

# ThroughTheGale-2022- CanBigLawBeAntiRacist

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In the summer of 2020, after the killing of George Floyd, businesses and employers across

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America pledged to be anti-racist. Many of the largest law firms joined this pledge.

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We often refer to these law firms as big law. These law firms have clients who are the largest

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corporate players in Wall Street institutions. They employ thousands of people and make millions of

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dollars. What do these pledges of anti-racism specifically mean from big law firms? Can big

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"Big Law Firm Be Anti-Racist" in the full sense of the term?

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Welcome to another episode of "Through the Gale."

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In this episode, we will be discussing

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what does it mean for big law to be anti-racist.

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I'm going to turn this episode over to Alexis Banks,

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Mark Wright, and Sneha Pandia to shed light on this question.

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My name is Alexis Banks.

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I am a recent graduate of Columbia Law School.

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And when I first started out at Columbia,

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as I do believe many law students do,

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when they come to law school,

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they dream of working in the public sector.

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But for myself and oftentimes many other students,

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we find that the realities of student loans

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and structural careers or in law school

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leads to many of us starting our careers in big law.

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And I think this is especially true for students

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at Columbia Law School,

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which consistently sends the largest percentage

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of its graduates to the nation's 100 largest law firms.

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And these large law firms represent and serve

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the nation's largest corporations,

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which I think simply put means that big law

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is an essential engine in the machine of American capitalism.

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- And my name is Mark Wright,

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and I am also a recent graduate of Columbia.

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- And hi everyone, my name is Sanja Pandia.

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I am a lawyer working in DC and also a graduate

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of Columbia Law School joining this conversation today.

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- Many of these big law firms are historically bastions

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of wealth and racial disparity.

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And now they've recently undertaken diversity

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and inclusion efforts to address racial inequality

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in their hiring and their employment practices.

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And some firms have even joined

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the law firm anti-racism alliance,

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which was established kind of in the wake of summer of 2020,

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Despite these efforts, though, the fundamental issue,

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I think, remains to be seen that as large corporate entities

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can big law really be capable of being anti-racist.

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That's a really big responsibility.

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And if they can, what are those steps to them getting there?

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How do they do it?

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I think there are many ways that we

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could approach this question, such as, you know,

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through the internal efforts that these law firms make

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to change themselves internally and learn

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from the experiences of lawyers of color

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within their own walls.

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But I think we wanted to take a little bit of a different

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approach that was a bit more external

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and dive in on big law and its role in modern capitalism

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and its broader impact on society.

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And I think that's where we ended up talking about pro bono.

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And so Pro Bono is an aspect of the legal industry in which

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free legal services are provided that can be, you know,

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by a lawyer working in their own practice or by a law firm

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that typically takes on its own paying clients.

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So I know from my experiences in law school

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that Pro Bono is a big selling point for big law firms.

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It's marketed to students, potential hires, clients,

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and the community at large.

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Law firms go to really great lengths

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to underscore their robust pro bono practice.

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And from a law student perspective,

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this sort of targeted communication really works.

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Law students that Alexis mentioned

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and that Mark and I talked about

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on our episode about law schools

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often decide to become lawyers

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to serve the public interest and to seek justice.

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They'll shop around for future employers

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through summer internships

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and specifically ask about pro bono opportunities

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to serve the public.

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For many law students who enter big law

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early in their careers,

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who planned a transition into public service later on,

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pro bono is really an opportunity

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to make a societal impact as a part of their job.

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And it can also be more fulfilling than their billable work.

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- Yeah, and I think when I was going through the process

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of interviewing at law firms,

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I recognized that many attorneys indicated

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that witnessing the impact of their pro bono work

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really allowed them to feel like the work that they do

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has more impact than just on their firm's biggest clients

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who are often corporations.

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It seems like Pro Bono is framed as a sort of foil

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to the corporate nature of that associate job.

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And the firming maybe is that, yes, big law firms

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and attorneys work for large corporations

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and catered to companies' needs.

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But on the other hand, these firms and attorneys

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can still better society through their pro bono work.

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- We wanted to look into the impact of pro bono,

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especially as law firms advance their anti-racism work.

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So to do so, we spoke with Professor Scott Cuning's,

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the Robert Henningson Professor of Legal Ethics



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at the UCLA School of Law,

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who teaches and writes broadly about the legal profession

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and access to justice.

