

Pro Bono Is Pro, Low Bono is Low:

Qualitative and Quantitative Analysis of Lawyers' Legal Aid Participation

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Abstract

Low bono programs, under which attorneys receive below-market-rate compensation to represent indigent clients, are used in many jurisdictions; yet systematic study of lawyers in legal aid practice is still rare in the U.S. and elsewhere. Using a unique, comprehensive data set on all legal aid lawyers in Taiwan (nearly 4,000), two nationwide attorney surveys, and 143 in-depth interviews with practicing lawyers across the country, we offer the first comprehensive empirical analysis of legal aid lawyers and explain that the design of a legal aid system attracts lawyers of a different caliber into the endeavor. Our theory is that lawyers pursue reputation and money. While low bono programs provide monetary rewards but tarnish lawyers' professional images, attracting struggling solo practitioners and small law firms, well-off lawyers develop pro bono programs of their own to retain reputation, particularly those in large corporate firms.

Keywords

Pro bono, low bono, legal profession, legal aid attorneys, access to justice

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INTRODUCTION: WHO ARE LOW BONO LAWYERS?

“If someone said my name and ‘18-B’ in the same sentence, I’d probably commit suicide,” said a well-paid attorney. New York Times, May 22, 2011.

We are all familiar with the image of pro bono lawyers, from movies, TV shows, and academic research. Pro bono lawyers are high-power Wall Street corporate counsels who spare hours to support people in need. We are also familiar with the image of public-interest lawyers. They may graduate from elite law schools and work in a D.A. office or a non-governmental organization, settling for a steady salary yet dealing with high-profile cases.

Nonetheless, this is an incomplete picture in depicting all legal service providers assisting indigent clients. In 2011, the New York Times ran a story on the so-called 18-B attorneys in New York City. These assigned counsels received \$60 or \$75 per hour for representing indigent clients in criminal or family cases (Feuer 2011). The 18-B attorneys still receive the same rate to this day.¹ Another New York Times story in 2002 covered the “low bono” community lawyers that several law schools co-developed. These lawyers were “almost guaranteed to struggle for a couple of years before there's a light at the end of the

¹ NYC Government – 18B Assigned Counsel Plan, <https://a002-oomwap01.nyc.gov/18B/Login.aspx> (last visit: May 28, 2020).

tunnel,” and they worked with a perception that “the solo practitioners are the ones who got C’s, the second string who didn’t excel enough to get to the big firms” (Winter 2002).

The image of a struggling legal aid lawyer appears to be common. In Illinois, legal aid lawyers were reported to be “struggling each day to make ends meet” (Dettro 2006). In Connecticut, a local newspaper in New Haven reported an hourly rate of \$50 received by low bono practitioners. They were not welcomed by the profession. “Low bono lawyers said they’re already starting to see a backlash from the mainstream legal profession against the concept,” because it might bring down the cost of legal fees (Shelton 2013). These news stories account for not only how much these attorneys struggle for money but also how strong the negative image is among their fellow practitioners. The U.S. is not an outlier. In Queensland, Australia, Bartlett and Taylor (2016, 277) reported “the potential dangers of being marked as a lawyer that will do free or discounted work.”

The association between low bono lawyers and a negative image appears to be a common phenomenon worldwide, and yet it attracts limited scholarly attention. The prior academic literature, under the tripartite public-private model of pro bono in the U.S. (Cummings and Sandefur 2013), mostly focuses on pro bono programs in large law firms. Low bono programs, often funded through local courts, have been analyzed neither theoretically nor empirically in depth. As a result, while we have a fair understanding of the effect of legal education, professional networks, institutional context and organizational factors on law

firms' participation in pro bono programs in large corporate firms (Granfield 2007; Sandefur 2007; 2009; Dinovitzer and Garth 2009; Boutcher 2010; 2017), we know quite little about the participation in pro bono and/or low bono in the other hemisphere of the profession, namely, solo practitioners and small firm lawyers. Some pioneering research showed that client development is a key reason for their participation in pro bono/low bono (Seron 1996; Mather, McEwen, and Maiman 2001), and facing great market pressure, solo practitioners and small firm lawyers tend to be less supportive of mandatory pro bono (Granfield 2007). Still, what drives solo practitioners and small firm lawyers to provide pro bono and low bono services is still understudied.

To provide a richer account of why and when lawyers do or don't do pro bono and low bono works, we conducted a case study of Taiwan, especially its government-funded, centrally administered legal aid program. Taiwan's centralized program and detailed administrative data, in addition to 143 in-depth attorney interviews and two national attorney surveys, allow us to conduct a comprehensive analysis of particularly the low bono lawyers.

In the remainder of the paper, we adopt an unconventional structure to present our arguments. We start with an overview of the interview data, national attorney survey data, and administrative data in Part I, in order not to break the flow of the following parts. Part II uses both qualitative and quantitative data to show that in general, only uncompetitive lawyers do low bono, whereas competitive lawyers don't. Part III demonstrates the

unintended consequences of low bono programs: low bono representation came to signal professional incompetence. As most legal aid lawyers are solo practitioners and small firm lawyers, competitive solo practitioners and small firm lawyers shy away from doing legal aid, lest they are perceived as unsuccessful. Large, corporate law firms worry less about the misconception that comes with low bono participation, but the lack of reputational gain in doing legal aid does not incentivize their participation either. Instead, large, corporate law firms develop their own pro bono programs to develop good images. Part IV reviews the two strands of literature in light of our empirical findings. We contend that reputation and monetary rewards are the two driving factors that explain lawyers' participation in low bono and pro bono. The existing theories are incomplete because they ignore lawyers' low bono participation. Part V concludes the paper.

I. BACKGROUND, DATA AND LIMITATION

The Taiwanese Legal Aid Foundation (TLAF) is an independent, state-subsidized entity that covers all legal aid services in the country. Founded in 2004, the TLAF now has 22 branch offices across the country with 3,809 lawyers registered to take up cases.² The TLAF

² TLAF hires twenty-some staff attorneys as of 2020. These in-house attorneys, apparently public-interest-minded, are fairly respected in the profession. Similar to the ACLU in the U.S., the TLAF in-house attorneys also assist in class action lawsuits of social significance. These in-house attorneys are not the subject of study

provides legal assistance in civil, criminal and administrative law cases, pursuant to the regulations in the Legal Aid Act, the Public Assistance Act, the Act of Assistance for Family in Hardship and the Consumers Debt Clearance Act. From 2010 to 2017 (inclusive), TLAF in total provided legal representation in more than 120,000 cases and provided legal document drafting and other services in more than 45,000 cases (TLAF administrative data). In 2019 alone, TLAF provided legal representation in more than 60,000 cases (Legal Aid Foundation Annual Report 2019). Indigent people receive legal assistance through branch offices, which review applicants' wherewithal.³ Low-income applicants with non-trivial stakes will receive approval, and be assigned to a TLAF attorney, who is remunerated by TLAF once the case is closed. Lawyers taking up legal aid cases receive below-market-standard compensation for their service, which is set between 15,000 to 30,000 NTD (approximately 500–1000 USD) per case, about half to one-third of market price in Taiwan. In the past decade, the TLAF has grown to be a prominent player in the legal services market: to put the number in context, about 8,000 attorneys were in active practice in 2016,⁴ where close to 50% of the active attorneys were registered as legal aid attorneys.

here. Those analyzed in this article are the external attorneys who are assigned cases by TLAF offices.

