

Pro Bono Practices and Opportunities in Argentina

Excerpt from: A Survey of Pro Bono Practices and Opportunities in Selected Jurisdictions

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The Argentine legal system has long provided a mechanism of free legal services for the indigent. However, support in Argentina for the emerging concept of voluntary *pro bono* work among private lawyers and law firms began in earnest in the late 1990's and intensified as the country suffered through a crippling economic crisis. The Argentine legal community is increasingly recognizing that fostering a culture of *pro bono* facilitates equal access to justice, bolsters democratic institutions, provides satisfying personal and professional experiences for lawyers, and is ultimately good for business. As leaders push for the development of this culture, the infrastructure supporting *pro bono* opportunities and lawyers who perform this work in Argentina is on the rise. This chapter summarizes the existing regime of legal aid for the indigent, highlights the recent growth of the *pro bono* movement, and discusses avenues for obtaining *pro bono* work in Argentina.

I. The Legal Profession and Legal Aid in Argentina

Argentina's Constitution and Supreme Court decisions interpreting its provisions provide that all individuals, even when they cannot afford it, have the right to a legal defense in criminal matters as well as when they are sued in civil court.¹ If a criminal defendant chooses to proceed without securing legal representation or without representing himself, a judge will appoint an official defender ("*defensor oficial*") to the case.² In addition, people of limited resources with legal needs outside of the criminal system may seek free assistance through university legal clinics. Although the work performed by official defenders and law students is free of charge, it is not typically categorized as *pro bono* in Argentina because the former is government funded and, as explained below, the latter is a university requirement. Nonetheless, this legal aid system helped to shape the modern *pro bono* movement, and therefore merits some explanation.³

Similar to the clinical education programs prevalent in U.S. law schools, law students in many Argentine universities learn the practical skills of lawyering by offering free legal assistance to the indigent through clinical programs. In Buenos Aires, for example, all University of Buenos Aires law students must spend part of their final year of study providing free services either through the *Consultorio Jurídico Gratuito* ("*Consultorio*"),⁴ a legal clinic supervised by law professors, or through an NGO-affiliated clinic in collaboration with the *Centro de Estudios Legales y Sociales* (the Center for Legal and Social Studies or CELS),⁵ overseen by its legal professionals. Other Argentine universities such as *Universidad de Belgrano*, *Universidad de*

¹ *Constitución Argentina*, Article 18; *Fallos de La Corte Suprema*: 308:1557.

² *Ley Del Ministerio Público* No. 24.946, Art. 60. Though the public defender provides free legal services, a defendant who is convicted and has sufficient means at the time of sentencing must reimburse the cost of this representation.

³ The importance of Argentine universities in promoting free legal services to the indigent is also evidenced by the fact that, as of April 3, 2009, six Argentine law schools were signatories of the Pro Bono Declaration for the Americas, more than in any other signatory country. "Pro Bono Declaration for the Americas: Signatories by Country," available at: <http://www.nycbar.org/vc/decl.pdf>.

⁴ The *Consultorio* is structured through commissions, each of which centers around a particular area of law, e.g., children's rights or property law. "*Docentes y Alumnos Llevan Las Causas*," May 14, 2007, available at: <http://edant.clarin.com/diario/2007/05/14/sociedad/s-03401.htm>. See also, the description of the *Consultorio* program on the University of Buenos Aires' "University Extension" website, available at: http://www.uba.ar/extension/trabajos/derecho_patro.htm.

⁵ CELS is a non-governmental organization that promotes the protection of human rights and the strengthening of the democratic system in Argentina. See <http://www.cels.org.ar>.

Palermo, Universidad Nacional de Córdoba, and Universidad Nacional del Comahue have similar clinical programs.⁶

Legal aid provided through the *Consultório* and similar programs is confined to persons with extremely limited means.⁷ More than a quarter of the clients are unemployed with a monthly income of under \$300.⁸ Law students may not charge a fee for their services.⁹ There are also certain substantive restrictions, such as, for example, the preclusion of labor cases.¹⁰ Finally, this free legal assistance is only available to individuals; non-profit organizations do not qualify.¹¹ As this chapter highlights below, this exclusion is an important gap in the legal aid regime that is being addressed by the *pro bono* movement.