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Professor Cummings has written very extensively

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about pro bono specifically within the big law context

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over the past few decades.

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And his most recent book, Global Pro Bono,

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Causes Contacts and Contestation,

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deals with pro bono's increasing role

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in people accessing the legal system,

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both within the United States and around the world.

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- To start, we asked Professor Cummings

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why Pro Bono is considered public interest work

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at these big law firms.

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What is it about the corporate side of the work

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that makes it fall outside of this public interest work

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that Pro Bono seems to be labeled as?

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- I think there are a lot of corporate lawyers

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who do really, really excellent work, Pro Bono and otherwise.

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Lots of that work doesn't impact the public at all.

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A lot of what corporate lawyers do is kind of move money

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back and forth between corporations that are fighting

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over dollars. And in some of what big law firm lawyers do

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actually makes a meaningful difference in people's lives just

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in their regular day to day practice. But you know, I think

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that the point that you're you're underscoring, that's really

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important is that firms do represent large corporations

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for the most part. And those clients often want to do things

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that are not in the public interest.

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They pay a lot of money to lawyers to get around regulation

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that's designed to protect workers, consumers,

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in the environment.

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And this doesn't mean that they don't sometimes stand up

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and tell clients to do the right thing

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or walk away when clients want to go too far.

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And I think we saw an example of the latter

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when some big law firms who had signed up

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to represent Trump, for example, in the 2020 election,

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litigation walked away when they thought the litigation was crossing the line. So there are

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good examples of firms pushing back, but too often they

don't. And in that way, I think corporate

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lawyers do end up doing the bidding for the most part of big firms that are not thinking about

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acting for the public interest, but are thinking about acting for profit. Yeah. And I think that

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attention serves as a backdrop for pro bono work across the board.

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Large law firms want to make a socially positive impact outside of their billable corporate

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work.

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They carve out space in their practice to do so intentionally in an effort to do more

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than just serve corporate clients, especially given the large amount of resources and funding

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that they have as compared to public interest organizations.

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And that's why we also spoke with Debo Adigbele, a partner at Wilmer Hill in New York City

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in their government and regulatory litigation group.

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Debo is a pretty famous litigator who spent a decade at the NAACP Legal Defense Fund,

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LDF, where he served as LDF's head of litigation.

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And in 2016, President Obama appointed Debo to a six-year term as a commissioner on the

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U.S. Commission on Civil Rights, where he still serves today.

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His experience in both the public and private sector shows what Pro Bono can actually do

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for communities.

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From my earliest days in big law, I have been involved in various Pro Bono matters, ranging

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from individual matters about people's entitlement

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to disability benefits that were central and critical

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to their sustenance and well-being,

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to matters involving domestic violence,

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and a necessity for an order of protection,

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and ultimately a marital dissolution,

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where there was a young child that was in a family situation that was not great for either

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the mother or the child. I was very glad to hear many years later when I was at the Legal

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Defense Fund that that person who I had known as a child went on to graduate from one of

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the nation's top colleges and I felt so good to hear that she had achieved so much and

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continued on a path of opportunity, two matters involving constitutional law, and either in

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the context of democracy and voting rights, which has been a through line in my career,

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to capital cases, including capital cases that were argued in the United States Supreme

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Court.

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You name it, and I've come close to doing it in pro bono.

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But what is most noteworthy about my pro bono experiences, one is that my greatest career

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opportunity grew out of some pro bono representations that I had as a very junior lawyer when I

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got to work on my very first voting case led by the wonderful late great Alion Higginbotham

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junior and I got to collaborate with the legal defense fund, the end of the ACP legal defense

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fund which would later become my employer.

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And so doing work, serving others and learning about voting rights turned into what became

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for me an extraordinary career opportunity.

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And the other thing that I would say that has run through my pro bono experiences is

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is that the collaborations and as I have become more of a gray-haired lawyer,

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creating opportunities for younger lawyers to litigate meaningful cases

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and cases that animate the ideas of why people wanted to go to law school in the first place,

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those are two really special things about pro bono experiences and in big law.

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Pro Bono clearly has the potential to be an overwhelmingly positive aspect of Big Law's

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legal practice, but that doesn't mean there aren't downsides.

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Yeah, I think that's exactly right. Pro Bono can play a role in creating an anti-racist

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Big Law, but only through understanding its limitations can we see its potential here.