³ For the regulations on the qualification to receive legal aid, see the TLAF website: Legal Aid Foundation <<https://ppt.cc/fbYL3x>> accessed 12 May 2020.

⁴ As proxied by the number of attorneys in the mailing list of the Taiwan Bar Association.

In this article, to describe legal aid activities in Taiwan, we draw on data from three sources: qualitative interviews, two national surveys, and the official administrative data from the TALF. They are introduced in turn below.

A. Interviews

The 143 interviews were conducted by one of the authors [redacted] between 2016 and 2018 in two research projects. The first project was her doctoral dissertation fieldwork, in which 26 lawyers were interviewed between fall 2016 and summer 2017. The second project was a collaborative project at the University of Toronto between winter 2017 and summer 2018, in which 117 interviews were directly conducted or indirectly led by her. Lawyers were recruited through professional networks, including law schools, bar associations and legal aid offices. All were semi-structured, open-ended interviews, lasting from 40 minutes to two hours.

B. Legal Aid Foundation Administrative Data

The TLAF administrative data contain a unique ID number, sex, educational level, year of entering legal practice, year of handling first TLAF case, and age of all registered TLAF attorneys. They also chronicle the number of civil, criminal, administrative, and family law cases handled by each TLAF attorney. The data set also chronicles whether a registered attorney has dropped out of TLAF (only five had); whether a registered attorney has been

certified as an expert in labor law, family law, or consumer bankruptcy law; and the amount of remuneration awarded to attorneys in each case.

C. Two Nationwide Attorney Surveys

One of us was commissioned by the Judicial Yuan of Taiwan (the highest judicial administrative organ) to conduct a nationwide attorney survey in 2016. Aided by the Taiwan Bar Association, 834 attorneys (about 11% of all practicing attorneys at the time) responded. [Redacted; a published article] showed that the responding attorneys were fairly representative of the attorney population. The survey includes, among others, variables capturing the size of the law firm, attorney's age, sex, and practice experience, the amount of flat fee charged in a typical case, and the percentage of cases from TLAF.

One of us, with several other scholars, conducted another nationwide attorney survey in 2018. 1448 attorneys (about 16% of all practicing attorneys at the time) filled out part or all of the survey. The 2018 survey also includes the size of the law firm and the sex, age, and practice experience of a lawyer. It also asks the surveyees for their alma mater and the number of times it took them to pass the bar exam.

D. Limitation

The survey response rates of 11% and 16% in 2016 and 2018, respectively, may appear to be on the low end for a survey. Nonetheless, no prior research has collected responses from

11% or more of all the practicing attorneys in a jurisdiction with more than 23 million citizens. That is, if our surveys are compared with other national surveys of attorneys, the response rates are very high.

Still, one may worry about selection bias, which we contend to be non-fatal. The 2016 survey was conducted to gauge lawyers' attitude toward a legislative proposal to mandate attorney representation in civil lawsuits, while the 2018 survey was conducted for general purposes. One may be concerned that certain types of opinionated lawyers tended to respond to the 2016 survey. Nonetheless, as long as these responded attorneys did not manipulate their background information along the line of our study (for instance, TLAf attorneys under-reporting their fee, and non-TLAf attorneys over-reporting their fee), our description should not be far from reality. In any case, the same concern does not apply to the 2018 survey. We of course recognize that unless the attorneys were randomly sampled and their answers could be meaningfully audited, there is always room for selection bias. Given that nation-wide, large-scale attorney surveys are hard to come by, and no alternative sources of quantitative data are available, the two surveys should be sufficiently serviceable.

II. UNCOMPETITIVE LAWYERS DO LEGAL AID

With our mixed methods, from our data, we distilled two recurring themes, which are two sides of the same coin. First, struggling lawyers do legal aid cases, which are of low quality

and involve high maintenance clients. Second, capable lawyers and competitive law firms do not participate in legal aid. Section A provides a rich account of legal aid (non-)participants in Taiwan through quotes from our 143 interviews with Taiwanese lawyers across the country. Section B then demonstrates consistent evidence with our numeric data.

A. *Qualitative Evidence*

The first observation concerns the nature of a legal aid case — low quality, “easy, and boring cases” (TW201851) that bring “petty cash” (TW201873) for those lawyers who are not seeking intellectual or professional challenge. Young lawyers are especially sensitive about this feature of legal aid cases, as they are developing professional skills in an early stage of their career. A young lawyer in an eastern city of Taiwan clearly identified legal aid cases as “meaningless,” and believed his time would be “wasted,”

I stayed, not only because lawyer X [his boss] and I get along, but also because [...] a large proportion of cases I'd have would be legal aid, if I left. I might have some cases from my own personal network. The nature of these cases is likely to be simple, easy, boring, or meaningless. I won't learn much. [...]

Lawyer X has a high-volume business with complicated cases and government agencies as clients, even administrative litigation, arbitration, construction disputes.

[...] if I left, in this stage, salary-wise it wouldn't be too much different [...] I might have less cases and an easier life, but I won't have exposure to difficult cases. I want to do complicated cases. To be honest, legal aid cases are very simple, personal loans, house demolition and land return, reputation obstruction, personal injury... your work, your day, would be very boring and wasted (TW201851).

In stark contrast, some other young lawyers, less ambitious and prioritizing work-life balance, took up legal aid cases precisely because they are easy. A young lawyer in the same city expressed moderate expectations of his career,

All I want is some food on the table. I just want some legal aid cases. If you want to be a great lawyer, you go to Taipei [the capital]. [...] I had a classmate who wanted to be a front-page story, a famous prosecutor or judge. I don't. Everyone has different aspirations. I just feel like, I'll handle my legal aid cases well, sometimes take up some cases of my own. [...] If you want me to make a lot of effort and make a lot of money, no, I don't want that. Some food on the table is good enough for me (TW201879).

He made career choices based on this aspiration. When the firm he worked for split into two firms, he stayed with his senior partner because he could be exposed to the "basics,"

I thought about going to another firm [...] but then I stayed with lawyer A. He really has a lot of cases, all kinds, those basics included. These cases are more similar to the legal

aid cases I'll do in the future. Lawyer B (the other firm) has a lot of construction or corruption cases. You might learn from the big cases, but you can't learn about the legal aid cases (TW201879).

A senior lawyer in the same city sharply pointed out that legal aid has become the easy money for lawyers, which is disincentivizing young lawyers to seek solid training and hence hinder their professional development,

Now, many lawyers may start their own practice after six months or a year's employment, which is not good [...] When I first started, [...] I had six hundred or eight hundred in seven or eight years. Meaning, I had a training of a hundred cases per year. But those solo practitioners who only take legal aid cases have a training of 20 cases per year. How much difference that would make in eight years! You might feel you have a very ok life, but the training makes a big difference. Many associates can't see the value (TW201853).

