

LATIN LAWYER AND THE VANCE CENTER'S ANNUAL PRO BONO SURVEY

The findings from our latest joint survey suggest pro bono practices are taking root in Latin American law firms. More firms from a greater spread of countries are taking part, and at the same time, a slew of new clearing houses in the region and the growing reach of established initiatives promise to benefit an increasing share of the region's disadvantaged. Yet challenges remain; in Latin America there is still a deep-rooted culture that is unobliging to pro bono, while lack of funding and uncooperative governments have slowed pro bono's progress. **Vincent Manancourt** reports

While making pro bono part of a lawyer's day-to-day remains a challenge, the network of clearing houses taking root in the region points to substantial progress

This is the 10th year we have surveyed Latin American firms on their pro bono practices, and the sixth together with the Cyrus R. Vance Center for International Justice (Vance Center). Throughout this time, we have charted the rise and increasing institutionalisation of pro bono legal services across the region.

This exercise has given us an in-depth insight into the development of pro bono in Latin America. But the regularity with which we have put a spotlight on the area means that sometimes it can feel like we miss the wood for the trees. While it is heartening to see certain institutional measures increasing incrementally each year, a focus on the minutiae is perhaps less useful at capturing the bigger picture.

Antonia Stolper, a partner at Shearman & Sterling LLP and a member of the Vance Center's executive sub-committee, puts it best: "In the 12 years I have been working with the Vance Center, we have gone from almost nothing to quite a large Americas-wide mission. We now have 13 pro bono clearing houses in the region and more about to open. I don't know if the survey data really captures that institutionalisation."

As Stolper suggests, the proliferation of clearing houses gives a clear indication of the progress that has been made. Guatemala, Nicaragua, Uruguay, Panama and Bolivia – countries where a thriving pro bono culture would be beneficial, but where the practice is largely under developed – are likely to have clearing houses up and running in the next year.

Even in countries with longer pro bono traditions, new initiatives are popping up to plug gaps in demand. In 2016, Mexico welcomed its third clearing house, Centro Mexicano Pro Bono, which aims to include a broader base of legal practitioners than existing set-ups by allowing non-bar members to join. Indeed, pro bono in Latin America has taken such great strides in the last few decades that legal communities around the world are looking to the region for inspiration. Those spearheading Spain's first clearing house are looking to Latin America for guidance.

More established clearing houses in the region are also upping the ante. Colombia's Fundación Pro Bono, for instance, recently became the first to establish a presence outside the capital, opening an office in Medellín. In Argentina, the Buenos Aires bar association signed an accord with the country's Ministry of Justice and Human Rights enabling its clearing house, Comisión Pro Bono e Interés Público (CPBIP), to provide free legal advice to underprivileged people living in Buenos Aires, marking the first time the Argentine government has backed a pro bono initiative by the bar association. More recently, the CPBIP launched a new website that aims to expand the reach of pro bono services across the country. Read more about these initiatives and the role of the region's clearing houses in 'Build it and they will come' on page 18.

The vital role that pro bono has played in helping communities recover following the recent spate of natural disasters gives an idea of how crucial a service it has become. In Mexico, for example, all three clearing houses – Appleseed México, Centro Mexicano Pro Bono and Fundación Barra Mexicana – have combined their efforts in the aftermath of an earthquake in September that killed over 200 people in Mexico City alone.

At a law firm level, The Pro Bono Declaration of the Americas, devised by the Vance Center in 2008, has done much to push pro bono up on the agenda. "The declaration has been tremendously successful at increasing the level of participation from firms," says Sullivan & Cromwell LLP partner and Vance Center committee member Werner Ahlers. Signatories, of which there are around 550, commit each of their lawyers to work at least 20 hours a year on pro bono cases. Our survey bases the bulk of its questions around the measures law firms have implemented to allow lawyers to hit (or even surpass) that target.

Initiatives like Red Pro Bono de las Americas, set up by the Vance Center and the Fundación Pro bono in Chile, have helped promulgate regional and even global pro bono projects. In the belief that that clearing houses are the bedrock of pro bono, Red Pro Bono was set up in 2011 in a bid to unite efforts across the region. The network aims to provide clearing houses in Latin America with a platform to exchange best practices, as well as a referral system to bring lawyers together for cross-border work. Ahlers says the network has institutionalised and intensified its cooperation efforts since launching. The next regional meeting that the network is organising will be in Mexico City in March, and organisation is already in full swing, with conference calls between local clearing houses and network executive committee members occurring almost weekly.

Cross-border pro bono projects are becoming more common. "We're seeing people getting involved in global projects. For example, there's one involving 72 jurisdictions regarding the criminalisation of atrocity crimes. I think those broad projects really provide opportunities for engagement across the region," says Sabrena Silver, a White & Case LLP partner and co-chair of the Vance Center committee.

There are many reasons to be cheered by the progress of pro bono in Latin America, says Simpson Thacher & Bartlett LLP partner and Vance Center executive sub-committee member Todd Crider: "My feeling is that to a certain degree there is acceptance of, and an institutional structure for, pro bono. Many firms have created policies and now have pro bono committees."

The challenge now, Crider says, is to take it to the next level. Or, to put it another way: "How do you get lawyers to be more engaged in the issues of their society?" he says.



In Latin America, a significant obstacle is that pro bono culture does not have as strong historical foundations as it does in the US

– Werner Ahlers



Bottlenecks

Perhaps the biggest sticking point to further progress is culture. A common grumble is that pro bono work is not valued by all law firms in Latin America: for some, that it is an optional extra. “In Latin America, a significant obstacle is that pro bono culture does not have as strong historical foundations as it does in the US. Increasing the opportunities to participate in pro bono work and changing how pro bono is sometimes perceived is an important objective of the Network” says Ahlers.

In the US, for instance, most firms promote pro bono on a firmwide basis, signalling to lawyers that providing free legal advice to the disadvantaged is an important focus. Stressing the value of pro bono to a lawyers’ practice is even a standard part of the hiring process. In New York firms, pro bono work is often mandatory.

Engaged senior partners will play a crucial role in changing this culture. Law firms are hierarchical beasts, so the visible commitment of partners signals to the rest of the firm how much to prioritise pro bono. And it is not enough for partners to simply put in the hours; they need to develop a feel for society’s problems and be able to direct work to their firms. Crider suggests partners do this by becoming board members of the local clearing house and other NGOs. “Culture takes time to change,” says Crider. “Lawyers need to have experience of doing pro bono, feel it was time well spent and be willing to do it again.”

Even if not all of today’s partners get it, a large portion of the next generation are more likely to, and there is an expectation of faster progress once the inevitable generational handover happens. Many

younger attorneys have spent time working in US firms, where pro bono is much more ingrained in law firm culture. Universities at home and abroad are also doing their bit to impress the importance of pro bono on young lawyers. “Local law schools have done a lot to promote pro bono culture. Young lawyers are coming out of law school with a contagious enthusiasm for pro bono work,” says Silver.

One challenge that future law firm partners may come up against is law firm size. Relative to the US and the major economies in Europe, law firms in Latin America are small: there are only around 15 firms in the *Latin Lawyer 250* with more than 200 lawyers. Larger headcounts are more conducive to fostering a pro bono culture because they usually translate into more resources to throw at developing the necessary internal infrastructure, such as coordinators and committees.

Though law firms in Latin America will probably never be as large as their US or European counterparts, it does bode well for pro bono that headcount in the region is increasing. Over the past two decades some of the region’s firms have leveraged strong economic growth to expand their staff to such an extent that they can, locally at least, be classed as big. In 2000, only 4% of the Latin American firms listed in the *Latin Lawyer 250* had more than 100 lawyers, and only two had headcounts above 200. Now, 17% of firms listed from the region have over 100 lawyers and there are 11 firms with over 200 lawyers in Brazil alone.

Larger law firm headcounts and revenues should help address another bottleneck to pro bono progress: funding. Of the five clearing houses that answered our survey, two said that funding had increased in



Antonia Stolper



David Flechner

2016 compared to 2015, while one said it had fallen, commenting that, consequently, sustainability is “still difficult to achieve”. This is a sentiment many in the region will be able to empathise with.