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Yeah, I find it helpful that Debo shared what his hopes are for what Pro Bono can be despite

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its limitations.

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I guess I don't so much have critiques as I have aspirations.

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Most of big law recognizes pro bono hours as being counted toward the commitments, the

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billable hour commitments that lawyers are asked to make and that associates are asked

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to make.

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And I think that's very important.

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It's important so that the work done in service of clients who don't have the means to pay

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for it is not regarded as less than or less important or significant than the work for

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your paying client.

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I think that mostly now, I think pretty uniformly is my understanding that those hours are credited.

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Now, some firms will cap the number of hours and some firms might approach it in slightly

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different ways and if the caps are not generous, if folks aren't given the opportunity to really

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do this work, if associates are put under pressure not to give your all in any way,

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to one of those cases that would be inappropriate and not consistent with the standard that

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I think our profession should aspire to.

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And beyond that, I sort of talked about some of the matching and the pairing and the understanding

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of the full complexity of matters.

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And I think it's an occupational hazard that you may have matchups that work great and

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then some matchups that don't.

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But the other thing in lawyering, and this happens both on paying matters and on pro bono

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matters, is that folks have a range of skills.

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And very often, you need a team with lawyers that have different skills or different strengths

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in any event.

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And so that's something that I've learned also

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is to respect people's different competencies,

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even very able people are better at some things

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and some are better at others.

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- It also strikes me that despite there being a wealth

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of resources at Big Law firms,

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Big Law attorneys still experience structural limitations

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in pursuing pro bono work.

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- There are lots of opportunities, but lots of challenges.

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Well, one thing is that even with the extraordinary resources

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of big law. There are more cases than any one firm can take on. And there are lots of

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worthwhile cases that don't find lawyers or don't find big lawyers to advocate. And so,

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although pro bono is a way, pro bono programs are a way for people to get able representation

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in very significant cases, vindicating their rights and creating opportunities to be heard,

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which in and of itself is a value in a multiracial democracy to have the orderly vindication

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or efforts to vindicate people's differences and grievances is itself a good.

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Those of us who are lawyers like to continue to believe that.

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There's value in that.

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But there still is a limit to how many hours can be spent and the demand exceeds the supply

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of lawyer time, even though many firms, including my own, dedicate quite substantial time to

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pro bono efforts, very often dedicating large numbers of lawyers, large legal teams to cases

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that need to be developed and tried, and substantial lawyer time, and also expending lots of supporting

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dollars on vindicating the case.

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Another issue I guess is that sometimes, and this goes for all cases, not just for bono

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cases, but you have to navigate conflicts.

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Sometimes there are conflicts.

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Sometimes you might want to take a case, but it conflicts with a firm client or with an

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issue that's actively in litigation.

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That's something that needs to be navigated.

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That is more a challenge of big law in general, where you have lots of lawyers and hundreds

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of lawyers across jurisdictions and lots of clients.

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you need a system to make sure that you're discharging your ethical duties and occasionally

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that can be one obstacle. And beyond that, I haven't experienced it directly or at least

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not in a very long time. Sometimes there is a perspective of some pro bono teams that

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don't adequately grapple with the context of the underlying right or the context of the

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clients or the plaintiffs whose rights they're trying to vindicate and the case becomes more

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of a logic game or a legal exercise than the very serious and life affirming or sometimes

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life-threatening, depending on the context of the case, controversy that is really affecting

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people's lives in very meaningful ways.

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And so the legal acumen is very important.

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There are a number of soft skills and EQ and ability to listen and to meet people where

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they are that are very important as well.

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And not all lawyers and not all big firm lawyers have those skills, but putting to one side

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whether they have them or don't have them, not all big firm lawyers and not all firms

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understand the importance of those skills in navigating and advancing the causes of your

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clients.

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Being heard and being listened to, as I said, is not the only objective, but it's an important

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objective and respecting the aspirations and goals of your client are very important.

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We also took the opportunity to ask Professor Cummings to share his own critiques of the pro-bono

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structure, especially where it concerns the quality of junior

attorneys and the work that

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they are performing for their pro-bono clients. Quality control is a big concern that doesn't

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just affect pro bono, but it affects pro bono in a particular way. I think we know empirically that

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at the big firm level, most pro bono gets done by more junior attorneys. And although I think firms

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care deeply about maintaining quality all the way down and treating pro bono on the same footing as

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as they treat billable work.