Practically speaking, the clinics have a tremendous impact on indigent communities in Argentina. The requirement that each member of the University of Buenos Aires' annual graduating class of over 3,000 law students participate in a clinic equates to free legal services for between 10,000 and 20,000 individuals of limited means each year.¹² The clinics also influence the legal community as a whole because, even before beginning their careers, law students learn that providing free legal assistance is a meaningful and fulfilling way to give back to their communities and experience professional growth. However, while universities are undoubtedly where the seeds of the modern *pro bono* movement must continue to be planted, as the next section of this chapter explains, it has been non-profit organizations and the large law firms in Buenos Aires that have been at the forefront of the *pro bono* movement in Argentina.

II. *Pro Bono in Argentina*

A. The Growth of the Pro Bono Movement

The *pro bono* movement in Argentina was shaped in large part by the two aspects of the country's legal aid system described above. First, law students who provide free services through their university clinics do so as a requirement to graduate, rather than as volunteers. Second, non-profit organizations are not eligible to receive free government or student legal aid. These two unique facts presented leaders of the Argentine *pro bono* movement with opportunities for improvement and for developing a complementary system. The Buenos Aires Bar Association has been instrumental in this effort.

In the late 1990's, before Argentina's financial crisis, Argentine lawyers began considering how to address these opportunities. The answer was to define the concept of *pro bono*, and to create an infrastructure that would facilitate the performance of *pro bono* work and educate lawyers about the merits of *pro bono*. While the idea of *pro bono* was still in its infancy, Argentina descended into an unprecedented financial crisis, and members of the legal community

⁶ See *Red Latinoamericana de Clínicas Jurídicas*, available at: <http://www.clinicasjuridicas.org/universidades-latinoamerica.htm>. Students who participate in the NGO-affiliated clinic at the University of Córdoba work with the *Centro de Derechos Humanos y Ambiente* (CEDHA), <http://www.cedha.org.ar>.

⁷ *Reglamento del Consultório Jurídico Gratuito*, Title IV, Article 9.

⁸ "Acceso a la Justicia para todos," Sebastian Scioscioli, *Facultad de Derecho, Universidad de Buenos Aires*.

⁹ *Reglamento del Consultório Jurídico Gratuito*, Title III, Article 7.

¹⁰ *Id.* Title IV, Article 9.

¹¹ *Id.* Title II, Article 7.

¹² "Acceso a la Justicia para todos," Sebastian Scioscioli, *Facultad de Derecho, Universidad de Buenos Aires*.

came face to face with pervasive poverty. This experience strengthened the conviction among early *pro bono* supporters that offering free legal services was an ethical responsibility of those with the greatest access to the judicial system.

When defining the concept of *pro bono*, the Buenos Aires Bar Association distinguished the term from the already-existing practice of free legal aid in several important ways. First, *pro bono* work is not to be conducted out of obligation, but rather from a firm or lawyer's individual motivation or commitment, and as such, should be carried out with the same quality as all other paid legal work. Second, in order to leverage the scarce resources of practitioners in a way that insures the greatest social impact, the Buenos Aires Bar Association treats as *pro bono* only those cases deemed to be in the "public interest," meaning cases implicating broad social issues or the rights of multiple persons. Toward that end, unlike in the free legal assistance regime, NGOs and other organizations can qualify as *pro bono* clients to the extent they seek assistance with issues that are in the public interest.

In December 2000, the Buenos Aires Bar Association formed the Comisión de Trabajo Profesional Pro Bono en Causas de Interés Público (the Pro Bono Commission).¹³ Not to be confused with a group of lawyers offering *pro bono* legal work, the Pro Bono Commission is an administrative group that acts as a clearinghouse to match lawyers with *pro bono* clients. Potential *pro bono* clients first present the Commission with a request for services, which the Commission analyses to determine if it qualifies as a matter of "public interest." If accepted, the case is circulated among registered law firms with a summary of its essential characteristics, and assigned to the law firm that manifests an interest in taking the case. If several law firms are interested, the case will be assigned in accordance with the preference of the client or, lacking such a preference, by lottery.¹⁴ In order to facilitate a positive match between attorneys and clients, and to ensure that public interest cases receive the highest quality of legal work, the Pro Bono Commission formed a network of participants consisting of many of the leading law firms in Argentina.¹⁵ It also works in association with other bar associations in Latin America.

B. Governing Structure

Pro bono services are, like all legal services in Argentina, governed by the code of ethics of the applicable legal district. In order to practice law in Argentina, attorneys must earn a law degree from an accredited university and register with the *Colegio de Abogados* (Bar Association) of the legal district in which they intend to practice.¹⁶ Bar associations regulate and discipline their members by adopting and enforcing the ethical rules that govern the practice of law in their

¹³ The Pro Bono Commission's website is www.probono.org.ar.