But law firms alone cannot foot the bill. In the US, NGOs can rely on a large network of wealthy donors, but Latin America does not have the same culture of private sector giving. “The US is good as a funding machine. We have this incredibly long tradition of people giving lots of money away. There is a tendency in the US to look to the private sector rather than the state for that kind of funding,” says Stolper. Securing stable funding sources would help set Latin America’s pro bono scene on a more sustainable footing. “If we have active clearing houses who are generating lots of interesting work, the lawyers can be found to do it and the law firms are standing by to do that work.” Clearing houses in the region should think long and hard about who might give what, and to what cause. Government measures introducing tax deductibility for donations, as happens in the US, is one suggestion put forward to stimulate more fundraising.

Yet Latin American governments seldom assist pro bono efforts, and are more often a hindrance. The case of Argentina’s government actively supporting the Buenos Aires clearing house’s efforts is rare.

Those currently setting up clearing houses complain of endless bureaucracy, while Brazil’s Bar Association only partially lifted restrictions on lawyers providing free legal advice in 2013, before finally instigating nationwide reform in 2015. It had previously demurred because of fears that the provision of free legal advice would threaten state lawyers’ livelihoods.

Whether culture of any kind – be it the degree to which law firms value pro bono, private sector giving or government obstinacy – can ever be truly changed is up for discussion. What can be said for certain is those in Latin America that are fighting the pro bono cause are making great strides with often little at their disposal, and for that they should be lauded.

Latin Lawyer and the Vance Center would like to thank the following for their help in encouraging firms to take part in our survey and for their feedback on their local pro bono communities: the Comisión de Trabajo Pro Bono in Argentina, Brazil’s Instituto Pro Bono, the Fundación Pro Bono in Chile, the Fundación Pro Bono Colombia, the Costa Rican Comisión Pro Bono, the Dominican Republic’s Fundación Pro Bono, Fundación Barra Mexicana, Applesseed and Centro Mexicano Pro Bono in Mexico, CIDSEP in Paraguay, the Alianza Pro Bono in Peru and ProVene in Venezuela.

ON THE UP



Our survey results suggest that more partners are participating in their firms' pro bono programmes. While the increase may be small, the greater involvement of senior lawyers is nonetheless encouraging given the impact it has on a law firm's overall output

This year's survey produced some welcome news: the proportion of law firms saying that more than half their partners did 20 hours or more of pro bono a year has doubled since the previous survey, to 14%. While the percentage is still low, the growth reverses the steady decline seen in partner participation between 2011 and 2015, which had caused concern among those that count on partners to set an example to younger lawyers. The 20-hour target is based on guidelines provided in the Pro Bono Declaration of the Americas, which the Vance Center created with others in 2008. By signing the declaration, firms commit to building the infrastructure to allow their lawyers to do 20 hours of pro bono a year. Just over half this year's respondents are signatories.

The latest numbers on partner supervision of projects are also encouraging. In 2015, some 78% of firms said projects are supervised by at least one partner; in this year's survey, which covers data for 2016, the figure is 85%. With their greater level of experience, partners present a better pair of hands to lead complex cases.

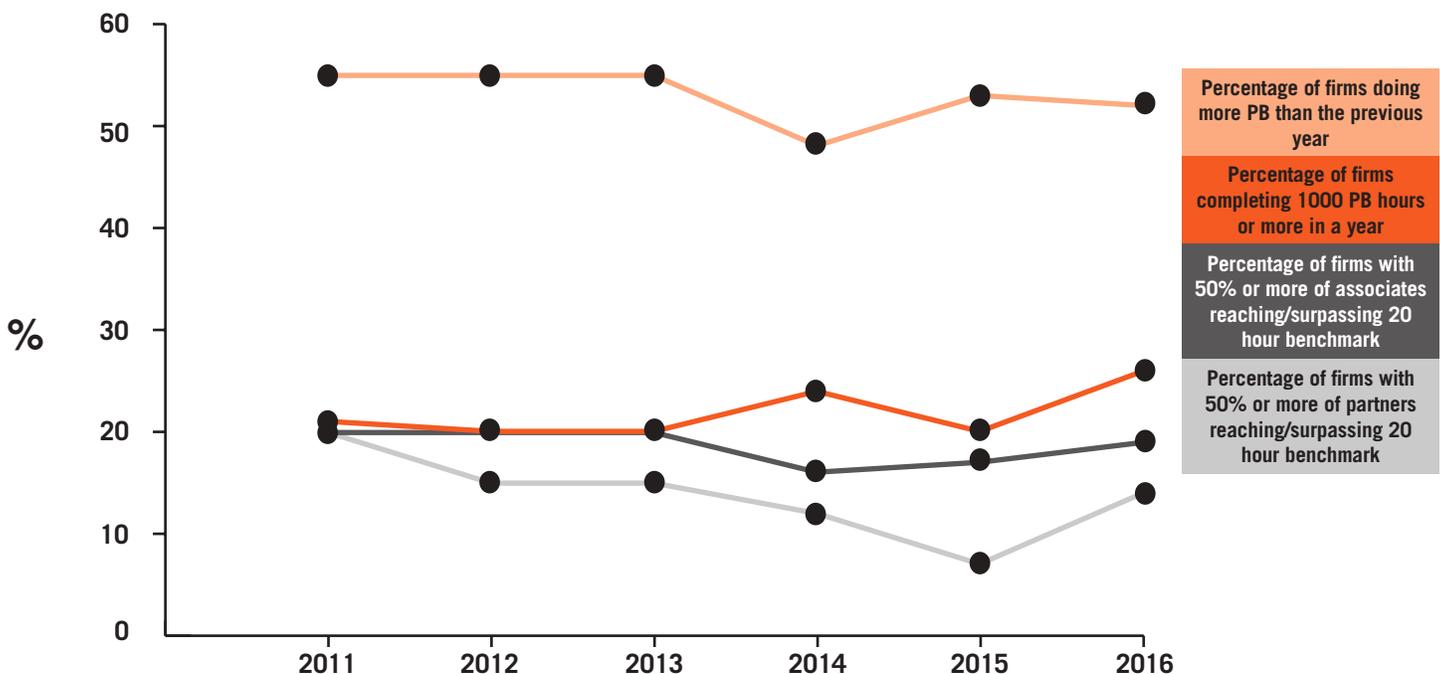
One explanation for the rosier outlook regarding partner involvement could be that firms have made a push to recognise their efforts. Some 36% of firms profess to including pro bono in the evaluation of their partners, up from a third in 2015.

But while the figures present a positive trajectory for partners' role in pro bono work, the optimism must be tempered with some caution. Most partners still do not reach the 20-hour target, never mind surpass it. It is still too early to say whether these latest figures signal the beginning of an era of increasing engagement from firms' upper echelons.

Even so, pro bono enthusiasts should take heart. Much ink has been spilt on the crucial role senior partners play in ensuring pro bono becomes part of the fabric of law firm culture. Law firms, perhaps more than many other types of businesses, are led from the top, so lawyers look up for examples to follow. The visible commitment of partners signals to the rest of the firm the priority pro bono should be accorded. These latest figures are reassuring, if nothing else. As Sabrena Silver, a partner at White & Case LLP in New York and a member of the Vance Center committee, puts it: "I'm delighted to see more partner involvement. I think that's a key statistic."

There is an expectation that the figures for partner involvement will improve once more firms go through a generational handover. Many younger attorneys have spent time working in US firms, where pro bono is much more ingrained in law firm culture, and are returning to Latin America with a fresh perspective and a desire for change. Indeed, our survey findings

How much pro bono work are lawyers doing?



consistently show that associates are doing more pro bono than partners.

Quality over quantity

Over half the firms polled say they are taking on more work compared to last year. Around 26% of firms are completing 1,000 or more hours of pro bono work in a year, up from 20% in 2015. A lack of interesting work is often put forward as a reason for low partner involvement in pro bono, and in recent years there has been a push to bring lawyers into contact with more compelling projects. The thinking goes that this will both increase senior participation and the impact of lawyers' toil.