The second observation prevalent in the field is that competitive and able lawyers rarely take up legal aid cases. Firms in good operation with ample cases of their own refuse to participate. A successful litigation lawyer in Taichung, previously a prosecutor, nicely explained why low quality and compensation prevented him from doing legal aid,

(Would you do legal aid?) No. (Why not?) I have enough cases. Also, the legal aid clients are not clients of good quality, they ask this and that, but I get 20 to 30 grand per case.

With all the energy I invest, the return rate is not enough. I devote 100% in every case. If the legal aid case comes as a regular case, my representation is worthy of 80 grand, but legal aid only gives me 30. How can I spend 80-grand energy to a 30-grand case? It's not fair to my clients who spend 80 grand on me (TW201841).

A former TLAf staff member, now a mid-career lawyer in an eastern county, gives a clear, broader picture of those who decline legal aid cases:

The question should be what kind of lawyer would *not* join legal aid. Evidently, those with a strong base, those who do corporate business, in cooperation with corporations [...] In addition, those who think they have special expertise. Someone who thinks he's an expert in corporate law. Or someone who doesn't like interacting with the disadvantaged [...], who's not as patient, cannot accommodate (TW201890).

Legal aid cases are unprofitable cases that consume the energy of able lawyers. Another young lawyer in the same city, who had just started his own practice, showed his frustration with how legal aid cases affected his limited time and cooperation with other lawyers in a small firm,

This would be on the record, but I'm still going to say it. I'm forced [to take up legal aid case]. Because the legal aid remuneration is really low [...] for our firm, doing legal aid is losing money, because it just doesn't meet our cost. Surely if the legal aid office sends me a case, I'll have to do it, but the time I spend on legal aid would cut down the time I spend on my fee-earning cases. Then other lawyers have to step in. It's definitely not worth it (TW201849).

Simply put, able lawyers who have choices rarely take up legal aid cases. It turns out that TLAF is fully aware of the reality, as a TLAF staff member in Taipei told us,

A lawyer may reject [legal aid] cases. He has many cases of his own, so he can't take legal aid cases. Then I'd ask, when would you take our case again? He'd say, "when I have fewer cases of my own," meaning, when he needs money (Fieldnotes, November 28, 2018).

To summarize, legal aid lawyers in Taiwan have a negative image. As legal aid lawyers handle "boring and meaningless" cases with difficult clients, and "waste" time on ineffective communication and paperwork, legal aid lawyers may encounter stagnation in professional development and have limited energy for fee-generating cases of their own. While most lawyers choose regular cases over legal aid cases, some lawyers still base their practice on legal aid cases with moderate expectations of their careers. Legal aid lawyers are hence

perceived as uncompetitive, good-for-nothing practitioners in the profession, while those successful lawyers and profiting law firms stay away from legal aid.

B. *Quantitative Evidence*

Section A finds the general perception of low bono lawyers through the lenses of our attorney interviewees. This section uses two recent national surveys in Taiwan and the unique administrative data set from TLAF to examine the observations about legal aid lawyers. Our quantitative analysis shows results that are consistent with the qualitative findings: legal aid lawyers in Taiwan are indeed, at least on average, less competitive attorneys. More specifically, three pieces of evidence support the observation that legal aid lawyers tend to be less competitive lawyers, and that successful lawyers do shy away from legal aid. First, less successful bar exam takers are more likely to become TLAF lawyers. Second, graduates of the best law school in Taiwan are less likely to register as legal-aid attorneys. Third, even in their regular cases, TLAF attorneys charge less than those who do not register as legal aid attorneys. We elaborate these findings in turn.

The first two pieces of evidence concern the academic success of lawyers. We find that the more attempts a lawyer needs to pass the bar exam, the more likely she is to register as a TLAF lawyer. Table 1 shows the percentages of TLAF registration by the number of attempts to pass the bar exam. The number of bar-passing attempts should be a reasonable proxy for

competitiveness in a jurisdiction where bar-passing rates are never higher than 15%. Hence, less competitive lawyers tend to serve as a TLAF lawyer (p -value under Fisher's exact test <0.03).

Second, alumni of the National Taiwan University College of Law, the most competitive undergraduate law department in Taiwan (Apple Daily 2016) since its inception, register as TLAF attorneys less frequently. We use the degree from the top law school to proxy professional competitiveness. As Table 2 shows, again, less competitive lawyers tend to serve as a TLAF lawyer (p -value under Fisher's exact test <0.01).

Third, legal aid attorneys charge lower fees in the legal service market. Most, if not all, litigation attorneys in Taiwan charge fixed/flat fees. Regular market price ranges from NTD 50,000 (USD 1,600) to NTD 70,000 (USD 2,300) per case, while the TLAF provides remuneration at between 15,000 to 30,000 NTD (approximately 500–1000 USD), as shown in Figure 1. As Figure 2 shows, non-TLAF attorneys, as compared to TLAF attorneys, no matter whether they are based in Taipei or not, tend to charge higher fixed fees, which is suggestive of the former's competitiveness. Almost 20% of registered TLAF attorneys outside of Taipei charge between NTD 25,000 and 50,000, close to the remuneration for a TLAF case. Charging lower fees in their own cases thus suggests that an attorney is less competitive—indicating who is more likely to be a registered TLAF attorney.

Besides, as Figure 3 shows, uncompetitive lawyers appear to remain as TLAF attorneys through at least their mid-career. Every year, they take a steady number of legal aid cases. As our attorney interviewees suggest, perhaps for lack of solid practical skills through handling complicated cases, or perhaps due to their lack of ambition, once attorneys do legal aid work, they tend to stay in the low bono circle.

Our quantitative analysis shows that legal aid lawyers in Taiwan are weak competitors. In the low bono system, the effect of legal aid is similar to what Ramseyer (2009) found in the Japanese health care system. Under the universal health insurance, the more talented medical doctors devote themselves to cosmetic surgery, which is not included in the national health care system and is competitive. The less talented doctors enter the national health care system and receive government-suppressed compensation.

Table 1 Bar-passing Attempts and Registration as Legal Aid Attorneys

Attempts to pass the bar exam	Legal aid attorneys		Total
	no	yes	
=1	112	63	175
	64%	36%	100%
=2	147	97	244
	60%	40%	100%
=3	129	95	224
	58%	42%	100%
>=4	85	89	169
	49%	51%	100%
Total	473	344	817
	58%	42%	100%

Notes: p -value under Fisher's exact test = 0.029. The bar passing rate in Taiwan has been lower than 12% for decades. The median age when an attorney receives her license is 28 years old, and the first attempt takes place, at the earliest, after graduation from an LLB program at around 22 years old. Other than the 2018 attorney surveys, there are no data on how many attempts one takes to pass the bar exam. The respondents in the 2018 attorney

surveys are predominantly young attorneys, many of whom took the bar exam during the past few years, when the passing rate was raised to around 10%. The 25 and 50 percentiles of attempts among the respondents in the 2018 survey are 2 times, whereas the 75 percentile is 3 times.

