rank	Firm	Pro Bono Score	Average Hours	% with 20+ Hours	Am Law 200 Rank
1	Jenner & Block	118.2	141.0	95.3	70
2	Hughes Hubbard	115.7	131.4	100.0	103
3	Irell	112.4	155.9	69.0	153
4	Munger Tolles	108.4	147.6	69.1	127
5	Patterson Belknap	107.0	118.0	96.0	152
6	Paul Hastings	103.4	108.7	98.1	26
7	Dechert	102.8	107.4	98.1	35
8	Shearman & Sterling	102.0	96.7	107.2	33
9	Orrick	101.3	112.0	90.6	32
10	Debevoise	99.6	132.5	66.6	47

51 percent—said they sponsored pro bono fellowships, up from 49 percent last year.

WALKING THROUGH THE NUMBERS

Overall, commitment to pro bono among Am Law 200 firms remained relatively steady in 2016, with slight increases in both the average number of hours that lawyers spent on pro bono projects and the percentage of lawyers who performed at least 20 hours of pro bono work. In 2016, U.S.-based lawyers spent an average of 56.7 hours on pro bono projects, a slight increase from the 54.1 hours that lawyers averaged in the prior year. Among the firms surveyed, half of the lawyers clocked at least 20 hours of pro bono during 2016, up from 47.3 percent in last year's survey.

Those modest gains are in line with the prevailing trend over the past five years or so, according to Eve Runyon, president and CEO of the Pro Bono Institute. "We have found that law firm pro bono hours have remained fairly steady," she says.

Runyon adds, however, that it's not uncommon to see an increase in a given year and that an uptick in pro bono hours can stem from a range of factors. Law firms may tweak their internal programs to make it easier for lawyers to record their hours or give them greater incentive to perform pro bono, or some issues may increase in visibility and generate more energy among the private legal community. For example, Runyon notes, in national election years such as 2016, lawyers direct more attention to election and voting rights issues. "Definitely in an election year, you see more law firms engaged in election protection," she says.

56.7 HOURS

THE AVERAGE HOURS
U.S.-BASED LAWYERS
SPENT ON PRO BONO
PROJECTS IN 2016



Engagement levels were high at Jenner & Block, which came out on top of the U.S. pro bono rankings. Its lawyers put in an average of 141 hours in 2016, and more than 95 percent clocked at least 20 hours. The firm's most significant pro bono matter in 2016 was a court challenge of North Carolina's controversial "bathroom bill," which specified that in the state's government buildings, people could only use bathrooms and changing facilities that matched the sex on their birth certificates. Jenner & Block lawyers, teaming with Lambda Legal, put more than 1,800 hours toward the case, which resulted in a ruling by a federal district court in Winston-Salem that the bathroom law discriminated against transgender students and employees using North Carolina's public facilities.

Andrew Vail, a litigation partner and co-chair of pro bono for Jenner & Block, says the firm's place at the top of the American Lawyer rankings comes in light of a long, standing commitment at the firm to LGBT rights cases, along with immigration rights and death penalty cases. He also noted that even Jenner & Block's transactional lawyers take part in pro bono at a rate that some might find surprising. Among other projects in 2016, the firm handled a transactional matter pro bono for the Young Center, a nonprofit focused on promoting the interests of immigrant children who arrive unaccompanied to the United States. Jenner & Block lawyers spent more than 216 hours guiding the center through a spinoff to become a freestanding nonprofit, after it had been sponsored for roughly a decade by The Tides Center.

While Jenner & Block does expect all of its lawyers to perform pro bono, Vail says that's just part of the reason the firm is so active in the pro bono sphere. Beyond firm policy, pro bono is such a piece of Jenner & Block's inner fabric that some lawyers come to the firm in part because of their interest in pro bono, he says. "We're very proud, and not in the ranking itself, but that it's a reflection of and a recognition that pro bono is in Jenner & Block's DNA," says Vail. "And, as the firm has grown in size, diversity, reach and practice, our pro bono program—and its numbers, impact and scope—has grown."

Other standouts in 2016 include second-ranked Hughes Hubbard, where 100 percent of lawyers did at least 20 hours of pro bono, averaging 131.4 hours each, and international pro bono leader Dechert, where virtually all lawyers did at least 20 hours and U.S. lawyers averaged more than 107 pro bono hours.