"The bottleneck is no longer just that there is too much need and too few resources, it's getting high-quality projects; there's a scarcity," says Vance Committee member David Flechner, a partner at Allen & Overy LLP. He defines "high-quality" work as that which has a concrete impact and beneficiary. Too often, he says, pro bono work involves doing legal studies where there is no clear benefit to anybody. Often it is a case of the client not knowing how to use the resource properly, he adds.

If partner involvement is really on the rise, ensuring that involvement is productive is the next battle. There is a consensus that it is not enough for partners to simply put in the hours; they should also go looking for pro bono cases to take on. "Partners should be aware of society's problems by being on the board of the clearing house and all types of organisations. In that way, they can feed this

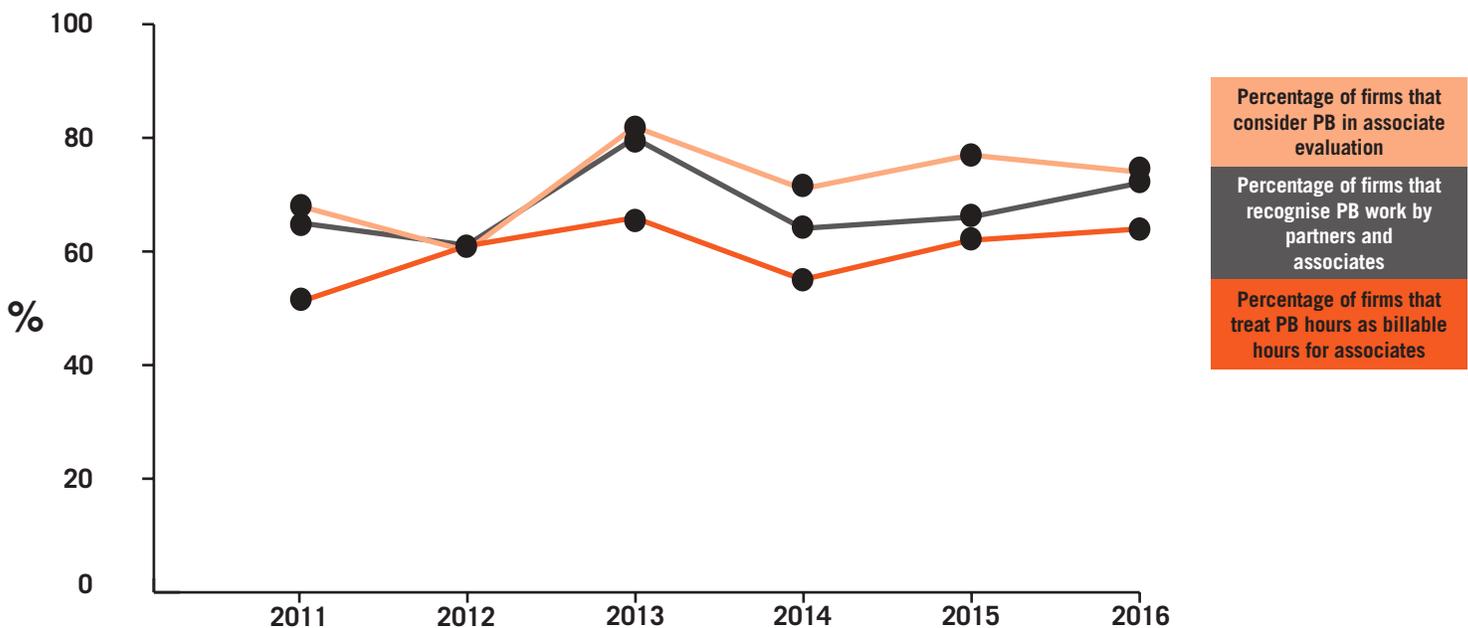
work back to their firms," says Todd Crider, Vance Committee executive sub-committee member and Simpson Thacher & Bartlett LLP partner.

Central American firm BLP, for instance, encourages its partners to involve themselves directly in the organisational structure of their pro bono clients. Through these efforts, partners are now on the board of directors of pro bono organisations and participate in the decision-making process.

Our survey results give some indication that pro bono is becoming more ingrained in law firm practices, not least because more firms are measuring the work they are doing. Measuring what lawyers do is key for pro bono to really take hold and progress, though it may also depress the apparent rate of progress. Firms that do not measure pro bono could, knowingly or not, inflate their figures. In 2015, just over 70% of firms said they kept a record of the pro bono work they did; in 2016, 83% of firms reported doing so.

Firms are not only more likely to measure their pro bono hours, but the impact of those hours too. Around a third of firms said they measured the impact of their work in 2015, while in 2016 it was up by 10%. It must be noted that approaches used to make these measurements vary wildly, and some have more sophisticated methods than others. At the more scientific end of the spectrum, one firm uses theory of change and development frameworks to monitor and evaluate its work, but many others say they measure the impact through conversations with clients and do not have any formal criteria in place.

Rewarding pro bono efforts





Sabrena Silver

Taking root

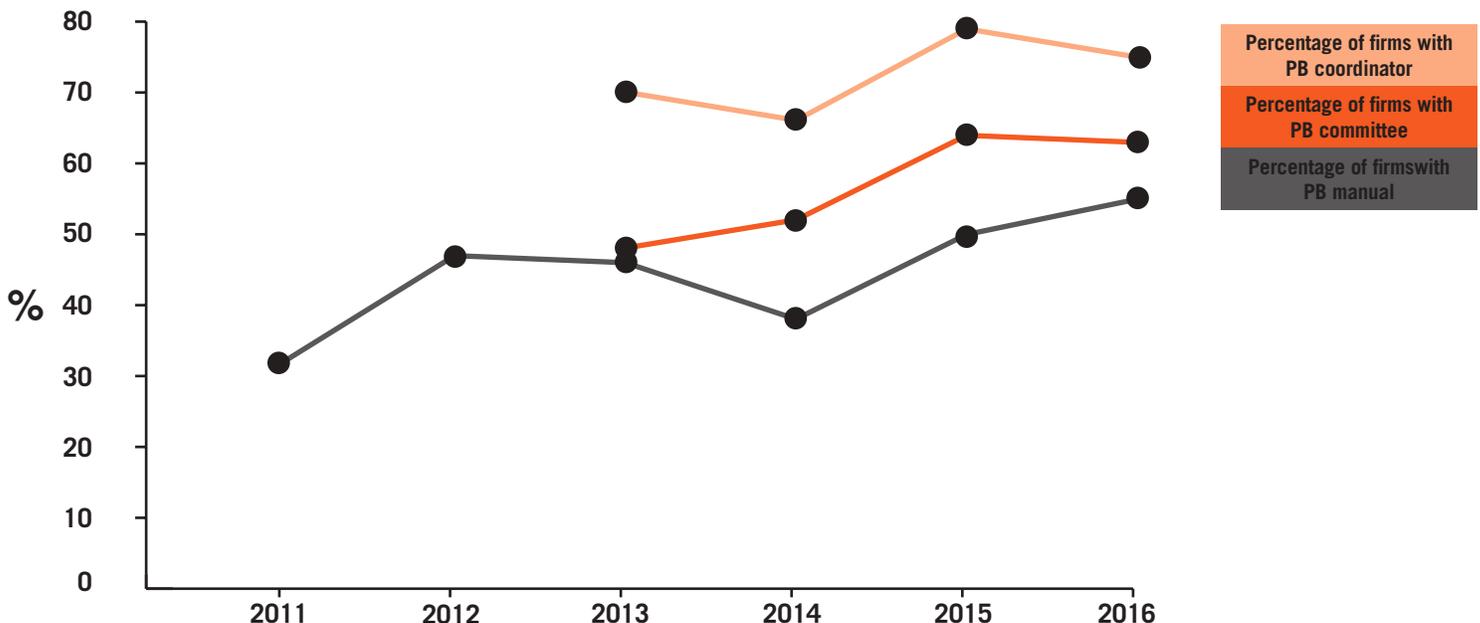
We also ask firms about the policies they have implemented to make pro bono part of lawyers' routines. These are based on guidelines provided in the Pro Bono Declaration of the Americas.