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There's some evidence that that doesn't always hold true

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when you get down to the reality of the way

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that pro bono operates.

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And it's often the case that more junior associates doing

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pro bono work operate with less stringent oversight

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by partners than they might otherwise on billable cases

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where there's a lot of money at stake.

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And I think that structural problem of more junior lawyers

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taking on pro bono and maybe taking it on without the same

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kind of systematic oversight that they would get

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in billable cases that creates the potential for more error.

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The problem is that the potential for error

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is concentrated on cases where you're generally representing

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people that are the most vulnerable

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and in many ways have the most to lose.

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So there's a mismatch there between quality control and oversight and what's at stake for people that

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don't have otherwise a very good access to the legal system. But I think the more concerning

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thing really is the kind of things that fall through the gap that we don't hear about,

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the corners that are cut in ways that really affect people's life in a meaningful way, but

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you know, kind of don't make it to the newspaper. And I think that's a problem that we really have

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have to be concerned about when we think about the implementation of pro bono from the system lens.

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So it sounds like the quality control and supervision of pro bono work by junior attorneys

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is a critical part of the ethics of legal profession. We wanted to turn to Daepo and

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ask about what that looks like from inside the big law firm. Pro bono should not be regarded

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as just a training area for young lawyers without the guardrails to make sure that the

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client's interests are being vindicated, that people are being given opportunities that they're

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prepared for, and that there's enough supervision and oversight of the matter such that the client

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is being vigorously represented. And I think that the tension can be that sometimes you want to

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to create a vehicle or an opportunity for an associate to take on a case, but you need

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to make sure that there is enough bandwidth with enough senior lawyers so that nobody

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is laboring without the context and experience that they need to make the judgments about

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what the clients really require in a given context.

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And it's very often the case that some younger lawyers will play very substantial roles,

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But at Wilmer Hale, I know the partners have a long tradition of being deeply involved

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and engaged in the work of our pro bono matters.

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And I think probably wouldn't step away from a matter unless there was a senior ABLE lawyer

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to make sure that the obligations were being met to the client.

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And I think given how nonprofit institutions partner with big law firms and they hand over

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some of their own legal work as pro bono to big law

attorneys. I also wanted to understand if

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any such organization had indicated a positive or negative experience in their relationship with

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these firms. As we know, Davel has been on both sides of that relationship and it sounds like

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it's a delicate balance to make sure the work gets done to the standard of both organizations.

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There is a piece of lawyering, a deep piece of lawyering that's about a trust relationship

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and the ability to be able to communicate in a way that's not only clear, but in a way that inspires trust and conveys to a client that you have their interest in mind.

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And if lawyers are not making that time to hear, to evaluate, to understand the contributions that clients who are always closer to the facts may be able to offer and make,

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you need to sort of walk humbly as a lawyer and understand what you know, but understand

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what you might not know and what you'll benefit from learning and listening to people about.

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And so where you have lawyers that exist at too great a remove to the interests and the

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voice and the needs of one's clients, then there can be some challenges.

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And it can feel as if the service is some burden or some charity rather than a commitment

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to a very vigorous defense and vindication of the interest.

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Now there are some clients and some public interest organizations that have felt that

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they have had difficult relationships with some firms or council and that there hasn't

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in the level of respect and mutuality that is necessary.

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And that's something that can undermine the trust relationship

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and the function of a working relationship on a case team

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to the extent you're in a litigation posture.

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Earlier in our conversation,

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Debo noted that conflicts of interest, which is a common issue in any legal practice, also

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impacts pro bono.

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So, Sneha, our newly barred attorney, can you please explain what a conflict of interest

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is in legal practice?

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Sure.

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And by the time this podcast airs, I'm sure you both will also be newly barred attorneys

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and can give us all a refresh.

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But in its simplest terms, a conflict of interest is when a potential client approaches a lawyer

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or law firm with a matter, but the firm discovers that they represent another party to the same

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type of matter, perhaps on another issue. This means that they couldn't adequately represent

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the client without compromising the interests of another pre-existing client. And this isn't

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just a judgment call that firms have to make. Lawyers themselves are bound by the rules of

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professional responsibility to comply with conflict of interest rules. Yeah, and we learned in law

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school that it is commonplace for firms to conflict out, which is a term of art, of certain

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matters which can occur with either paying or pro bono clients. And one thing that I wanted to address

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after reading some of Professor Cummings' work was the question of pro bono no-go zones.