Source: 2018 nationwide attorney surveys.

Table 2 Alma Mater and Registration as Legal Aid Attorneys

NTU undergraduate law degree	Legal aid attorneys		Total
	No	Yes	
No	431	357	788
	55%	45%	100%
Yes	147	80	227
	65%	35%	100%
Total	578	437	1015
	57%	43%	100%

Notes: p -value under Fisher's exact test = 0.008. NTU stands for National Taiwan University.

Source: 2018 nationwide attorney surveys.

Figure 1 Remuneration Received by Legal Aid Attorneys in Taiwan

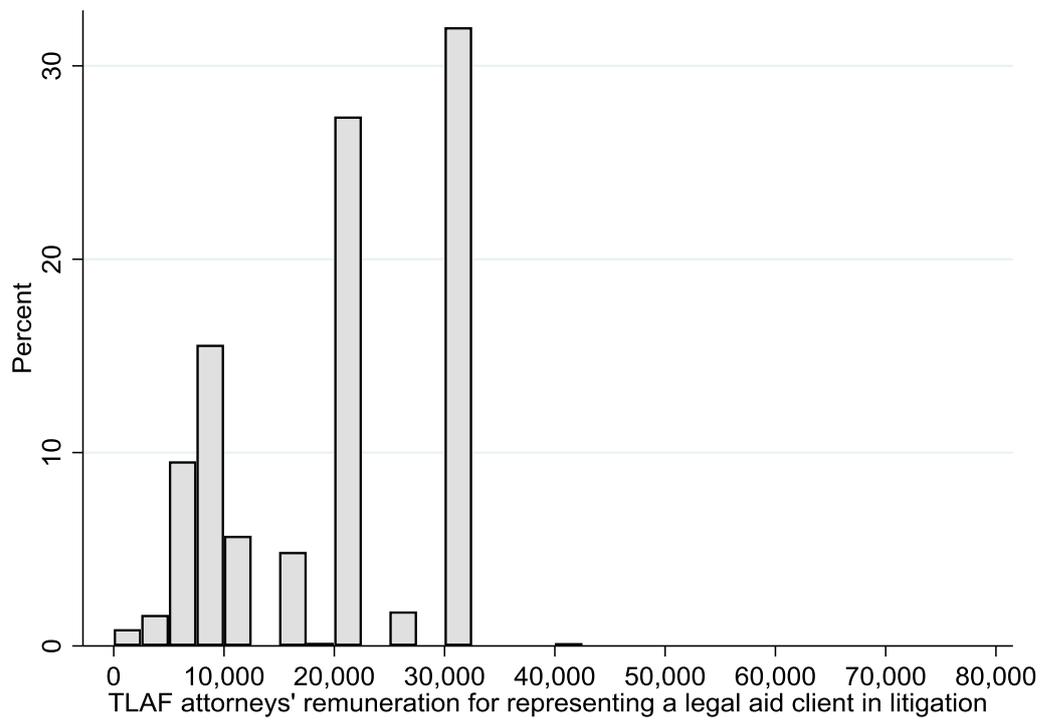
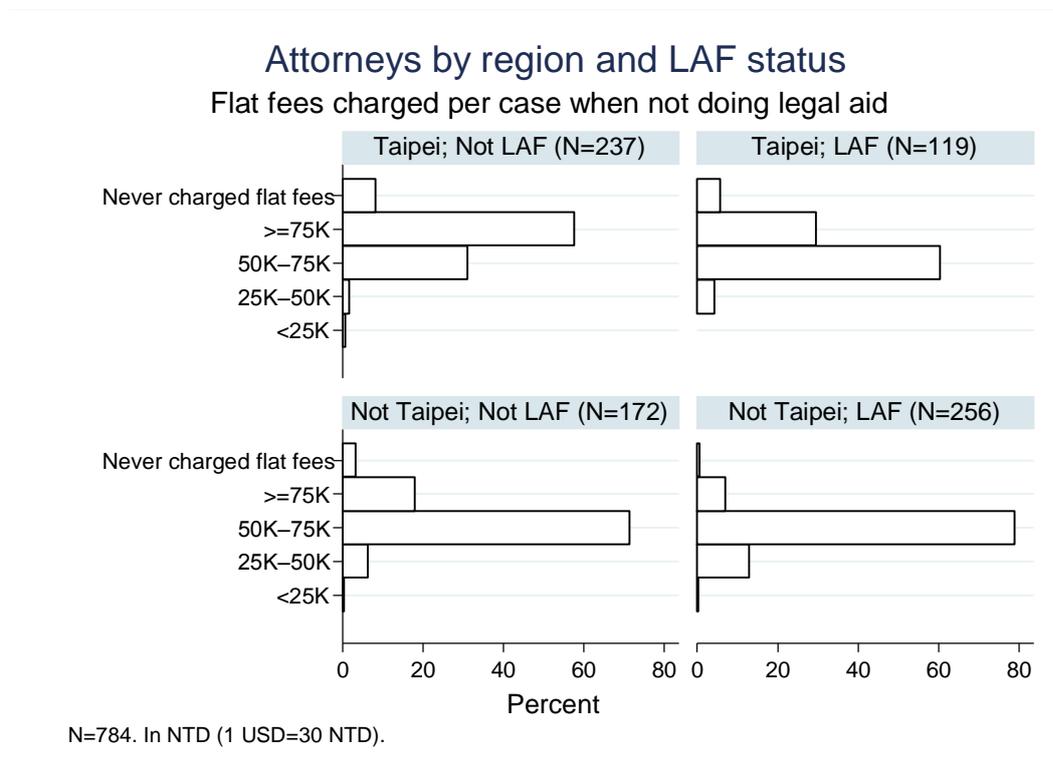


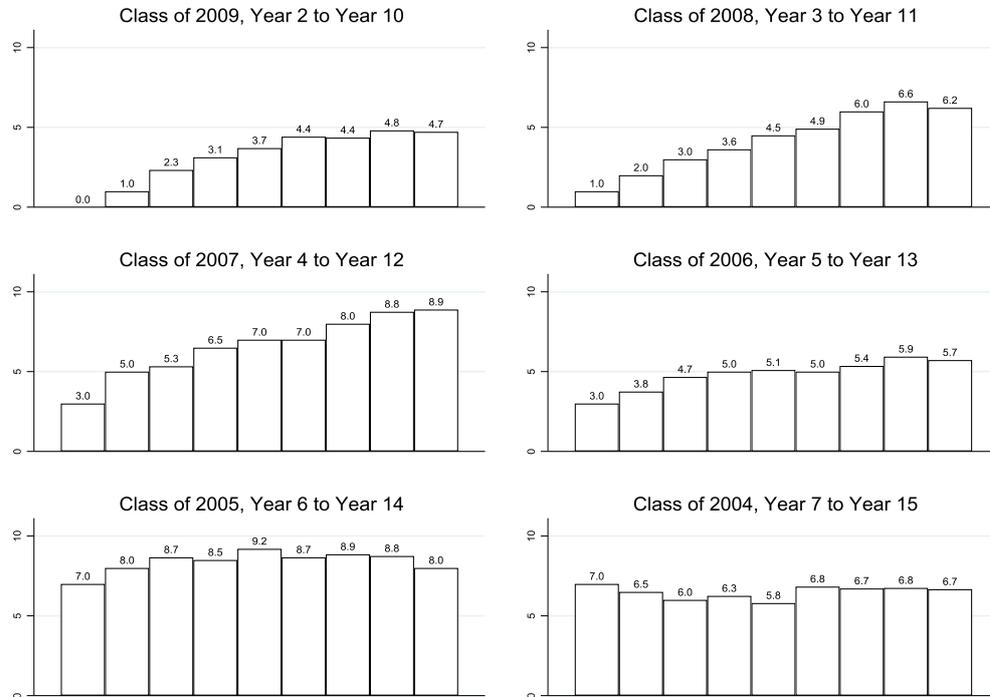
Figure 2 Difference in Legal Fees by Region