Measures include having a pro bono committee and coordinator, and recognising the pro bono efforts of their lawyers. The percentage of firms with a pro bono committee is roughly the same as last year, at 63%, but this is over 10% higher than in 2013. Similarly, 55% of firms now have a pro bono manual, which is nearly 20% higher than in 2011. At 75%, the proportion of firms with a pro bono coordinator is encouraging, even if it represents little change from 2013, the first year for which we have data.

Firms also seem to have realised the importance of recognising the efforts of their lawyers. Over 70% of responding firms both consider pro bono work in associate evaluation and recognise pro bono work by partners. These numbers are roughly similar to previous years'. More than six in ten firms that responded to our survey treat pro bono hours as billable hours for associates, which is a promising near-10% increase from 2014.

Having these measures in place is crucial if firms are to be rid of "the perception that doing pro bono has to come at the expense of paying client work," says Werner Ahlers, a Sullivan & Cromwell LLP partner and Vance Center committee member. "That is where institutionalisation is helpful: for example, in giving pro bono work equal credit alongside billable hours." Crider reinforces this message: "Most firms compensate based on time, so if pro bono is done differently, you are essentially asking lawyers

Institutional progress





Todd Crider



Werner Ahlers

to do work for free without getting any credit. The firm has to send a strong message about how it views pro bono.”

More respondents, more countries

The level of participation in our survey is increasing. This year there were some 130 respondents, compared to around 110 last year. It is fair to assume that the majority of those willing to set aside the 40 minutes needed to fill out our survey do so because they have good news to relay.

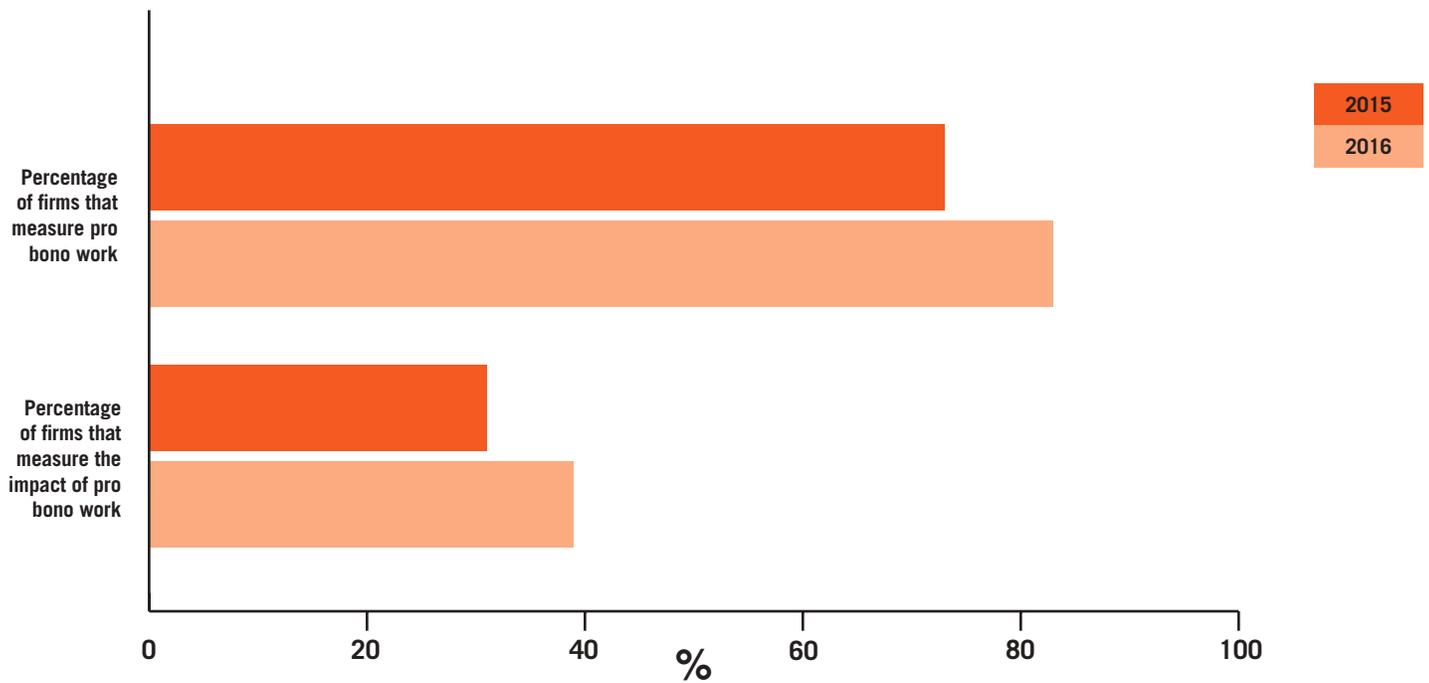
Similarly, more and more firms from countries with a less established pro bono culture are taking part in the survey.

The proportion, but not the number, of respondents from Chile and Colombia, two countries with arguably the most established pro bono cultures in the region, has fallen compared to 2012’s survey,

an indicator of the increasing geographical spread of respondents.

Meanwhile, the proportions of respondents from Uruguay and Paraguay, for instance, are up nearly five times compared to 2012’s survey. There was also an increase in the share of respondents from Bolivia and countries in Central America, where plans are afoot to establish clearing houses. Panama, which is also expecting a new clearing house, saw a dip in its share of respondents compared to the 2012 survey, though this is partly due to the draining effect the Panama Papers scandal has had on lawyers’ time and efforts. The number of Argentine firms taking part has more than doubled compared to last year, which is perhaps indicative of the massive progress made in pro bono there recently. (Read about efforts to set up new clearing houses, and extend the reach of existing ones on page 18).

Measurement is key

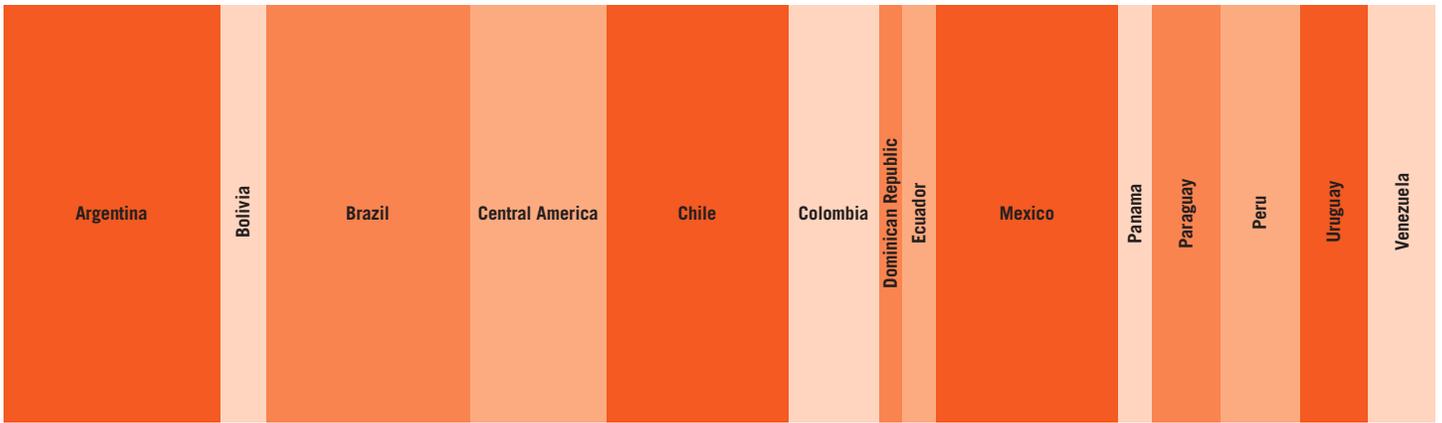


Methodology

Some 130 law firms from across Latin America took part in the sixth pro bono survey by *Latin Lawyer* and the Vance Center, which was supported by JP Morgan and BTG Pactual. Each year, we invite firms from across the region to take part in an extensive survey that asks questions about the amount of work firms are doing and the policies they are introducing to build a pro bono culture. We also contact clearing houses in the region that belong to Red Pro Bono de las Americas, and ask them about the cases they are doing, as well as the progress and challenges they have seen in the past year.