"We've ratcheted up the focus in recent years to get the maximum impact from our hours," says Hughes Hubbard chairman Theodore Mayer, who also noted that the firm expects lawyers to put 50 or more hours toward pro bono. "That dovetails very much with other goals like letting our lawyers work on things that they are really passionate about and train associates very well."

50%

AVERAGE PERCENTAGE OF U.S. LAWYERS WHO PERFORMED MORE THAN 20 HOURS OF PRO BONO WORK IN 2016.

Among other projects, Hughes Hubbard devoted substantial time—3,876.2 hours—to prisoner rights issues, representing prisoners in 10 civil rights federal court cases. In six of those cases, the firm secured financial settlements for its pro bono clients, while in another, Hughes Hubbard's lawyers helped protect a Muslim prisoner's right to pray in prison recreation yards, the firm reported in its survey response.

Dechert, for its part, had significant matters in the voting rights realm, with the firm's lawyers spending 5,800 hours challenging voter identification laws in multiple states, according to the survey. Three of those cases, contesting laws in Texas, Wisconsin and Kansas, resulted in successful outcomes at federal appeals courts, which found that the laws put certain voters at a disadvantage—based either on their race or ability to obtain IDs—and impinged their ability to vote. In Texas, for one, Dechert represented the state's conference of NAACP branches and the Mexican American Legislative Caucus, securing a July 2016 ruling from the U.S. Court of Appeals for the Fifth Circuit that a voter ID law passed in 2011 had the effect of discriminating against black and Latino voters. In April 2017, a federal district court ruled for Dechert's pro bono clients on a remaining issue in the litigation, finding that the Texas state legislature also passed the law with the intent to discriminate.

Suzanne Turner, who chairs Dechert's pro bono practice, says her firm's approach to pro bono allows for individual lawyers to pursue projects they have a passion for, but that Dechert also looks for economies of scale that would allow it to make the largest impact possible in its pro bono projects. "We do that by either taking on a case that might have wider impact ... or taking on a lot of individual cases in a specific area," Turner says.

IMMIGRATION, VOTING RIGHTS AND CRIMINAL JUSTICE

Several firms devoted significant time to immigration and asylum work, voting rights cases, and clemency petitions and criminal justice reform, according to the survey responses.

Am Law 200 firms advocated on behalf of individual women and children detained as undocumented immigrants in the United States, as well as taking on international projects focused on refugee crises in the European Union and Middle East. Latham & Watkins, for instance, offered counseling on international law that helped the International Rescue Committee—a global humanitarian organization focused on refugee rights—make recommendations to EU officials in the midst of crafting a strategy to regulate the flow of displaced Syrians into Europe. "Immigration still seems to have the most number of hours," says Vilia Hayes, the chair of pro bono at

INTERNATIONAL PRO BONO

Rank	Firm	Non-U.S. Pro Bono Score	Average Hours	% with 20+ Hours	Number of Non-U.S. Offices	Non-U.S. Lawyers	% Lawyers Outside U.S.	Lawyers in the U.S.
40	Jenner & Block	12.9	9.0	16.7	1	12	2%	535
41	Kaye Scholer	12.6	9.4	15.8	3	38	10%	334
42	Pillsbury	12.2	9.1	15.3	5	59	9%	627
43	Brown Rudnick	11.7	8.4	15.1	2	86	26%	241
44	Fenwick & West	11.6	14.1	9.1	1	11	3%	355
45	Proskauer	10.7	10.2	11.2	5	98	12%	720
46	Mayer Brown	10.5	8.2	12.8	13	717	45%	871
47	Bryan Cave	9.5	9.1	10.0	7	80	8%	871
48	King & Spalding	8.7	8.0	9.4	10	170	17%	829
49	Jones Day	8.2	7.8	8.6	24	919	36%	1,639

Hughes Hubbard. “That comes from where there’s a big need for representation.”

As the national election cycle played out in 2016, firms also took on a number of voting rights cases and devoted time to staffing phone banks on Election Day to help voters who faced obstacles at the polls.