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Big corporate side, corporate defense firms just won't take on certain kinds of work as a

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categorical matter if it touches on client interests and not even just directly touches on specific

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clients that they're representing, but if it touches on the class of interests that firms represent.

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If it's about suing corporations, for example, for employment violations or siding with workers

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over management in a labor dispute that might generate precedent, or is likely to gain a lot of

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publicity that a corporate law firm's client base is not going to like to have, firms aren't going

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to do it. And this is not because there's an actual conflict of interest under the professional

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rules. It's not because the firms are necessarily taking on clients that are directly adverse to

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clients that they currently represent or have represented in the past. It's just because the

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client base is going to complain, they're going to take their business elsewhere, and this has a

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huge chilling effect on the kind of pro bono work that law firms will do. And this is just a structural

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reality of big law pro bono practice. So I think you often see firms taking on small individual cases

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for workers that are, for example, denied minimum wage, but these tend to be small one-off against

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smaller employers and not really likely to generate precedent or publicity that's going to negatively

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impact clients. So categories of cases where plaintiffs are bringing suit against corporate

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interests for workers' rights violations, consumer violations,

and environmental violations,

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those tend to be no-go zones really for big firm pro bono. Smaller cases tend to be okay.

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Cases against government actors, a lot of times they're okay if you're talking about

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environmental cases and maybe even employment in some consumer cases. Definitely civil liberties cases,

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which we might talk about in a bit. But for these corporate cases where you could generate precedent

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that's going to have a negative long-term impact on the corporate client base, firms aren't willing

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to touch those. It seems like it's not an easy task to keep clients happy while also taking on

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cases that might be viewed as more controversial to some risk averse corporations.

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We wanted to hear from Deboe his perspective about how a big law firm might approach that issue.

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There are some cases, whether they be paying or pro bono, that some folks may not want to take for

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a reputational reason, but there's also a robust value of providing representation to

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people, including two folks who are deemed unpopular. And so those things stand in a little bit of

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tension, attending to reputational concerns and sensitivities, while at the same time

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vindicating the idea of the right to counsel or the necessity of having an opportunity to be heard

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in a contested proceeding again when you're in a litigation context.

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So are there clients that might not look favorably on firms that take up certain causes?

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To be sure there are.

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And all you need to do is read the headlines to understand how some of those things might

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play out.

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But I think that most firms have to understand who they are and what their commitments are

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and take the matters that they think are consistent with the

firm's interests and values and commitment

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to serving folks that can't afford to pay for legal services.  
And if you do that, things will probably work out in the end.

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And I'm also curious if Professor Cummings might have any  
views on how no-go zones might also limit firms'

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to take pro bono cases on that implicates civil rights and civil  
liberties issues,

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especially as these law firms publicly commit to supporting  
anti-racism efforts and democracy protection work.

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I think there's more nuance when it comes to these kinds of  
civil rights, civil liberties cases

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than there are when we're talking about cases that are on  
issues like employment, consumer, environmental,

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environmental that are targeted toward corporate  
defendants.

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I think, again, those cases are pretty much categorically

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no pro bono area cases.

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Civil liberties, civil rights, I think, are more complicated.

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I mean, firms have done civil rights and civil liberties

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cases that are hugely impactful.

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They're instrumental in bringing the marriage equality case

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to the Supreme Court, for example.

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They played a huge role fighting for immigrant rights

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during the Trump era, before the Trump era,

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and continuing on into the Biden administration.

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So firms take on cases against government actors

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on these issues, even though they might court

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a fair amount of controversy and have a pretty high profile

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in the public domain.

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I think that's been true on abortion issues historically

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as well, and a lot of firms have been on the side

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of abortion rights and have filed amicus briefs

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and on behalf of organizations and represented plaintiffs

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and organizations in a variety of different abortion rights

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cases.

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It's always been politically controversial.

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In some ways, it's become more politically controversial

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and salient.

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I think there are lots of discussions within firms

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about whether to take on those cases on what side to come  
in,

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whether to come in at all.

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I know since 2020, firms have sought

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to do more robust racial justice work.

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as you probably know, started this law firm anti-racist

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alliance, which is designed to kind of coordinate

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on a national scale law firm pro bono to target anti-racist

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work.