Latin Lawyer has long highlighted the pro bono work done by Latin American law firms, and its first annual pro bono survey was made in 2007. It also raises money for pro bono activities through its annual charity awards dinner in São Paulo. Part of this focus has been to promote the work of the Vance Center, which has helped bring about significant change in this area, not least through the Pro Bono Declaration for the Americas (PBDA) launched in 2008 and through the development of multi-jurisdictional pro bono projects to encourage collaboration among law firms in the region.

Proportions of respondents by country/region



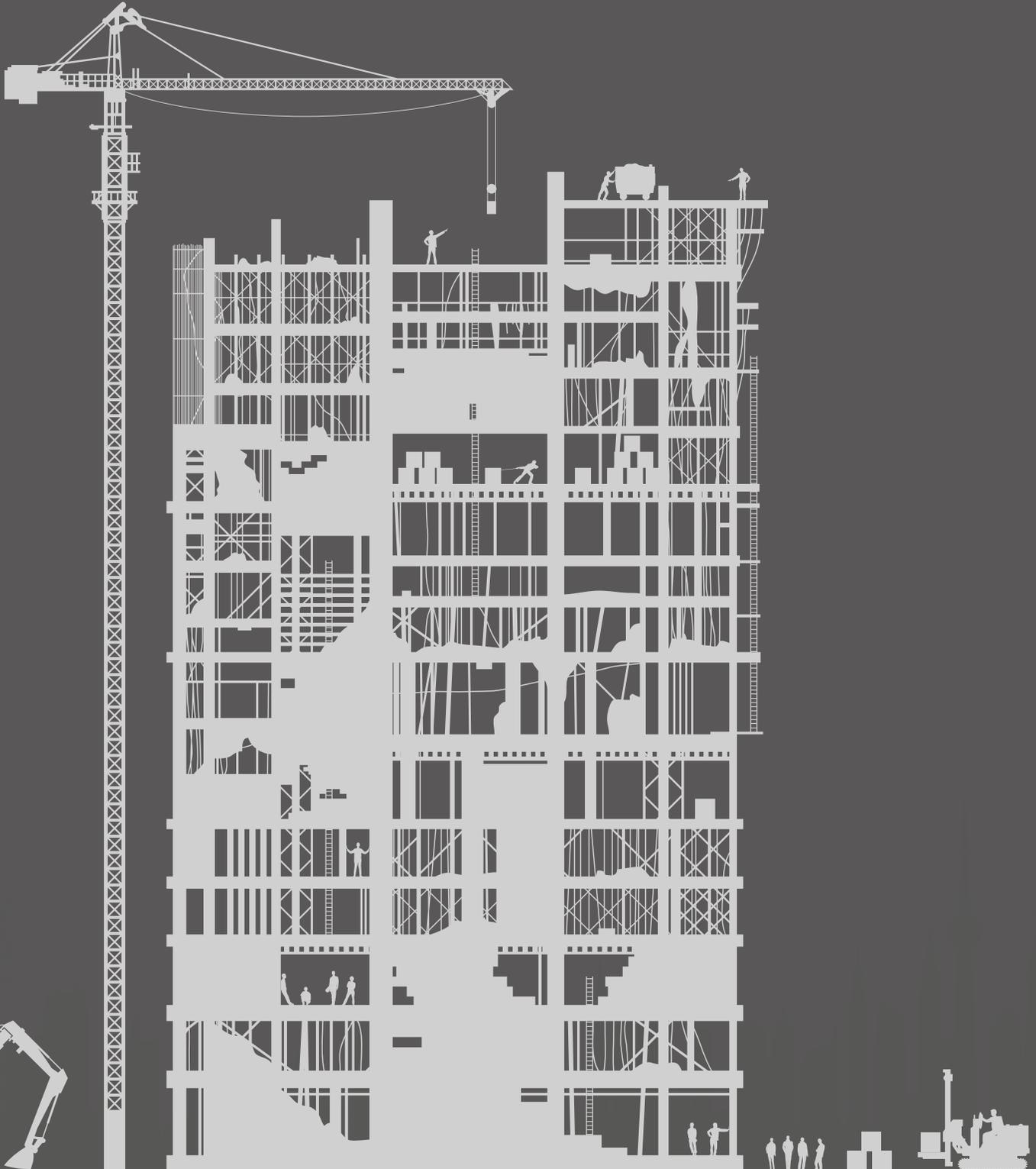
Selected country-by-country results



Country	Firms w/ pb coordinator	Firms w/ pb committee	Firms that recognise pb work	Firms that consider pb in associate evaluation	Firms with pb manual	Firms that treat pb as billable hours for associates	Firms completing 1000 pro bono hours or more/year	Firms with 50% or more partners reaching/surpassing 20-hour benchmark	Firms with 50% or more associates reaching/surpassing 20-hour benchmark	Firms doing more pro bono work than previous year
Argentina	60% – 79%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%
Brazil	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%
Central America	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%
Chile	60% – 79%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%
Colombia	60% – 79%	60% – 79%	60% – 79%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%
Mexico	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%
Paraguay	60% – 79%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%
Peru	60% – 79%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%
Uruguay	20% – 39%	20% – 39%	20% – 39%	20% – 39%	0% – 19%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%
Venezuela	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%	20% – 39%

BUILD IT AND THEY WILL COME

In its mission to spread pro bono throughout Latin America, the Vance Center has focused on supporting the development of local clearing houses. Here, we explore how these organisations are taking pro bono to the next level



In November, the Buenos Aires bar association signed a historic accord with Argentina's justice ministry, enabling the province's clearing house, the Comisión Pro Bono e Interés Público, to provide free legal advice to underprivileged people living in Buenos Aires. Since then, the same ministry has called for public law associations, universities and NGOs across the country to submit proposals to set up local clearing houses.

The move is designed to support the Comisión Pro Bono's initiative to expand its remit beyond Buenos Aires to the rest of the country. The idea is that this nationwide network of clearing houses will work closely with local government "access to justice" centres, where people can seek out state legal aid.

The government's wholehearted embrace of pro bono organisations after years of mutual distrust has come about because the administration of President Mauricio Macri includes a smattering of former private practice lawyers with experience of pro bono. Zapiola Guerrico & Asociados partner and clearing house head Martín Zapiola Guerrico describes the change in approach as nothing short of a miracle. "When the government is behind you, it's a different story – it multiplies our efforts. Without government support, promoting pro bono is like rowing in a sea of dulce de leche," he says.

It is an encouraging tale of what can be achieved when governments and the pro bono community actively work together, and a good example of what the Vance Center's pro bono director, Leire Larracochea, refers to as a "crucial next step": that is, a broadening of the reach of pro bono efforts.

Argentina isn't the only country in Latin America where attempts are being made to spread pro bono beyond the confines of the capital city. Colombia's Fundación Pro Bono recently opened an office in Medellín to better serve the city's needs as well as those of the surrounding Antioquia region.

Arboleda Abogados's Ana María Arboleda, who works at the foundation, says the number of assigned pro bono cases in the city has jumped from around 10 cases per year to 100 since the office opened. "Before, cases were dealt with over the phone or by email from Bogotá. It's just not the same," says Arboleda. Juan Esteban Sosa, who heads up the Medellín office, says having someone full-time in the city makes a big difference. "I can develop relationships with the organisations and lawyers here in a way that would be impossible to do from Bogotá," says Sosa.

Colombia's pro bono foundation launched its Medellín station with the help of Bogotá-based firms' offices in the city. It plans to do the same in other cities across the country, starting with Barranquilla.