Notes: This figure divides attorneys into two groups by whether their firms’ main office is in Taipei City (the capital and business center of Taiwan) or not. Most attorneys, as shown in the figure, charge flat fees per case. K means 1,000 New Taiwan Dollars. 75K is approximately 2,500 U.S. Dollars. “50K–75K” in the Y axis means “≥50K and <75K.”

Source: 2016 nationwide attorney survey.

Figure 3 Average Represented TLAF Lawsuits during 2010–2018, by Class of Admission to Bar, 2004–2009



Notes: One bar represents the median of the average caseload of that year and all the previous years since 2010 combined. For instance, the fourth bar in the 2004 Class subplot shows that the median of the average annual number of represented lawsuits in the 7th, 8th, 9th, and 10th years of practice (2010, 2011, 2012, and 2013) is 6.3 cases. Assuming that there are 5 lawyers in the class of 2004, and their average caseloads in those four years of practice are (6, 6.2, 6.3, 10, 15), the median is 6.3. We only have caseload data since 2010 but these TLAF attorneys started to practice law before 2010. Therefore, this graph cannot show their caseloads at the beginning of their career. The heights of the bars level off, suggesting that these registered lawyers handle a stable number of TLAF cases after a few years in practice.

The bars only include attorneys' represented lawsuits assigned by TLAF, with both mediations and legal document drafting not included. TLAF staff attorneys are not included in this figure, as they have a much higher workload.

Source: Legal Aid Foundation Administrative Data.

III. UNINTENDED CONSEQUENCES

As the preceding discussion shows, successful lawyers refrain from participating in legal aid. Counterintuitively, the legal aid lawyers who support the government's good cause, serve the indigent clients and willingly receive less remunerations acquired a *negative* reputation. They are deemed uncompetitive, inexperienced practitioners on the low end of the market.

Two unintended consequences follow: firstly, some lawyers emphasize their limited or lack of participation in legal aid, *in order to* differentiate themselves and to signal competitiveness and success. Secondly, many large corporate law firms develop independent pro bono programs of their own. Participation in TLAF work becomes a convenient line-drawing tool: on one side, it is the successful us; on the other side, it is the unsuccessful them. Pro bono indicates moral high ground in the profession, and low bono signals low status in the profession. Simply put, pro bono is pro, low bono is low.

A. Line-drawing by Competitive Lawyers

Solo practitioners and small firm lawyers are wary of doing legal aid. An associate lawyer in a mid-size litigation firm in Taipei explained why he has stayed away from legal aid cases:

Your income is the average of six best friends of yours. So my boss told me, “if you do legal aid all day, legal clients would only introduce you to those without means.” Rather, if you serve an entrepreneur, he will introduce you to other entrepreneurs. That’s why I don’t do legal aid (TW201718).

Lawyers develop clients through their clients. Legal aid brings unpromising clients, and hence aspiring lawyers stay away from them.

For the successful lawyers, it is important for others to know that they are in legal aid not for the money, but for offering services to a public-interest endeavor. A local bar association leader in an eastern county said he still does legal aid because TLAF keeps asking for his help (TW201865), implying that he may not have taken the cases, were it not for the request for a favor. Another former bar leader in a mid-west city gave an identical response, as her senior associate described her passivity in taking up a legal-aid case,

Her stance [is that], the legal aid office would assess if the applicant needs help. If yes, we would still take the case (TW201857).

These two local bar leaders emphasized they were only reacting to the legal aid offices' request. For these successful practitioners, their participation was not active but invited, which differentiated them from those who voluntarily took up legal aid cases. The emphasis indicated a push, where the negative image of legal aid lawyers drives practitioners away from low bono works. As Lochner (1975) noted, solo practitioners did not see the no fee/low fee cases as having ideological or political importance. "The inclination of the attorneys was, typically, to settle their no fee/low fee cases and get back to the important paying business" Lochner (1975, 443).

Turning to the other hemisphere of the profession, corporate lawyers in big law firms in Taiwan have very limited, if any, participation in legal aid. Figure 4 shows that the bigger the law firms are, the less involved they are in legal aid. Large law firms (>10 attorneys in the context of Taiwan)⁵ in Taiwan have almost no involvement in legal aid. Large law firms, even when financially struggling, are unlikely to take low bono cases for the money, as they are still marginally unprofitable.

Two associates in prestigious big law firms vividly showed that corporate law firms were busy making profit, and would rather donate money than service,

⁵ A Taiwanese law firm with more than 10 or so attorneys should be considered a big law firm that mainly provides corporate counseling. To put it in context, the Taiwan office of Jones Day has about 20 attorneys.

“I was in Formosa Transnational for over three years. The firm said you can take legal aid cases, but only after you finish your billable hours. But you can never finish your billable hours!” (Fieldnotes November 28, 2018)

“I was in Lee & Li, and then PWC. Firms encouraged us to do public interest [cases], but by donation. Partners would say, ‘you can do legal aid after you’re done with your billable hours.’ No one has the energy to do it. You get off work at 2 am.” (Fieldnotes November 28, 2018)

Formosa Transnational, PricewaterhouseCoopers (PWC) and Lee & Li are full service, top-10 law firms in Taiwan. Clearly the fee-generating workload is keeping associates away from offering legal aid services.