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And I think you see that in really important areas,

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like defending voting rights, for example.

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But I think there's a way in which some of that

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may also be a little bit of PR by the firms designed

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to demonstrate to their constituencies,

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which include law students who are thinking

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about joining the law firms,

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as well as lateral recruits,

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and in some ways even the client base,

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that they are committed to civil rights

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and anti-racist causes,

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not to diminish the commitment,

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because I think it's symbolically very important.

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I think the question of whether or not

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it's actually changed the kind of pro bono work

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that firms do is an open one.

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I haven't seen any evidence one way or the other,

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but I do think it's important and symbolically significant

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that firms are putting their weight behind those ideas.

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- And I wanna take the opportunity to note here

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that Professor Cummings discusses

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the Law Firm Anti-Racism Alliance,

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which is an organization made up of many of the big law firms that we're mentioning in our conversation.

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And the LFA was founded in response to the momentum of summer 2020, and it has served as

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a sort of renewed promise by big law to meaningfully address issues of racism within its spheres of

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influence. And we also reached out to leaders of the LFA, but unfortunately we were unable to speak

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with them due to some scheduling constraints. But we did ask Professor Cummings how the LFA might

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be different from previous efforts by big law firms in achieving an anti-racist big law.

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I think living up to the promise that it's made to actually invest more resources pro bono and

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and financial honesty in supporting robust anti-racist

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efforts, I think that's the way that it actually moves from

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something that is symbolic and potentially has an overlay of PR

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to something that is substantive and actually goes above and

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beyond what firms are currently doing.

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I think the key for me and for observers of Pro Bono that really understand its importance,

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but also understand that we constantly have to be pushing

to make it better, is that it

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can't just be repackaging something that already exists.

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It has to actually be deepening the work in a meaningful way and extending it out so that

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it has a broader impact.

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I think the way that the law firm anti-racist alliance can do that is by facilitating the

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national conversation on anti-racism that's meaningful and to really think about what

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are the most important organizations, issues, movements that we can support and how can

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we most effectively do that given our vast amount of legal resources to move the dial

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and make a difference.

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And if that's the conversation and the networks and collaborations that the Alliance is fostering,

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actually think about thoughtful coordination and allocation of resources toward that end,

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then I think that's the way it lives up to its promise.

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Yeah, it sounds like Professor Cummings' insight here is consistent with Debo's perspective that

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that big law can be anti-racist and that he sees pro bono

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as a fundamental piece of how big law becomes anti-racist.

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- Well, I think that pro bono representations

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are a core piece of the anti-racism movement

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and of big law's participation in it.

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For most firms, it's probably the most direct

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contribution or effort that they have.

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in that regard, most firms that participate in substantial pro bono efforts. And it is a way to

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come most closely and directly to grapple with the issues that manifest the continuing

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claims of structural and racial inequality in our country and the way in which the continuing

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structural inequalities, shape, and narrow opportunity for people?

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So I'm noticing that this conversation has been about whether big law can be anti-racist and if

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pro bono can be a piece of that process. And now I'm wondering, what about the billable work?

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What is the role of billable work in reaching that mission?

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I think choices about which kind of clients to support, which kind of clients to take on,

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viewing that work through an anti-racist lens, making decisions about clients based on

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their own commitments to anti-racist practice, making decisions not to take on clients because

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of evidence that those clients are not engaged in and activities that are consistent with

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anti-racist principles and policies. I think those kinds of decisions can have a huge impact to the

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the extent that firms can organize their corporate law practice in such a way that is not just

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about a little bit of pro bono on the side because when we talk about pro bono, even in the most

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robust situations, we're only talking about roughly 5% of the law firms. Overall, legal

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hour is going to non-villable pro bono work. So it's a tiny fraction of the work that they do.

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I think that's always important to keep in mind. And if this other 95% can actually be allocated

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in a way that tries to devote those resources to companies that are actually doing good practices,

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that can also make a big difference. And if the Alliance is trying to do that as well and

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fostering a meaningful conversation about how that gets done in a way that

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overcomes the barrier of profit, that sort of pervades all of these decisions. And I think

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that's really important too. And one thing that I kept coming across in Professor Cummings' work

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was that sometimes the tension between principal and profit isn't as stark as it may seem.