This model could be adopted in other jurisdictions too. Larracochea says expanding pro bono's reach beyond capital cities is key for clearing houses to work effectively with the NGOs or small law firms that are based in other cities.

It's not just an almost exclusive capital city focus which is a problem; Larracochea claims clearing houses are not inclusive enough in general. "There needs to be a greater diversity of professionals involved in pro bono. It's not only law firms that should be involved, but in-house departments, private practitioners, different types of NGOs and universities. Then you get a multitude of skillsets that enables you to solve more problems," she says. Big law firms that tend to excel most in transactions might not have great litigation skills, for example, she says.

A thriving network of specialised experts is something Shearman & Sterling's Antonia Stolper says the New York pro bono scene has gotten down to a tee. "If you take an asylum case, you're working with a human rights person who is an expert in asylum cases. If you are doing environmental work, you're working with an environmental NGO who has done projects all over the world," she says.

It is only when a pro bono community is diverse that it can begin to tackle controversial cases, such as litigation against the state or legal reform, says Larracochea. "When clearing houses are developed enough, they can sign themselves as the legal counsel, which means member firms can work on a case anonymously." This means that firms can work on cases they wouldn't otherwise for fear of alienating paying clients. Larracochea sees this as the next step that clearing houses should be aiming for in the evolution of pro bono in Latin America.

Mindful of the need to have a broad base, Pérez-Llorca partner Alejandro Osmá, who is part of a group of law firms working on establishing a clearing house in Spain, notes the group's desire to make the initiative as inclusive as possible. "We will gather as many law firms, in-house counsel, universities and solo practitioners and other legal providers as possible under the umbrella of the clearing house. We don't want this project to be seen as a toy of the big law firms or as an advertising instrument," he says.

Similarly, Ivette Montero launched Mexico's third clearing house, Centro Mexicano Pro Bono, in 2015 because she felt there was a need for a more inclusive organisation. "There was interest from in-house lawyers, smaller firms and lawyers that are not part of the bar to get involved in pro bono," she says. Fundación Barra Mexicana, naturally enough, only admits lawyers that are bar members, while Applesseed Mexico is predominantly a grouping of large or US headquartered firms.

WHEREFORE CLEARING HOUSES?

Clearing houses are revered as the main engine of pro bono, but what exactly do they do? Here, we explore the crucial function they perform

Why are clearing houses important? It is a simple enough question, but one where the answer is deceptively complex. Because if law firms already have pro bono programmes in place, which many do, irrespective of clearing houses, why are these organisations one of the main – if not the focus – of the Vance Center’s efforts?

While it is possible for law firms to set up their own pro bono programmes independently of clearing houses, such an endeavour requires a lot of resources. It is unlikely that those in need will approach law firms directly, so the onus is on the provider of those legal services to identify where there is need. This takes time and effort. As Sullivan & Cromwell’s Werner Ahlers puts it: “It’s not like people are knocking our door down or cold-calling us. That is where the clearing houses are key, at putting needy and worthwhile clients in touch with legal service providers with the appropriate expertise.”

Clearing houses effectively function as intermediaries and, as such, cut down on transactional costs on both sides. A more professional, formalised system of referring work is one reason why QIL+4 Abogados’ María Isabel Luján thinks a clearing house is necessary in Guatemala. “At the moment, pro bono work is assigned on an ad hoc basis. You end up hearing about work through a cousin of a friend – it’s that sort of situation,” she says.

Screening work is another function of clearing houses. With no shortage of demand, it takes someone with knowledge of the law to work out how law firms can help. For instance, Pérez-Llorca partner Alejandro Osma, who is part of a group working to set up a clearing house in Spain, feels that NGOs do not provide law firms with high-quality work. He believes this will change once the clearing house is up and running. “We know that we can provide high-quality or high-level legal assistance, it’s just about working out what needs doing,” he says.

This screening function means that those that work at clearing houses must have a particular skillset. “[They] need to have sophisticated knowledge to be able to approach lawyers, but also be people that can go to culturally distinct environments and be able to engage with the people there,” says Simpson Thacher & Bartlett LLP’s Todd Crider. For example, Harvard-educated lawyer Ivette Montero, who is the director of Centro Mexicano Pro Bono, says that her involvement with non-profit organisations means that she is “close to [these organi-

sations’] needs” and can identify what legal assistance is most helpful.

Clearing houses also provide a rare neutral space for competitors to collaborate. Leire Larracoechea, who is the director of pro bono at the Vance Center, says this has been one of the New York-based organisation’s main achievements. “Since the beginning, the Vance Center has pushed to mobilise and organise lawyers to aim at a common goal. We manage to bring these lawyers, who are usually competitors, together to speak about common challenges and problems.”

Collaborative efforts also allow law firms to play to their respective strengths. “A beauty of a clearing house such as the one we have in mind are the synergies that we can create among firms. One firm might be very good at tax, while another might be the best at international arbitration,” says Osma.

Even the prospect of a clearing house opening can prompt law firms to work together more closely. In Panama, where plans to set up a clearing house are in motion, member firms are considering banding together ahead of time to handle a pro bono case for the first time ever. The project in question is to provide legal assistance to a youth movement linked to the Catholic Church.

While rich, large law firms may already have well-oiled pro bono programmes, clearing houses can provide the necessary push and resources for smaller outfits and solo practitioners to get involved. A large part of this involves educating lawyers, since some in the legal community, especially in smaller firms, only have a basic grasp of pro bono. In Spain, for instance, the clearing house plans to provide training to lawyers at law firms, companies and non-for profit organisations, and also to beneficiaries of the latter and students, working closely with legal clinics to that aim. Like most other clearing houses, it also plans to set aside much of its resources to promote pro bono across the media, universities, in-house counsel and private practitioners.

But not all revere clearing houses. Some firms find these institutions’ demands are too great or far-reaching. There are good examples of firms that have built successful pro bono practices without their support.



There has to be deference to the organic nature of leadership and you need to figure out where the initial stakeholders of a clearing house can be found first

– David Flechner



Made to measure

Complementing initiatives to spread the existing remit of pro bono, several countries in Latin America (and beyond) – including Guatemala, Nicaragua, Panama, Bolivia, Uruguay and Spain – are in the process of setting up clearing houses for the first time.

When it comes to launching a clearing house, there are some best practices that are common to any jurisdiction. The Vance Center and the Fundación Probono in Chile set up the Red Pro Bono de Las Americas with precisely this in mind in 2011. The network allows clearing houses to exchange best practices, as well as acting as a referral system to bring multi-jurisdictional teams together. In the same vein, QIL+4 Abogados' María Isabel Luján says that clearing houses in Colombia and Chile – two jurisdictions seen as leaders in pro bono in Latin America – have invited the new executive director to visit each country.

Yet despite certain commonalities, clearing houses need to be tailored to the jurisdiction. The initial stakeholders of a new venture will vary from country to country. “There has to be deference to the organic nature of leadership and you need to figure out where stakeholders can be found first,” says Allen & Overy LLP partner David Flechner. Being flexible and able to adapt to changing circumstances are key, he says. “One minute an institution like a university might be your principle stakeholder, and the next it could be law firms. You need to be attuned to that.”

In Uruguay, a university has been the driving force behind the new clearing house. Many are keen to have universities involved, since that helps the idea of pro bono take hold early on in a lawyer's career.

“We approached the university, because having the university on board helps create the right culture. Everything begins with the students,” says Sandra González of Ferrere (Uruguay), who is a key member of the group spearheading the clearing house project. Luján is keen for the executive director of Guatemala's fledgling pro bono foundation to be linked to a university for similar reasons. “One of the things that we want to do is start creating this pro bono philosophy in all Guatemalan law schools.”

Bar associations are also commonly sought out partners. In the US, where membership is mandatory, the bar is integral to the legal community so is a natural ally in promoting pro bono. “The US bar sets ethical rules that lawyers must pay attention to,” says Ahlers, by way of explanation.