Partners in corporate-serving firms hesitate to release manpower to engage in legal aid works, and choose to offer peripheral supports. A senior partner who founded a successful law firm that serves high-tech and construction companies commented,

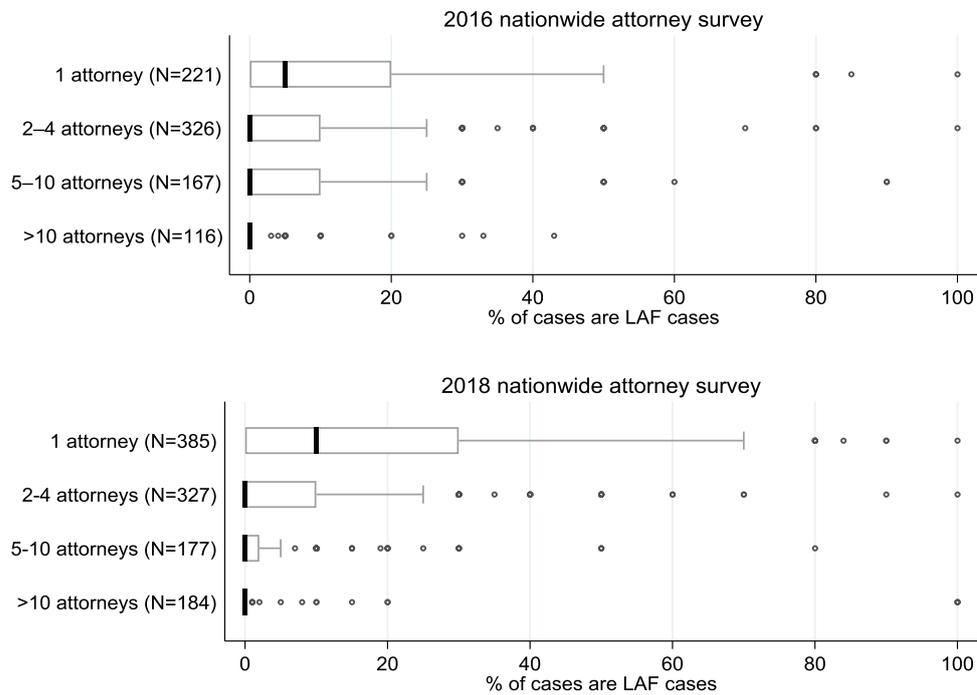
We don’t play a big role. Legal aid cases are not within our practice area. We only send people to participate in matters such as free consultation (TW201885).

While expertise may be an issue, it is only an issue when it doesn’t bring in profit. As our lawyer interviewees noted, legal aid cases are not complicated. It may take some time for the

corporate lawyers to get familiarized with, say, case law regarding homicide; however, time is exactly what successful corporate firms would not spare.

Furthermore, for the partners, the low compensation is not only unprofitable but dispiriting. A partner in a tier-one law firm with a reputable patent department used “humility” to describe the low fee and noted that “the price is so low that legal expertise is not recognized” (TW201901). She wondered out loud: “If [legal aid] really appeals to our social responsibility, they might as well ask us to offer service without remuneration. There should be mandatory hours. Don’t do it via legal aid.” Note that the partner herself (and her law firm) did not actually participate in the legal aid programs. The negative image of legal aid lawyers has the same consequence of driving lawyers away in both hemispheres of the profession.

Figure 4 Difference in Law Firm Size and Participation in Legal Aid



Notes: N=780 in the 2016 survey; N=1073 in the 2018 survey. These are box-and-whisker plots. Thick vertical lines within boxes are medians. Boxes show 25 and 75 percentiles. The two whiskers show the upper and lower adjacent values. The upper adjacent value is the value of the 75 percentile + 1.5*(the differences between the 75 and 25 percentiles). The lower adjacent value is the value of the 25 percentile – 1.5*(the differences between the 75 and 25 percentiles). Circles show outliers beyond adjacent values. See Appendix A for variable definitions. The Y axis shows the number of years an attorney is in practice. “5–10” on the Y axis means “≥5 and <10.”

Source: 2016 and 2018 nationwide attorney surveys.

B. Corporate Firms Develop Their Own Programs

Successful corporate lawyers, discouraged by low bono programs, develop other ways to contribute their services, for free. A recurring pattern in Taiwan is that large law firms would spare a team, usually a senior attorney with a small number of associates, to offer free services in highly visible cases. The aforementioned partner who led a successful patent department discussed a pro bono case her firm did support: “We did a compulsory licensing case for the government, requesting that X pharmaceutical company authorize other factories to produce Y flu vaccine” (TW201901). Obviously, the corporate firm disregarded the low fee that the government might have been able to offer,

“We think it was a good thing to do. If the government wanted to pay us, following the Procurement Act... it was too much trouble, and the fee was very low. [The fee was] not the point. Might as well do it for free” (TW201901).

Standing with people in need, particularly with ordinary citizens against the government, is another identity that some corporate lawyers are willing to acquire by doing pro bono. A renowned example is Willington Koo, a former senior partner and forceful litigator at Formosa Transnational, who had a successful career in commercial litigation but also actively participated in many human rights cases (Chu 2014). In fact, Formosa Transnational, being one of the top full-service firms, is known to designate employed attorneys to devote time to

pro bono cases (TW201714; Fieldnotes February 17, 2017). Formosa Transnational has developed a reputation as a “Royal Firm” for a certain network of activists and politicians (Hou 2016). Senior partners of this firm approve the devotion to civil society (TW201704; TW201714; TW201839; Huang 2009). Junior partners follow the tradition to represent criminal defendants who are wrongly prosecuted, or laborers sued by the government (TW201719; Formosa Transnational 2019). It is important to note, again, that Formosa Transnational selects pro bono cases to provide free service, but offers peripheral support to legal aid programs (cf. Fieldnotes November 28, 2018).

Many corporate law firms in Taiwan also establish charities, separate legal entities that connect the legal expertise at the law firm with corporations and other charities in their network. Corporate lawyers, perhaps subconsciously, believe that they are better at connecting the dots than at rescuing indigent individuals. When explaining their inactivity in legal aid, a founding partner of a prestigious boutique law firm referred to *other* legal expertise they offer:

The purpose of setting up a foundation is to help, [...] to lobby for a legislation [...] It took us about one year to raise thirteen million; then the Foundation for Rare Diseases was funded. The first task was to lobby for the Rare Disease Control and Orphan Drug Act, which was passed in six months. The fastest in Taiwan. [...] I asked six or seven

graduate students in law school, and with my own background in law, we drafted the bill (TW201885).

The partner proudly identified the Foundation for Rare Diseases as the firm's most successful pro bono project. While emphasizing how vulnerable and small the rare disease population is, the partner actually revealed the firm's capacity in mobilizing its corporate clients.

Now the Foundation can raise 100 to 150 million NTD annually. And most funds have been raised through small-amount donations. [...] Nonetheless, two to three foundations, such as the Wang Chang-yen Foundation under the Formosa Plastic Group, gave us 10 million NTD every year. They don't have specific projects of their own, and they endorse what we do, so they donate money to us (TW201885).

Reputation is the main concern for corporate lawyers. Corporate law firms prefer to do public-interest projects that bear *their own* brand names. Setting up a foundation or pro bono projects, or participating in public-interest activities that are not strictly law-related, is a way to increase their reputation. Lack of monetary reward is not the main reason why they are absent in legal aid, as evidenced by the many true pro bono efforts. Corporate law firms are incentivized to devote pro bono hours to rise in the ranking systems (Boutcher 2017). Simply put, for the successful lawyers, it is the *low* bono they avoid, and it is the *pro* bono they are after.