In addition to the 5,800 hours Dechert put toward its voting rights efforts, at least three other firms—Covington & Burling; Kirkland & Ellis; and Lowenstein Sandler—devoted more than 1,000 pro bono hours to voting rights in 2016. Covington, for one, put in 6,444 hours challenging a restrictive voter identification law in Alabama, alleging that it served to discriminate against black and Latino voters in the state. The case remains pending in federal district court in Tuscaloosa.

In the criminal justice arena, many firms continued their efforts on the Clemency Project 2014, an initiative that brought together thousands of lawyers to review clemency petitions for nonviolent offenders who likely would have received shorter sentences under current sentencing guidelines. The project was established to take advantage of an Obama administration initiative that invited clemency petitions from inmates that met certain qualifications; in light of President Donald Trump’s departure from the prior administration’s criminal justice policies, 2016 effectively marked the Clemency Project’s last year. Six firms in the survey—Ballard Spahr; DLA Piper; Jones Day; Kirkland & Ellis; Wilmer Cutler Pickering Hale and Dorr; and Winston & Strawn—put at least 3,000 hours toward Clemency Project work, with Ballard Spahr, Jones Day and Wilmer spending at least 5,000 hours on the project. The survey responses show those hours had an impact: Ballard Spahr drafted more than 50 clemency petitions and saw 29 of them granted; DLA Piper drafted 39 and saw 15 granted; Jones Day drafted 88 and had 18 granted; Kirkland drafted 53 and had 16 granted; and Wilmer drafted 66 petitions, 12 of which were granted.

LOOKING AHEAD

While pro bono efforts at large law firms picked up steam in 2016, a murky future lies ahead for the populations and organizations those projects usually aim to serve. Runyon of the Pro Bono Institute says that, while law firms have shown a “wonderful” commitment to pro bono that has remained consistent over the past several years, the legal services and other nonprofit groups they often partner with are facing a potentially troubling landscape. It remains to be seen what Congress might put toward the government-funded Legal Services Corp., but the latest budget proposal from the Trump administration would entirely cut off funding to the organization [see “Defending Legal Services,” page 28].

17.5

AVERAGE PRO BONO HOURS
FOR NON-U.S.-BASED LAWYERS

With possible funding threats looming, Runyon says private law firms and corporate legal departments could step in to fill some of the gap with pro bono. Runyon says she expects to see continued need for pro bono assistance in the realm of immigration and asylum law, as well as increased attention to cases involving LGBT rights and climate change, issues that have come to the fore in recent years. But she also says that some perennial issues, ranging from landlord-tenant disputes to criminal cases, aren’t going away any time soon.

“There’s a tremendous amount of anxiety among the legal services community,” she says. “It’s critical for law firms to continue to address not just emerging needs such as climate change ... but the bread and butter issues, like landlord-tenant [matters].”

Seyfarth Shaw pro bono and philanthropy partner Allegra Nethery forecasts that The American Lawyer’s next survey will show a surge in pro bono hours and participation among large law firms—particularly in areas where government enforcement and policy priorities put strain on the low income and vulnerable people who are

often the clients in pro bono matters. “I would predict that participation numbers will be significantly higher. I’ve seen in my own firm and heard from my counterparts at other firms that lawyers who had not previously done pro bono work are now actively seeking out those opportunities,” says Nethery. “Areas of focus in addition to immigration are likely to include voting rights, LGBTQ rights and women’s reproductive rights.”

Echoing Runyon, Nethery also takes a similar view on the challenges that legal aid groups face, stressing that “there is simply no substitute for the frontline legal services organizations” that serve low-income and vulnerable populations.

“There seems to be a misconception in Washington that, if the Legal Services Corp. is eliminated or has its funding reduced, private attorneys in law firms can just fill the gap,” says Nethery. “Large firm pro bono programs rely on legal services organizations to do community outreach to find the clients, to screen the clients for eligibility,

and to train and mentor our volunteer lawyers. We simply could not do the amount and type of pro bono work reflected in your survey without them.”

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FIRMS WITH THE HIGHEST AVERAGE HOURS PER LAWYER

155.9

IRELL

147.6

MUNGER TOLLES

141

JENNER & BLOCK

132.5

DEBEVOISE

131.4

HUGHES HUBBARD

JENNER & BLOCK LLP