But when it comes to identifying stakeholders, there is no strict template to follow. In many jurisdictions, law firms have embarked on the venture alone. Those seeking to get a clearing house off the ground must simply see “who raises their hand”, as Flechner puts it.

While having a bar association on board might make sense in one country, it may not in another, for example, in countries where membership is not mandatory, or where the bar simply plays a different role. In Brazil, the bar famously only lifted restrictions on private practice lawyers providing free legal assistance in 2015. Before that, there was a feeling that pro bono presented a threat to the livelihood of legal aid lawyers. Consequently, a human rights NGO is a key stakeholder instead. In Panama, Galindo, Arias & López's Cristina Lewis says the group launching the clearing house have decided against working



Martín Zapiola



María Isabel Luján



Alejandro Osma



Diana Rivera

with the bar association because membership is not mandatory for lawyers and because the association can be “very political”.

Friends or foes?

The trajectory of pro bono in Brazil presents a good example of how suspicion of the practice can lead to damaging consequences. To avoid such push-back, one of the first steps in setting up a clearing house has to be a needs assessment, which takes into account the scope of a country’s legal aid system. It is crucial that clearing houses do not step on the toes of public defenders. “Pro bono should complement inefficiencies in the public legal system rather than seek to replace that system,” says Flechner.

Hoping to avoid the Brazilian experience, Diana Rivera of Cuatrecasas is keen to stress that Spain’s clearing house will not seek to compete against the state in providing free legal advice; “that is a line we cannot cross and we don’t want to cross; it’s about complementing, not replacing,” she says. Luján says Guatemala’s clearing house won’t go near criminal law for similar reasons.

Pro bono institutions should aim for good relations with the state, even if that sometimes seems unobtainable. Tales of endless bureaucracy and frustrating delays among those in the process of establishing clearing houses are common. The pro bono foundation in Nicaragua executed its by-laws more than a year ago, but is still waiting to get the green light from the government. Ferrere’s Sandra González talks of having to take Uruguay’s “lifecycle” into

account, which makes progress between November and March nigh impossible. In Bolivia, the clearing house registration process has come to a standstill because the ministry dealing with the paperwork was dissolved earlier this year, while those establishing one clearing house joke that lobbying for reform of the registration process for foundations will be their first project once everything is up and running.

Despite the horror stories, there is space for pro bono and state legal aid to co-exist (even if the Argentine case of active cooperation is rare). Pro bono can complement the services offered by often overburdened state legal systems. Pro bono sometimes casts a wider net than legal aid. “In Spain, the legal aid culture is strong but its coverage is quite specific and narrow. So there is a huge amount of work that we can do, even if we have been experiencing an increase in pro bono work over the past few years” says Rivera. Flechner shares this sentiment: “Pro bono is so much broader than representation in small claims. None of the work I have done could have been done by the government.”

It is clear that clearing houses are essential to creating a thriving pro bono ecosystem. In their simplest form, they provide a framework to manage the supply and demand of free legal assistance. At their most effective, they push law firms and other member organisations to go beyond what each could achieve individually. What their existence reveals is that if lawyers are provided with the right tools and incentives, they can make a difference. As Stolper puts it: “If we build it, they will come.”

HOW ARE IBERO-AMERICA'S FLEDGLING CLEARING HOUSES DOING?

Guatemala

Guatemala's clearing house has progressed quickly since a Vance Center visit in July 2015. Twelve law firms signed the bylaws and constitution papers last July. They are now waiting on registry approval.

Once up and running, the clearing house will assist NGOs and foundations with administrative work. "A lot of them don't have their paperwork in order, which sometimes means they struggle to get financing," says QIL+4 Abogados' María Isabel Luján.

Financial and labour advice will also be an initial focus, while eventually the clearing house plans to take on strategic cases that aim to make improvements to the Guatemalan legal system, says Luján.

Panama

In January 2016, eight law firms formed a working group to develop a business plan for a clearing house. But progress has since stalled, mainly due to the Panama Papers furore. In the meantime, pro bono advocates are seeking to implement the Vance Center's "Women in the Profession" programme, which seeks to promote diversity across the legal profession. There is also talk of law firms trialling a collaborative approach to pro bono cases.

Nicaragua

Ten law firms signed constitution papers and bylaws more than a year ago. They are waiting for government approval to get the initiative up and running.

Initially, the clearing house aims to advise NGOs and provide counsel on administrative, family and constitutional law. After that, representation in litigations and arbitrations is the goal.

Bolivia

The Bolivian clearing house submitted all the paperwork to the government around two years ago. Since then, the government dissolved the ministry in charge of processing the application, and now a different ministry is dealing with the process.

Spain

Spain is an outlier in Europe for not having a broad-based clearing house yet. In December 2016, after a Vance Center meeting in New York, representatives of various law firms established a working group to develop

a business plan for the clearing house. They have almost agreed on the operating, funding and governing model of the clearing house, and have finalised the bylaws.

Currently, at least 15 more law firms are considering joining as founding members.

As well as traditional screening and matchmaking, the clearing house aims to provide training services and promote pro bono across universities, in-house counsel and law firms.

Uruguay

Around five firms are now working on the foundation's bylaws and a book laying down the ground rules, such as what the protocol is when a firm doesn't want to take a case. The Universidad de Montevideo is a key stakeholder in the project, and is formulating a mentoring programme for law students.

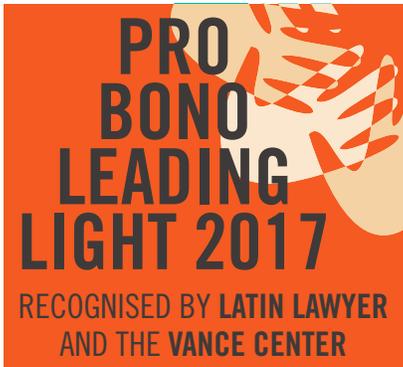
Currently, the Vance Center is helping the initial group of firms attract new members and design a catalogue of pro bono projects.

The clearing house will focus on education, environmental issues, domestic violence, migration and human rights.



LEADING LIGHTS

Here we list 56 “Leading Lights”: law firms who responded to our survey and whose pro bono efforts during 2016 stood out



Several factors played a role in drawing up this list. These include firms’ answers to the survey with regards to institutionalisation of the practice and examples of their recent pro bono cases. We also asked for feedback from clearing houses, the Vance Center and other pro bono professionals, and considered the development of firms’ pro bono practices if they participated in last year’s survey, as well as further research. The list includes behemoths of the regional legal community that can bring significant resources to bear, and small firms from whom personal dedication can make a significant difference.

While this is by no means an exhaustive list (for a start it only mentions firms that participated in our survey), we hope it will give readers an idea of the efforts that firms across Latin America are taking to provide free legal services to those in need.

Of course, it should be noted that simply participating in this survey demonstrates awareness among all participants of the need for pro bono and each one had interesting developments to report. We hope that all respondents will continue to advance their pro bono practices and come back to us to report their efforts in the years to come.