IV. THEORETICAL DISCUSSION: REPUTATION VS. MONEY

We contend that the keys to understanding who provides low bono/pro bono services are reputation and monetary rewards. Successful lawyers prioritize reputation, while struggling lawyers maximize monetary rewards. Providing legal service for free generates reputation but clearly not monetary rewards, while charging below market standard compensation for legal service brings monetary rewards but also harms reputation—or simply brings insufficient halos for big, corporate law firms. Low bono lawyers are the uncompetitive lawyers who seek monetary rewards and cannot afford to seek reputation. Successful lawyers do pro bono, not just because they think they do the right thing, but also because reputation as a publicly spirited lawyer gives a competitive edge. If successful lawyers only cared about money, they would not do low bono, let alone pro bono. Yet, we observed that successful lawyers in big, corporate law firms in Taiwan were often involved in public-interest affairs without getting paid. It is the difference in the reputation generated that drives successful lawyers to do pro bono but not low bono.

Our finding responds to two strands of literature on pro bono lawyers. Why lawyers provide their services for free is a longstanding puzzle in the study of the legal profession (Sandefur 2007; Cummings and Sandefur 2013; Boutcher 2017; Granfield 2007; Granfield and Mather 2009; Rhode 2005). The first strand of literature contends that pro bono activities

derive from lawyers' altruism and have been socialized into their professional development.

This approach presupposes the normative position that the legal profession should provide indigent litigants with professional services to facilitate justice. Incorporated in the professional ethics, pro bono is hence regarded as a critical element of professionalism.

Through various channels, including formal and informal education and professional training, lawyers come to internalize the value of pro bono.

Intuitively, driven by personal pride and collective duty, lawyers regard pro bono as an ideal and a principle of public interest (Rhode 2005), and they take pride in serving the disadvantaged population by committing (part of) their career to such services (Sommerlad 1998; 2008). The institutional context (Menkel-Meadow 1998, 47) in which lawyers are educated and practice plays an important role to construct the norm and shape the norm's impact. In the U.S., law schools and bar associations conceptualize pro bono and put the professional ethics into action. On the one hand, organized bar initiatives cultivate a network that provides positive feedback and reputation to pro bono lawyers in the community. On the other hand, clinical education constructs the meaning of pro bono for law students, which affects subsequent participation after they enter work (Granfield 2007). As law graduates enter legal practices, Dinovitzer and Garth (2009) identify a "nobles oblige strategy" such that pro bono may be where young lawyers acquire material and symbolic rewards to advance their career.

The second strand of literature focuses on the profession's competition. In contrast to the aforementioned value approach, where lawyers are of a citizenry nature, the competition approach sees lawyers as actors in a competitive market, who seek and create advantages to achieve market control and collective social closure (Abel 1989). The nature of their work is to diagnose clients' problems and prescribe solutions, and, consequently, to claim exclusive authority in such services against other potential service providers (Abbott 1986). Facing internal and external competition, lawyers participate in pro bono to gain competitive advantage.

Specifically, the literature found, corporate lawyers do pro bono to acquire a competitive edge over fellow lawyers and external competitors. In the U.S., lawyers under greater pressure from non-lawyer competitors have higher rates of participation in organized civil pro bono programs (Sandefur 2007, 102). Lawyers also contribute more time to pro bono when they can afford to do so. States in which lawyers have better financial returns also are more active in participating in organized civil pro bono programs (when other factors, such as ethical codes, requirements, and initiatives from the local bars, are controlled for) (Sandefur 2007, 98–100). Big law firms do pro bono for self-interest, such as to advance their American Lawyer ranking (Sandburg 2006), and law firm revenues are positively associated with pro bono participation (Sandefur 2009, 106–7). Boutcher (2017) also points out an organizational motivation— that large law firms use pro bono to keep lawyers active until fee-generating

work returns to the firm. Granfield (2007) finds that, at the individual level, studies also show that associates in large firms perceive pro bono work as a break that compensates for some of the unsatisfactory aspects of large law firm practice.

Both approaches, however, offer incomplete explanations to the hybrid reality in Taiwan, and probably in most other jurisdictions where pro bono and low bono coexist. The value approach, in essence, posits that lawyers do pro bono because they believe it is the right thing to do. This is unsatisfactory, as this approach cannot explain why successful lawyers shy away from doing low bono—if lawyers serve indigent clients simply because they believe in the value of it, why don't they help litigants while receiving small amounts of honorarium? Why don't they get involved in the institutionalized legal aid system and simply decline being paid? We contend that reputation has to be the anchor of any pro bono/low bono theory. Once we characterize successful lawyers as doing legal aid to pursue reputation—not just because it is the right thing—the unfortunate dynamics that make doing low bono a signal for incompetence and struggle, rather than a sign of moral high grounds, readily explain successful lawyers' absence in low bono.

The competition approach offers a good theory as far as corporate lawyers in pro bono systems are concerned. This approach, in itself, again, cannot aptly explain why successful lawyers in Taiwan, both individual and corporate-serving lawyers, shy away from providing their services in a low bono system. As our findings suggest, on the one hand, low bono

identifies struggling lawyers who are weak competitors; on the other hand, lawyers signal their competitiveness by their absence from low bono participation. Simply put, pro bono lawyers and low bono lawyers are competing in two different realms. Pro bono is for the “pro” who can afford to leverage pro bono participation to increase their competitiveness; low bono is for those low-end competitors to make up for their uncompetitiveness, not to give a competitive edge.

Incorporating prior literature, our analysis provides a new framework to understand lawyers’ participation in low bono and pro bono programs. Monetary rewards and reputation are the two main considerations driving lawyers’ participation. Regarding monetary reward, low bono offers limited returns and pro bono offers nothing. Regarding reputation, however, pro bono signals moral high ground, but low bono’s low compensation denotes a negative image that offsets any good name. Therefore, the less competitive practitioners are drawn to the low bono programs for the monetary reward, thus reinforcing the negative reputation of low bono. To avoid the negativities associated with low bono, competitive lawyers further shy away from low bono and create pro bono programs of different kinds to gain reputation.

CONCLUSION

Our in-depth examination of the Taiwanese case uncovers the logic behind both individual-serving and corporate-serving lawyers' unbalanced participation in the low bono program. As in the U.S., high-power corporate law firms are the main service providers of pro bono works. In a centrally administered low bono program, the scene is exactly the opposite. Corporate law firms avoid engaging in the low bono work sanctioned and subsidized by the government, though they do other public-interest works. In their place, financially struggling solo practitioners and small law firms handle a large number of legal aid cases. These lawyers are perceived by their peers as inexperienced, unconnected, and struggling to make ends meet. The more established solo practitioners and small law firms, similar to the successful corporate firms, shy away from legal aid work, fearing that doing so will send the wrong signal to their clients and peers.

Policymakers thus face a trade-off. A pro bono system attracts resourceful law firms, but demand is usually much more than supply of legal assistance, as successful lawyers do only so much pro bono to create sufficient reputation. The lucky few clients retain top-notch lawyers, while many others are left *pro se*. By contrast, a low bono system creates an abundant supply of legal assistance that meets the demand, even creating demand. All indigent litigants get lawyers, though often less capable and unsuccessful ones. A pro bono system is cheaper (indeed, with zero costs for taxpayers) but relies on the market conditions

(e.g. how badly big law firms need to generate reputation via doing pro bono) and professional ethics of the bar to provide sufficient legal assistance. A low bono system is costly to administer and expensive for taxpayers, and its unintended consequence is to tarnish the reputation of the lawyers involved and to make low bono a profane term. However, as the Taiwanese experience demonstrates, there is a sufficient number of lawyers who are willing to participate and support the indigent clients in need. The contribution of this article in terms of legal-aid policy is bringing to the foreground the existence of such a trade-off, and the pros and cons of low bono programs.