¹⁴ Commission Protocols and Standards, *available at*: <http://www.probono.org.ar/en/commission-s-protocol-and-standards.php>.

¹⁵ The network has grown over time. The participating law firms as of September 13, 2010, are: (1) Allende & Brea; (2) Baker & McKenzie; (3) Beccar Varela; (4) Brons & Salas; (5) Bruchou, Fernández Madero & Lombardi; (6) Bulló, Tassi, Estebanet, Lipera, Torassa & Asociados; (7) Cárdenas, Di Cío, Romero & Tarsitano; (8) Casal, Romero Victorica & Vigliero; (9) Del Carril, Colombres, Vayo & Zavalía Lagos; (10) Klein & Franco; (11) Llerena y Asociados Abogados; (12) M. & M. Bomchil; (13) Marval, O'Farrell & Mairal; (14) O'Farrell; (15) Pérez Alati, Grondona, Benites, Arntsen & Martínez de Hoz (h); (16) Raggio & García Mira; and (17) Zapiola Guerrico & Asociados.

¹⁶ Colegios de Abogados are authorized semi-public bodies. Although these Bar Associations collect dues from their members, they are distinct from private clubs for lawyers, such as the *Asociación de Abogados de Buenos Aires*.

jurisdiction.¹⁷ In addition to regulating its attorneys' conduct, bar associations promote and organize the provision of free legal services by its members.¹⁸ They also oversee free student legal clinics. The Buenos Aires Bar Association, for example, oversees the *Consultorio Jurídico Gratuito*, offered by Buenos Aires University law students. The Bar Association of Córdoba is similarly responsible for creating free student clinics for the indigent and developing the procedures and policies that govern these clinics.¹⁹ One of its policies provides that the Association's attorney members have a duty to provide free legal services.²⁰

Lawyers and law firms may publicize that they offer *pro bono* work,²¹ but practically speaking, they do not generally offer their services to the public since they receive cases through the Pro Bono Commission or other *pro bono* clearinghouses. Though there is technically no ethical restriction on *pro bono* lawyers' ability to collect fees (as is the case with the *Consultorio Jurídico Gratuito*'s free legal assistance program), lawyers must comply with the *pro bono* policies of whichever clearinghouse or referring agency with which they work. For example, any fees collected by a lawyer who is affiliated with the Pro Bono Commission must be donated to the Pro Bono Commission and any press announcements about cases sourced through the Pro Bono Commission require prior approval.²²

C. Pro Bono Declaration for the Americas

The *Pro Bono* Declaration for the Americas, spearheaded by the Cyrus R. Vance Center for International Justice of the New York Bar, was launched in January of 2008 by a committee of leading practitioners in Latin America and the United States.²³ Signatories affirm that it is the duty of the legal profession to promote both a fair and equitable legal system and respect for human and constitutional rights. The Declaration calls for each signatory to commit to an average of no less than twenty hours of annual *pro bono* work per practicing attorney. As of April 3, 2009, sixteen private Argentine law firms had signed the Declaration, as well as the Bar Association of Buenos Aires, six law schools, one NGO (the *Fundación Poder Ciudadano*, described below), and one private practitioner.²⁴

In October of 2008, the San Andres Law School in Buenos Aires hosted a conference on the institutionalization of *pro bono*, which was attended by signatories of the Declaration from more than 75 law firms from North and South America, as well as members of the New York City Bar Association, the Bar Association of the City of Buenos Aires, Instituto Pro Bono in Brazil,

¹⁷ See, e.g., “*Requisitos para el ejercicio de la profesión de abogado en la Capital Federal, Jerarquía, deberes y derechos, Matricula, colegiación.*” (Law No. 23.187), June 25, 1985; *Código de Ética del Colegio de Abogados de Buenos Aires*, approved by the General Assembly of the BA Bar Association on March 31, 1987; *Colegio De Abogados de La Provincia de Córdoba*, Ley No. 5805.

¹⁸ See, e.g., Law No. 23.187, Article 20(d).

¹⁹ *Colegio De Abogados de La Provincia de Córdoba*, Ley No. 5805, Art. 32(15).

²⁰ *Colegio De Abogados de La Provincia de Córdoba*, Ley No. 5805, Art. 19.

²¹ See, e.g., the *pro bono* page on Estudio Becar Varela's website, available at: <http://www.ebv.com.ar/tipo.php?sec=167>

²² See Articles 4 and 5 of the Pro Bono Commission's “*Normas Básicas de funcionamiento y derivación de casos,*” available online at: <http://www.probono.org.ar/la-comisión-normas-de-funcionamiento.php>

²³ http://www.nycbar.org/VanceCenter/PBDA/PBDA_English.pdf

²⁴ “Pro Bono Declaration for the Americas: Signatories by Country,” available at: <http://www.nycbar.org/vc/decl.pdf>.