Alessandri
Araquereyna
Arias, Fabrega & Fabrega
BMA – Barbosa, Müssnich, Aragão
Baker McKenzie*
Barros & Errázuriz Abogados
Basham, Ringe y Correa
Benites, Forno & Ugaz Abogados
BLP
Bofill Mir & Alvarez Jana Abogados
Brigard & Urrutia Abogados
Bruchou, Fernández Madero & Lombardi
Bulló Abogados
Carey
Cavelier Abogados
Central Law
Chevez, Ruiz, Zamarripa y Cía SC
Consortium Legal
Creel, García-Cuéllar, Aiza y Enríquez, SC
Demarest Advogados
Dentons**
Estudio Beccar Varela
Estudio Olaechea
Ferrere*
García & Bodán
García Sayán Abogados
Gómez-Pinzón Zuleta Abogados
Grasty Quintana Majlis & Cia
Guevara & Gutiérrez SC – Servicios Legales
Guyer & Regules

Hogan Lovells*
Indacochea & Asociados
Jones Day
KLA – Koury Lopes Advogados
M&M Bomchil
Marval, O’Farrell & Mairal
Mattos Filho, Veiga Filho, Marrey Jr e
Quiroga Advogados
Morales & Besa
Morgan & Morgan
Olmedo Abogados
Pacheco Coto
Pérez Bustamante & Ponce Abogados
Pinheiro Neto Advogados
Posadas, Posadas & Vecino
Pérez Alati, Grondona, Benites, Arntsen & Martínez de Hoz (h)
Rodrigo, Elías & Medrano Abogados
Sánchez Devanny
Sanjinés & Asociados Abogados
Sfera Legal
Siqueira Castro Advogados
TozziniFreire Advogados
Urenda, Rencoret, Orrego y Dörr Abogados
Von Wobeser y Sierra SC
Yataco Arias Abogados
Zapiola Guerrico & Asociados

*All local law offices in Latin America

**Dentons Muñoz and Dentons Cardenas & Cardenas

PARTICIPATING FIRMS

Latin Lawyer and the Vance Center would like to thank all the firms that took the time to complete the survey. We list the participants below with the exception of those that requested to remain anonymous

Argentina

A&F Allende Ferrante Abogados
Allende & Brea
Baker McKenzie
Brons & Salas
Bruchou, Fernández Madero & Lombardi
Bulló Abogados
CCVZ ABOGADOS
Durrieu Abogados
Beccar Varela
Estudio O'Farrell Abogados
Fontan Balestra y Asociados
M & M Bomchil Abogados
Marval, O'Farrell & Mairal
Pérez Alati, Grondona, Benites, Arntsen & Martínez de Hoz (h)
Prieto Fasano Abogados
Zapiola Guerrico & Asociados
Zang, Bergel & Viñes Abogados

Bolivia

Ferrere
Guevara & Gutierrez Servicious Legales
Indacochea & Asociados
Quintanilla, Soria & Nishizawa
Sanjinés & Asociados Abogados

Brazil

Arap, Nishi & Uyeda Advogados
BMA – Barbosa Müssnich Aragão
De Vivo, Whitaker e Castro Advogados
Demarest Advogados
Gouvêa Vieira Advogados
KLA – Koury Lopes Advogados
Levy & Salomão Advogados
Mattos Filho, Veiga Filho, Marrey Jr e Quiroga Advogados
Murray Advogados
Pinheiro Neto Advogados
Salles Franco de Campos Bruschiini Advogados
Siqueira Castro Advogados
Souza, Cescon, Barrieu & Flesch Advogados
Tauil & Chequer Advogados in association with Mayer Brown
TozziniFreire Advogados
Trench, Rossi e Watanabe Advogados

Central America

Aguilar Castillo Love
Batalla Abogados
Benjamin Valdez & Asociados
BLP
Central Law
Consortium Legal
Dentons Muñoz
García & Bodán
Pacheco Coto
QIL+4 Abogados
Sfera Legal

Chile

Alessandri
Aninat Schwencke & Cia
Baker McKenzie
Barros & Errázuriz Abogados
Bofill Mir & Álvarez Jana Abogados
Carey
Cariola, Díez, Pérez-Cotapos
CMS Carey & Allende
Grasty Quintana Majlis & Cía
Guerrero Olivos
Morales & Besa
NLD Abogados
Philippi Prietocarrizosa Ferrero DU & Uría
Silva & Cía
Urenda, Rencoret, Orrego y Dörr Abogados

Colombia

Baker McKenzie
Brigard & Urrutia Abogados
Cavelier Abogados
Dentons Cardenas & Cardenas
DLA Piper Martinez Beltran
Gómez-Pinzón Zuleta Abogados
Lloreda Camacho & Co
Philippi Prietocarrizosa Ferrero DU & Uría

Dominican Republic

Headrick Rizik Alvarez & Fernández

Ecuador

Ferrere
Pérez Bustamante & Ponce Abogados
Romero Arteta Ponce Abogados

Mexico

Alessio Robles y Gonzales SC

Baker McKenzie
Basham, Ringe y Correa
Bello, Gallardo, Bonequi y García SC
BSN Bufete Sanchez Navarro S.C.
Chevez, Ruiz, Zamarrip y Cía SC
Creel, García-Cuéllar, Aiza y Enríquez SC
Curtis, Mallet-Prevost, Colt & Mosle SC
González Calvillo, SC
Greenberg Traurig SC
Hogan Lovells
Jones Day
Kuri Breña Sánchez Ugarte y Aznar
Ritch, Mueller, Heather y Nicolau, SC
Sánchez Devanny
Von Wobeser y Sierra SC

Panama

Arias, Fábrega & Fábrega
Galindo, Arias & López
Morgan & Morgan

Paraguay

Ferrere
GHP Guanes, Heisecke y Piera Abogados
Olmedo Abogados

Peru

Benites, Forno & Ugaz Abogados
Estudio Echecopar member firm of Baker McKenzie International
Estudio Olaechea
García Sayán Abogados
Lazo, De Romaña & CMB
Philippi Prietocarrizosa Ferrero DU & Uría
Rodrigo, Elías & Medrano Abogados
Yataco Arias Abogados

Uruguay

Bergstein Abogados
Ferrere
Guyer & Regules
Jiménez de Aréchaga, Viana + Brause

Venezuela

Araquereyna
Baker McKenzie
Hogan Lovells
InterJuris Abogados, S.C.
Mendoza, Palacios, Acedo, Borjas, Páez
Pumar y Cía

The Vance Center advances global justice by engaging lawyers across borders to support civil society and an ethically active legal profession.

The **Vance Center** is a unique collaboration of international lawyers catalyzing public interest innovation. A non-profit program of the **New York City Bar Association**, we bring together leading law firms and other partners worldwide to pioneer international justice initiatives and provide pro bono legal representation to social justice NGOs.

The Program on Pro Bono Representation advises clients with projects in:

- **human rights and access to justice**, including transitional justice, LGBT, women's, children's and prisoners' rights atrocity prevention
- **good governance**, including transparency, media development and press freedom
- **the environment**, including marine, freshwater, and biodiversity conservation, climate change, pollution prevention, and human rights and the environment

Vance Center clients include large and small social justice NGOs, such as:

- Human Rights Watch
- Amnesty International
- United Nations Joint Office on the Prevention of Genocide and the Responsibility to Protect
- Asociación Interamericana para la Defensa del Ambiente
- United Nations International Law Commission, Special Rapporteur for the Protection of the Environment in Relation to Armed Conflict
- Asia Catalyst
- Legal Resources Centre – South Africa
- Corporación Humanas – Colombia
- The Nature Conservancy
- Pronatura Noreste
- Legal Response Initiative
- Transparency International
- Access Info Europe
- Organized Crime and Corruption Reporting Project
- Media Development Investment Fund

In addition, our **Program on Strengthening the Legal Profession** builds an ethic and practice of global engagement on behalf of vulnerable, disadvantaged individuals and communities. The program engages law firms, bar associations, law schools, and pro bono clearinghouses with innovative initiatives, including Women in the Profession, African Legal Fellows, and the Pro Bono Initiative for the Americas.

The Vance Center manages the **Pro Bono Network of the Americas**, along with Fundación Pro Bono Chile, and supports international human rights agencies, including United Nations Special Rapporteurs and Working Groups and the Inter-American Commission on Human Rights. Member of the International Coalition on the Responsibility to Protect, the International Legal Assistance Consortium, and the Coalition for an Effective African Court on Human and Peoples' Rights, we have consultative status at the United Nations Economic and Social Council.

The **Vance Center Committee**, composed of leading lawyers from international law firms and the corporate and public sectors in New York City, constituted as a Special Committee of the New York City Bar Association, provides strategic direction, core financial support, and programmatic leadership. Because law firms contribute their time and expertise, the total value of the Vance Center's programs to our clients is five times our budget.

We proudly take our name from **Cyrus R. Vance** – former U.S. Secretary of State, New York City Bar Association President, and prominent private lawyer – who exemplified ironclad commitment to fundamental rights through collaborative problem solving.