Appendix

The table below is a list of interviews that are directly quoted in this paper, following the order they appear. Interviews are coded according to the order they took place in a given year: for example, TW201738 refers to the 38th interview one co-author conducted in 2017.

To give more specific information about the interviews, we also report the interviewee's gender, title, year of admission, residing area and workplace context.

Table A.1 Interviews and Interviewees

Interview #	Interviewee's vocation	Gender	Title	Year of bar admission	Region	Notes
TW201851	Lawyer	Male	Associate	2012	East	Small firm
TW201873	Lawyer	Male	Attorney	2014	North/East	Solo practice
TW201879	Lawyer	Male	Associate	2016	East	Small firm
TW201853	Lawyer	Male	Attorney	2006	East	Solo practice
TW201841	Lawyer; former	Male	Attorney	2017; prosecutor	Central Taiwan	Small firm

	prosecutor			since 1997		
TW201890	Lawyer; former TLAF staff	Male	Attorney	1999	East	Solo practitioner
TW201849	Lawyer	Male	Partner	2013	Central Taiwan	Small firm
TW201718	Lawyer	Male	Associate	2015	North	Mid-size firm
TW201865	Lawyer	Male	Attorney	1994	East	Solo practitioner
TW201857	Lawyer	Male	Associate	2012	Central Taiwan	Small firm
TW201885	Lawyer	Male	Partner	1984	North	Large corporate law firm
TW201901	Lawyer	Female	Partner	1998	North	Large corporate law firm

TW201704	Lawyer	Male	Partner	1988	North	Large corporate law firm
TW201714	Lawyer	Female	Partner	2002	North	Large corporate law firm
TW201839	Lawyer; politician	Male	Founding partner (retired)	1968	North	Large corporate law firm
TW201719 (Group interview)	Lawyer	Male (all male)	Junior Partner	2004; 2004; 2005	North	Large corporate law firm

Work Cited

- Abbott, Andrew. 1986. "Jurisdictional Conflicts: A New Approach to the Development of the Legal Professions." *American Bar Foundation Research Journal* 11 (2): 187–224.
- Abel, Richard L. 1989. *American Lawyers*. New York: Oxford University Press.
- Apple Daily. 2016. "College Entrance Exam Results Released, National Taiwan University Heads All Categories." *Apple Daily*. August 8, 2016.
- Bartlett, Francesca, and Monica Taylor. 2016. "Pro Bono Lawyering: Personal Motives and Institutionalised Practice." *Legal Ethics* 19 (2): 260–80.
- Boutcher, Steven. 2010. "From Policy to Practice: Assessing the Effect of Large Law Firm Pro Bono Structure on Pro Bono Commitment." *Studies in Law, Politics and Society* 52: 145–67.
- . 2017. "Private Law Firms in the Public Interest: The Organizational and Institutional Determinants of Pro Bono Participation, 1994-2005." *Law & Social Inquiry* 42 (2): 543–62.
- Chu Pu-ching. 2014. "Exclusive Interview: Willington Koo aided the disadvantaged, now benefits his political resume." *Taiwan People News*, February 24, 2014.
- Cummings, Scott L., and Rebecca L. Sandefur. 2013. "Beyond the Numbers: What We Know - And Should Know - About American Pro Bono." *Harvard Law & Policy Review* 7: 83–112.

- Detto, Chris. 2006. "Study: Attorney Debts, Salaries Affect Legal Aid." *State Journal Register; Springfield, Ill.*, November 27, 2006.
- Dinovitzer, Ronit, and Bryant Garth. 2009. "Pro Bono as an Elite Strategy in Early Lawyer Careers." In *Private Lawyers and the Public Interest: The Evolving Role of pro Bono in the Legal Profession*, edited by Robert Granfield and Lynn Mather, 115–34. New York: Oxford University Press.
- Feuer, Alan. 2011. "The Defense Can't Afford to Rest." *The New York Times*, May 20, 2011, sec. N.Y. / Region.
- Formosa Transnational. 2019. "Lucas, Lung-Kuan Wang, Formosa Transnational." 2019.
- Garth, Bryant G. 2003. "Noblesse Oblige as an Alternative Career Strategy." *Houston Law Review* 41 (1): 4902.
- Granfield, Robert. 2007. "The Meaning of Pro Bono: Institutional Variations in Professional Obligations among Lawyers." *Law & Society Review* 41 (1): 113–46.
- Granfield, Robert, and Lynn M. Mather, eds. 2009. *Private Lawyers and the Public Interest: The Evolving Role of pro Bono in the Legal Profession*. New York: Oxford University Press.
- Hou, Boa-ching. 2016. "Cover Story: Disclosure! The Royal Guard of Presidents." *The Journalist*, September 29, 2016.

- Huang, Shou-Yi. 2009. "The 'Iron Four' in Taiwanese Legal Profession." *The Watch Magazine*, October 22, 2009.
- Lochner, Philip R. 1975. "The No Fee and Low Fee Legal Practice of Private Attorneys." *Law & Society Review* 9 (3): 431–73.
- Mather, Lynn, Craig A. McEwen, and Richard J. Maiman. 2001. *Divorce Lawyers at Work: Varieties of Professionalism in Practice*. Oxford University Press.
- Menkel-Meadow, Carrie. 1998. "The Causes of Cause Lawyering: Towards an Understanding of the Motivation and Commitment of Social Justice Lawyers." In *Cause Lawyering: Political Commitments and Professional Responsibilities*, edited by Austin Sarat and Stuart Scheingold, 31–68. Oxford University Press.
- Ramseyer, J. Mark. 2009. "The Effect of Cost Suppression under Universal Health Insurance on the Allocation of Talent and the Development of Expertise: Cosmetic Surgery in Japan." *The Journal of Law & Economics* 52 (3): 497–522.
- Rhode, Deborah. 2005. *Pro Bono in Principle and in Practice: Public Service and the Professions*. Stanford University Press.
- Sandefur, Rebecca L. 2007. "Lawyers' Pro Bono Service and American-Style Civil Legal Assistance." *Law & Society Review* 41 (1): 79–112.

- . 2009. “Lawyers’ Pro Bono Service and Market-Reliant Legal Aid.” In *Private Lawyers and the Public Interest*, edited by Robert Granfield and Lynn Mather. New York: Oxford University Press.
- Seron, Carroll. 1996. *The Business of Practicing Law: The Work Lives of Solo and Small-Firm Attorneys*. Temple University Press.
- Shelton, Jim. 2013. “Legal Work at Cut-Rate Prices.” *New Haven Register*, 2013.
- Winter, Greg. 2002. “Law Schools Urge Graduates to Start Small and Think Local.” *New York Times*, December 16, 2002, sec. B1.