Appleseed Mexico, Pro Bono Foundation in Chile and faculty from the University of San Andres Law School. A subsequent roundtable was convened in Buenos Aires to focus exclusively on the advancement of *pro bono* work in Argentina.²⁵

III. *Pro Bono Opportunities in Argentina*

As previously discussed, the Buenos Aires Bar Association's Pro Bono Commission is a bridge between large law firms and *pro bono* clients. The Pro Bono Commission's major areas have traditionally emphasized disability, microfinance, NGO advice and transparency. New focus areas also include criminal as well as childhood and adolescence.²⁶ As examples of recent accomplishments by the Commission, attorney participation in "Project Manuel" has successfully enabled completion of adoption procedures for 130 children.²⁷ A favorable judgment was also obtained in a summary action against the City of Buenos Aires Government seeking compliance with the 5% quota of disabled employees required by the City's Constitution.²⁸

Fundación Poder Ciudadano (the Argentine chapter of Transparency International) is a non-profit organization in Buenos Aires that promotes civic participation and political transparency. *Fundación Poder* houses the *Programa Acción Colectiva por la Justicia* (the Collective Action Program, or the PAC) which acts as the second major clearinghouse for *pro bono* legal work in Buenos Aires. Like the Pro Bono Commission, the PAC accepts cases that are in the public interest. It additionally finds matches for individual clients, provided that such individuals demonstrate that their claimed legal rights are representative of violations being committed against a larger group of individuals. The PAC maintains an Internet-based network of volunteer lawyers rather than a network of law firms (although law firms can and do participate). PAC members include lawyers not only from Buenos Aires, but from throughout Argentina. Lawyers in the network can take cases individually, in groups, or can arrange to provide limited assistance in a particular case, such as only performing investigative work. Generally, the PAC offers flexibility and a broad range of opportunities for lawyers interested in *pro bono*. In 2007, approximately 200 potential clients presented their case to *Fundación Poder*, of which the organization was able to take 150.²⁹

The Cyrus R. Vance Center for International Justice in New York serves as a clearinghouse for foreign attorneys to offer *pro bono* services in Argentina. For example, in November 2002, Shearman & Sterling assisted *Fundación Poder* with issues of citizenship, civic information, collective action and democracy, and with its incorporation in the United States as a 501(c)3.³⁰ The Vance Center has also set up a small committee of senior human rights law practitioners from Africa and Latin America. The committee, called the South-South Human Rights Steering Committee, meets by telephone on a regular basis to discuss the challenges that are common to human rights advocates in Africa and Latin America and to identify opportunities

²⁵ Vance Center eNotes, June 2009, available at: http://www.nycbar.org/citybarjusticecenter/pdf/VC_eNotes_06_0209.pdf

²⁶ See <http://www.probono.org.ar/en/index.php>.

²⁷ "Con todas las de la ley," Aug. 29, 2010, available at: http://www.lanacion.com.ar/nota.asp?nota_id=1299138.

²⁸ "Pro Bono and Public Interest Commission of the City of Buenos Aires Bar Association," Dec. 18, 2009, available at: <http://intprobono.blogspot.com/2009/12/pro-bono-and-public-interest-commission.html>.

²⁹ Telephone interview with staff member of *Poder Ciudadano's Programa Acción Colectiva* on December 21, 2007.

³⁰ The Vance Center for International Justice: Global Clearinghouse, Transactional Assistance, available at: <http://www.abcny.org/VanceCenter/PDF/Transactional%20Assistance.pdf>

for collaboration, including drafting amicus briefs, convening conferences or organizing training sessions for judges, commissioners, or lawyers and other advocates, and engaging in joint advocacy campaigns.³¹

IV. Conclusion

The *pro bono* movement in Argentina is part of the growing recognition within the legal community in Latin America of the importance of fostering a culture of *pro bono* among lawyers and law firms. On a national level, the movement is still growing, and has made rapid strides. With an effective infrastructure in place, the Argentine *pro bono* movement is poised to continue this momentum.

³¹ “Vance Center Establishes South-South Human Rights Steering Committee,” January 10, 2101, *available at*: http://vancenet.org/index.php?option=com_content&task=view&id=185&Itemid=9. Gastón Chillier, Executive Director of the *Centro de Estudios Legales y Sociales* (CELS) in Buenos Aires serves as the Argentine representative.