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Pro Bono can actually help firms achieve their bottom line.  
He calls this the business case

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for Pro Bono. We were curious about what the pros and cons  
of this business case for Pro

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Bono and integrating it into a law firm's profit incentives  
could potentially be.

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firms are complex institutions with lots of different people,  
lots of different perspectives,

00:38:33.640 --> 00:38:39.160

and mixed motives. So a lot of people that work in big law  
want to do pro bono because it's the

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right thing to do and it's going to have a social impact.  
Others might need more persuading that

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it won't cut into their profits too deeply. Firms are under  
these different kinds of constraints.

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They're judged by the American lawyer on the basis of profit  
per partner. They're also judged by

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by the American lawyer on the basis of pro bono output.

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So it helps to be able to make different cases

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to different constituents about pro bono.

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And that's where this idea of the business case comes in.

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And it says, look, pro bono isn't just a giveaway of time.

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There are actual countervailing economic benefits

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to doing pro bono.

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As a firm doing pro bono

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allows the argument to be made that this is an important value

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and they're important opportunities.

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That helps recruit the best and the brightest--

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you guys, other lawyers from outside of the firms

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after they're already in practice who want to later all over.

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It helps retain lawyers because most people want more

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than just making money.

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They also want to have some sort of purpose and social value.

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It helps actually recruit clients,

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some of whom care deeply about these social justice issues.

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So there are lots of different,

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again, actors in this ecosystem of pro bono.

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And the business case allows arguments to be mobilized

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inside the law firm in support of Roboze Pro Bono.

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(upbeat music)

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And that brings us to the question of reform.

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What would it take to reform the pro bono system and make it work at its best so that

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it can fulfill its potential to bring lawyers to serve the public in their roles as corporate

00:40:36.420 --> 00:40:37.420

actors?

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Yeah, Professor Cummings seemed to focus on that reform through strong scaffolding and

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structure getting imposed on pro bono programs. I think having some protocols in place for

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feedback and evaluation from clients who are served and from other lawyers in the firm that

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are able to really look at the execution and quality of pro bono work is a really big issue.

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it is something that firms could address through more systematic review of pro bono

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from a qualitative standpoint, which could mean things like looking at outcomes of cases, but also

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just getting feedback from other actors in the system, like clients, like nonprofit organizations

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that refer pro bono cases to law firms to really get their sense of how well the pro bono lawyers

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are doing, what they could do better, what they could do to improve quality concerns,

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are cut across all sorts of different kinds of legal practices, and it's not just

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something that we want to hammer pro bono for. It seems like the answer here is definitely

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structural. It comes down to institutional structure that then ensures ethical and positive

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engagement by law firm lawyers who are doing this work.

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One of the ways in which I see pro bono evolving is that there's a greater institutional need

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for firms to be engaged in the issues of the day and to attract talent, in some cases,

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openly by touting their good works and the opportunities that are created for

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lawyers including young lawyers to pursue issues in which they're interested.

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And I think that's fantastic. It's sort of interesting that in the metric, in the

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barometer of big law that the American lawyer does measure pro bono

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commitments and in business and corporations there is a saying that

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that which gets measured gets achieved.

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And the idea that one of the criteria that firms are competing



on to be at the top of

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the so-called AMLAW 100 is a pro bono criteria, that that makes some contribution to it.

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It creates an incentive for pro bono to be broadly undertaken and for many lawyers in

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a firm to participate in it in some ways.

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I think all of that is positive.

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Some of the ways in which I think Big Law

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could do a little bit better is to think more creatively

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and to have more programs that create opportunities

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for pro bono service outside of litigation contexts.

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And there are lots of different legal needs

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that entities and people have.

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Not all of them are about trials and discovery.

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And sometimes it's about forming a corporation

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or giving advice to a not-for-profit or something else.

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And I think the value of institutionalizing

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and having as part of the big law narrative

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that the resources and successes of the major law firms

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really carry with it a responsibility to serve others

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and serve people without the means

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to hire counsel of their own.

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That is a value of the profession,

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and that is important to the continuity of the democracy

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and people's rights within it,

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and to have big law continue to make those commitments

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freely, unabashedly, and in ways that allow

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deep and meaningful experiences are part of the character

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of what distinguish the big law firms

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that have the resources to invest in this way

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from other segments of the market.

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- I think my perspective now is,

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is that there really is so much to be said

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about Pro Bono and Big Law.

