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What the Poor Really Need Is Legal Aid

By Susan Beck

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This may come as a surprise, but some of the biggest skeptics of pro bono efforts come from the ranks of Big Law's pro bono partners.

"It's a universal belief among the pro bono community that pro bono is not the solution," says Steven Schulman, who leads the pro bono practice at Akin Gump Strauss Hauer & Feld and is a former president of the Association of Pro Bono Counsel. "Pro bono is a very important part of being a lawyer, but anybody who thinks that it will solve the problem doesn't know much about pro bono." He's referring to the gargantuan problem of helping the poor with their legal needs.

And consider this from the current president of the Association of Pro Bono Counsel, Benjamin Weinberg: "One of the frustrations of the pro bono system is that it's not a system at all," says Weinberg, the pro bono partner at Dentons. "You have a whole bunch of law firms separately searching for ways to help the community. It's impossibly inefficient and not all that effective, and not that strategic in fighting for access to justice."

Adds Schulman: "We don't want pro bono to be a fig leaf that covers the real problem."

Schulman, Weinberg and others believe that now is the time for what Schulman calls a Second Wave Revolution in Big

Law pro bono.

The First Revolution started about 20 years ago, when the late Esther Lardent and others (including The American Lawyer) pushed firms to do more pro bono work, and set measurable targets. That movement succeeded in getting many firms more involved in pro bono—more than 4.6 million hours were contributed by The Am Law 200 last year for U.S.-based projects. But the legal needs of the poor are still largely unmet.

In a Second Wave Revolution, firms would organize to get more funding for legal services groups, whether through lobbying or other efforts to convince courts and lawmakers to boost funding. “We need to come together as a Big Law community—people who run pro bono and the lions of the profession—and make that a priority,” Schulman says. The Akin Gump partner suggests that firms set targets to increase funding for legal aid in their community by a specified amount, say 10 percent in one year.

It’s a great idea. As every lawyer should know, groups that provide legal services to the poor are desperately underfunded, and most have to turn away more than half of the people who seek their help. The vast majority of tenants go unrepresented in landlord tenant court. Many poor women seeking protective orders for domestic violence can’t get a lawyer. It’s a crisis that goes beyond legal issues and exacerbates the cycle of poverty and the burgeoning income inequality gap.

The federally funded Legal Services Corp., the biggest single source of funding for legal aid groups, received just \$385 million from Congress for the current fiscal year. Adjusted for inflation, that’s less than half of what it got in the 1970s. (On a rare bright note, it was 10 percent more than it received the prior fiscal year.)

It’s great that pro bono partners such as Schulman and Weinberg are speaking up. But for this movement to get going, it will need the leaders of Big Law—chairmen and chairwomen and managing partners—to raise their voices. “We need to harness the power of large law firm leadership,” says Dentons’ Weinberg.

As a start, Dentons global chairman Joseph Andrew is on board. “It’s a concept I have personally pushed for, and I have begun conversations with other law firm leaders,” he says. This effort should go beyond direct lobbying, he says, to mobilizing local businesses and community groups, which can influence their legislators and local leaders. “Every law firm plays an outsized role in their community,” he says. “We need to have a nationwide effort of law firm leaders to influence local communities.” He envisions firms taking responsibility for certain geographical areas, but says the organizational details still need to be figured out.

David Lash, the managing counsel for pro bono at O’Melveny & Myers, recalls that in the late 1990s California’s legal community banded together to lobby state legislators to allocate \$10 million from the general fund for legal services. Law firm managing partners and general counsel from big corporations signed a letter urging lawmakers to act. “We had 70 to 80 signatures of really impressive people who came from really impressive platforms,” says Lash, who then headed the legal service group Bet Tzedek. The effort was successful, in large part because the message came from the business community, and not just legal aid lawyers. “We were told after the fact that letter was one of the most important components of the lobbying effort because it came from people who weren’t the usual suspects,” says Lash.

While Weinberg, Schulman, Lash and others in the pro bono community have been discussing this Second Wave plan among themselves, few have yet to press the issue with their firm leaders. “We have the best law firm lobbying shop around,” and now is the time to lobby for increased legal aid funding, asserts Schulman. “We have not as pro bono practice leaders called out our firm chairs to do this.”

But here’s the hitch. Law firms can’t speak with authority on this subject until they’ve supported legal aid generously themselves. Big Law still has a long way to go on this front. As I revealed in a cover story last July, it appears that the most generous big firms give no more than one-tenth of one percent (0.1 percent) of their gross revenue to legal services

groups for the poor, and most fall far below that amount. Many contribute more to well-endowed alma maters and clients' pet charities. (While lawyers make individual contributions, I believe it's important for law firms to give, to show their institutional values.)

It doesn't seem like much has changed in the past year. New York, for example, is the home to many of the richest law firms in the world. There, The Legal Aid Society of New York conducts an annual campaign that asks firms to contribute \$600 for every lawyer they have in the city. That \$600 benchmark, which was set in 1996, has not inched up by one penny in 20 years.

Blaine "Fin" Fogg of Skadden, Arps, Slate, Meagher & Flom, the president of The Legal Aid Society, says he has thought about raising the amount, but hasn't pursued it. "Why upset the apple cart?" says Fogg. "We're doing all right." According to The Legal Aid Society's annual report, contributions were down slightly in 2015, from \$14.31 million in 2014 to \$14.28 million last year.

James Sandman, the former Arnold & Porter partner who is president of the Legal Services Corp., calls the concept of a Second Wave Revolution a great idea. "If Big Law leaders were out in front about the need for funding, it would be heard differently than if it came from pro bono leaders," he says. "These are business leaders, and they could make a business case."

Sandman recently started a similar initiative to get powerful voices to speak up for legal aid. Earlier this year the LSC formed a Leaders Council that includes University of Michigan football coach Jim Harbaugh, Viacom vice chairman Shari Redstone, and baseball legend Hank Aaron. (It also includes lawyers such as former Attorney General Eric Holder, now of Covington & Burling, and Craig Martin of Jenner & Block.) "They're heard very differently," says Sandman about the likes of Harbaugh and Aaron, because they're not the "usual suspects" who talk about legal aid.

While law firm leaders may not capture attention like Harbaugh or Aaron, they can still make a difference in the corridors of power.

Says Schulman: "So far I think we've been too silent."

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