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Legal-Aid Crisis Do the poor have adequate access to legal services? By Barbara Mantel

October

07, 2011

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More than one in seven Americans lives below the poverty line, the highest proportion in nearly two decades, and many cannot afford a lawyer to resolve noncriminal legal problems involving such issues as spousal abuse, eviction, child custody and consumer fraud. Government-financed legal-aid

programs have long helped fill the gap, but the weak economy and enormous pressure on state and federal budgets. . . .

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CON



President and CEO, Pro Bono Institute. Written

SPOTLIGHT

Private Lawyers Not Meeting Volunteer Goal

"Pro bono has great promise, but it is very imperfect."

Just when they are needed most, private attorneys are reducing the amount of time they volunteer their services to help the poor with

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After several years of sharp increases, the combined number of pro bono hours at the nation's 138 largest law firms, which account for most of the nation's pro bono legal work, dropped nearly 9 percent in 2010, according to the Washington-based Pro Bono Institute, which provides research and assistance to law firms.

The retrenchment should be no surprise. The worst time for pro bono work is the period immediately following a recession. "Big firms are nervous about staffing up, client demand is starting to pick up and everybody wants to jump on the [paying] work when they get it," says Esther F. Lardent, the institute's president.

In contrast, 2008 and 2009 — during the depths of the recession — were record years for pro bono work, at least at the largest law firms, as they tried to keep their lawyers busy. Latham & Watkins, a national law firm, "channeled even greater resources to our pro bono program" during the recession, said Charles Crompton, the firm's pro bono committee chairman. Latham's lawyers, on average, each put in 97.1 hours of pro bono work in 2007, 164.3 in 2008, 153.5 in 2009 and 107 last year. That made it one of the top firms in the country for pro bono work.

In fact, last year's drop in pro bono work at the largest firms followed a decade of steady increases. Rather than the informal ad hoc approach of 15 years ago, many large firms now have a formal pro bono policy, a pro bono committee and a full-time pro bono administrator. And many are signatories to the institute's Law Firm Pro Bono Challenge, whose goal is for firms to spend 3 to 5 percent of billable hours on pro bono work.

Several factors underlie this policy transformation, including the growing size, power and clout of the big firms and the resulting desire to "give back," says Lardent. "And some of it, honestly, particularly in recent years, is that legal publications that highlight large law firms are focusing on pro bono," she says.

In 2003, *American Lawyer*, a prominent trade publication, created its A-list of the nation's top 20 firms, factoring in financial performance, attorney diversity, job satisfaction of a firm's associates and pro bono work. "Lawyers tend to be competitive," says Ronald Flagg, chair of the pro bono committee at Sidley Austin, a national law firm.

Flagg also says pro bono representation benefits firms. "It gives lawyers, particularly our younger lawyers, experience in working on significant matters and working directly with clients. And it helps integrate our office into our communities."

But fewer than one in six U.S. lawyers works at a large firm. ⁵ And no one knows for sure how much pro bono work the remaining lawyers do. No national reporting system exists, and just seven states require lawyers to report their pro bono hours. ⁶



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COMING UP

Eyewitness Testimony (10/14/2011) Student Debt (10/21/2011) Children and Poverty (10/28/2011) Of those, Nevada and Illinois are at the low end, with fewer than one-third of lawyers doing pro bono work in 2010. On the high end are Florida, at 52 percent, and New Mexico, at 65 percent. However, the kind of pro bono work is usually not specified, so it is as likely to be for a nonprofit private school as for a low-income litigant in housing court.

The American Bar Association (ABA) tried to gauge the level of volunteer representation for those who are indigent in interviews with a cross section of 1,100 lawyers in 2009. About 73 percent said they did some pro bono work for people of limited means or organizations that support them, up from 66 percent in 2004. But only 27 percent provided 50 hours or more of pro bono legal services a year to those kinds of clients, an aspirational goal that the ABA sets for every lawyer.

"I'm encouraged on the one hand that there is extensive pro bono provided but discouraged a bit that we are not approaching the goal that we have identified for several years," says ABA President Bill Robinson III.

Trying to increase pro bono work among lawyers is like "missionary work," says Robinson. "It takes lots of articles, a lot of programming, lots of encouragement, and I think it takes recognition. Every bar association has programs that recognize lawyers for outstanding pro bono service."

An important requirement for encouraging pro bono work is adequate funding for the country's civil legal-aid programs. When the foreclosure crisis began hitting Ohio a few years ago, the state's chief justice and its then-attorney general sent a letter to every lawyer in the state asking for volunteers. In northeast Ohio alone, 300 lawyers came forward. But they required an infrastructure for referral and support.

"Almost none of them had ever done a foreclosure case before," says Colleen Cotter, executive director of the Legal Aid Society of Cleveland. "We did training for them, and we assign them a mentor when they are assigned a case." The 300 lawyers, she says, are much more willing to volunteer if they know that her organization "has their back."

But institutional limits restrict how much volunteer lawyers can narrow the justice gap, according to a report by Legal Services of New Jersey. Many solo practitioners are always going to find it too difficult to commit a large number of hours to pro bono work, the report says. Moreover, it says, few lawyers are willing to go beyond giving advice and provide full representation to a pro bono client because of a lack of time. Meanwhile, few private and corporate lawyers actively practice in "the areas most critical to people living in poverty," such as family, housing and consumer law, the report notes. And finally, it says, larger firms with financial institutions as clients may perceive a conflict of interest if they represent poor people in mortgage-foreclosure or debt-collection cases. "Pro bono has great promise, and it brings in incredible skills," Largent says. But, she adds, "It is a very imperfect mechanism."

- Barbara Mantel

[1] "Report on the 2010 Pro Bono Institute Law Firm Pro Bono Challenge Statistics," June 2011, p. 1, www.probonoinst.org/images/pdfs/challenge2010/ 2010-pbi-challenge-report.pdf.

[2] "Pro Bono Report 2011: Choppy Waters," *American Lawyer*, July 1, 2011, www.law.com/jsp/tal/PubArticleTAL.jsp?id=1202498700455&slreturn=1.

[3] "The A-list 2011," *American Lawyer*, www.law.com/jsp/tal/PubArticleTAL.jsp? id=1202498033012.

[4] "Pro Bono Report 2011," op. cit.

[5] "Supporting Justice II: A Report on the Pro Bono Work of America's Lawyers," American Bar Association, pp. 3, 10, 13. http://apps.americanbar.org/ legalservices/probono/report2.pdf.

 $[{\ensuremath{6}}]$ The states are Florida, Hawaii, Illinois, Maryland, Mississippi, Nevada and New Mexico.

[7] "State Reporting Policies," American Bar Association, http://apps.americanbar.org/legalservices/probono/reporting/pbreporting.html.

[8] "Supporting Justice II," op. cit., pp. 3, 10, 13.

[9] "The Civil Justice Gap: An Inaugural Annual Report," Legal Services of New Jersey, 2011, p. 18, www.lsnj.org/PDFs/The_Civil_Justice_Gap_2011.pdf.

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