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It is a complex structure that accounts for a great deal

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of the legal services rendered both in the US and globally.

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And whether it will be the vehicle

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for an anti-racist Big Law industry,

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is something that I think is far more nuanced

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than I ever realized before starting this conversation.

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- Yeah, I agree.

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There are so many more big picture questions to consider

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when we think about stakeholders in big law

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and how they fit into our ideas of what anti-racism is.

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We wanna share Debo's reflections on pro bono work

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as a whole to leave us with some suggestions

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on what it brings to the legal profession

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by allowing lawyers to have meaningful work experiences

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with pro bono integrated into their existing law firm work.

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- Working on pro bono cases has been one of the great joys

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of my life.

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It helped me to travel to the Supreme Court

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of the United States to see my first argument ever

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and to participating cases that were very meaningful

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from democracy cases and voting rights

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to capital cases involving death penalty sentences

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and to understand the intense commitments

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and the ability of what it looks like to litigate a case

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with substantial resources for folks

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that may not have the means to litigate the case

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without support, but certainly have very substantial legal

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issues and positions to vindicate.

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And it's been a rewarding personal experience

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because it's allowed me to do some of the work

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that motivated me to want to go to law school.

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And it's also been personally rewarding

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because I have seen the impact that these cases have

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in people's lives and how it lifts people up

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to have their causes taken up by counsel that's able

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and unafraid to fight to vindicate their positions

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in a variety of contexts.

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- And as we close out this conversation,

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I also wanna lean in on Professor Cummings's notions

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of the state of pro bono work today

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and where it could go tomorrow

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and the role that lawyers and especially law students

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will play in impacting and changing big law for the better.

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- Lawyers all over the globe are now tapping into this

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tradition of pro bono service and trying to make a difference

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in terms of what can be done to really target

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some of the issues that we talked about,

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particularly quality control and really mobilizing pro bono

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to have the most impact.

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I think that I wanna emphasize to your listeners

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to think about what they can do,

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what leverage that they have

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and how they should exercise it

00:47:50.800 --> 00:47:52.000

and when they should exercise it.

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And for law students in particular,

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those who are thinking about entering big law,

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I think the time to think about exercising power

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is before you make the leap when the firms are trying

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to recruit you, are fighting over you,

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and you're in a position to make demand

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so that when you enter, you do have standing

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to continue to build kind of a meaningful

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pro bono portfolio and then take over leadership over time

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and continue to push these really big

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and complicated institutions toward doing the right thing.

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And by the right thing, we're talking about

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really approaching pro bono in a meaningful way that really takes its cue and its lead from the

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people who need the resources the most and really tries to shape pro bono around their needs in

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a way that advances them and creates a more inclusive and equitable democracy. That's one way

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at least that the system is going to change, really bringing in resources and bringing in new

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talent that then shapes the meaning of pro bono over time in a way that really puts equity and

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inclusion at the forefront of it and makes sure that that actually is realized in practice.

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The other thing I would say is just that I think we all have to demand change from the

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outside of big firms. So these firms operate in a context in which they're responsive to



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demands from the public, they're responsive to demands from the government, they're responsive

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to demands from corporate clients. And I think we all have a role in advocating for changes

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to government oversight, to professional oversight, that really increases the incentives that law firms

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have to target pro bono in ways that are really meaningful, thoughtful, and responsive to the

00:49:45.440 --> 00:49:48.000

the most important issues facing our communities.

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I think we have the power to demand that our lawyers

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live up to the obligation to serve the public.

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And we're really in a unique time now, I think,

00:49:55.800 --> 00:49:58.520

to really focus on mobilizing toward that goal.

00:49:58.520 --> 00:50:06.880

- Thank you for listening.

00:50:06.880 --> 00:50:09.240

This episode was produced by Alexis Banks,

00:50:09.240 --> 00:50:12.240

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00:50:12.240 --> 00:50:14.560

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Governance and the Columbia Law School

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Anti-Racism Grant Program.

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Please check out our website for a list of books

00:50:30.520 --> 00:50:32.280

and articles mentioned in this episode

00:50:32.280 --> 00:50:34.200

and all the music we played.

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In our next episode, we return closer to home

00:50:36.880 --> 00:50:39.440

and discuss building inclusive law schools.

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(upbeat music)

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(upbeat music)

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