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The Justice Gap: How Big Law Is Failing Legal Aid

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On a morning in late April, a young woman appears in Cleveland housing court without a lawyer. Her mother faces eviction, she tells the judge, but she can't come to court herself because she's in the hospital. The judge asks the daughter if she has any documents proving this. She doesn't. The judge enters a default judgment for the landlord and orders the mother to move out in 11 days.

Magistrate Judge Myra Torain Embry will call more than 30 eviction cases this morning. With one exception, none of the tenants present have a lawyer. Most likely, they can't afford one. For more than half the cases, the tenant doesn't even show, and Embry enters a default judgment for the landlord. Most tenants are given seven days to find new homes.

During a break in the proceedings, Embry says this is a typical day in housing court. "It's rare to have a tenant with a lawyer," says Embry, a former legal aid lawyer who has been a housing court judge for 14 years. Even if a tenant hasn't paid her rent, she can benefit from having a lawyer, she explains. Cases usually settle if a tenant has counsel, and a settlement often gives the tenant more time to move. A settlement also won't leave an eviction judgment on the tenant's record, which can harm her credit, and prevent her from qualifying for public housing. In the case of this young woman, a lawyer would likely have known to bring the necessary paperwork, and a default judgment might have been avoided.

Maria Smith, a supervising attorney of the housing unit at The Legal Aid Society of Cleveland, says they just don't have the resources to represent most people facing eviction, or other crucial legal problems. The nonprofit is still depleted from cuts made during the recession, down to 40 lawyers from 55. Last year it had to turn away 57 percent of the more than 17,000 legal matters of all kinds that people brought to them.

Smith, 57, has worked as a legal aid lawyer in Cleveland for more than 15 years, previously spending time in Central and South America as a missionary. The stakes in these eviction cases can be scary, she says, especially for children. Smith recalls one judge telling her that her clients were facing "just an eviction," not a death sentence. "But for some people this can be a spiral down from which they never recover," she says.

Smith carries a caseload of roughly 30 active cases, and makes less than half the pay of many first-year associates at big firms. (Supervising lawyers at her organization earn between about $61,000

and $92,000.) "I have no complaints about the salary," says Smith. "But the work is suffocating. I could work 24/7 and still not do everything I need to do."

A juxtaposition

Scenes like the one in Cleveland's housing court play out every day in every major city in America, in housing courts, family courts and other settings where critical life issues of the poor are decided.

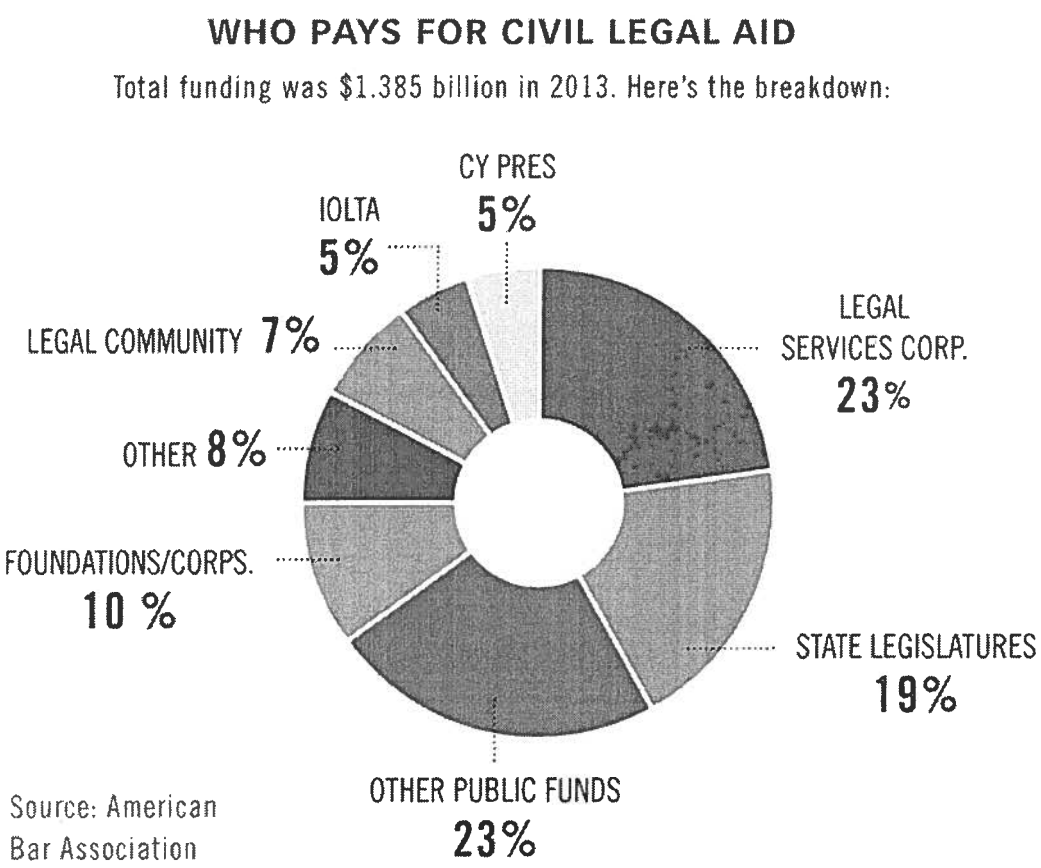
In contrast to the constitutional right to counsel in criminal cases, an individual doesn't have a federal right to a lawyer in a civil matter, no matter how serious. A few jurisdictions, however, have passed laws requiring lawyers for individuals in certain serious civil matters, such as the loss of parental rights.

A network of legal service providers who represent the poor for free has arisen to address some of this need, but a lack of adequate public funds and private donations means that, as in Cleveland, more than half of those who seek help are turned away. Put another way, there's just one legal aid lawyer for every 8,893 low-income Americans who qualify for legal aid, according to the Justice Index, a project of the National Center for Access to Justice at the Benjamin N. Cardozo School of Law. That's how, in a country with one of the highest concentrations of lawyers in the world, poor people often are forced to navigate the potential loss of their home, their children or their benefits on their own.

The crisis in legal aid isn't new. What is new is that since the recession, profits and revenue at Am Law 200 firms are healthy again—in many cases, surging. Last year, the collective revenue of these firms passed the $100 billion mark for the first time. Many recorded all-time highs in revenues and profits, and profits per partner at a dozen firms exceeded $3 million. Yet in our analysis—the first time we've looked deeply at firms' legal aid giving—it appears that the most generous firms contribute little more than one-tenth of 1 percent of their gross revenue to groups that provide basic legal services for the poor, and many fall far below that amount. This doesn't include individual donations by firm lawyers, which isn't feasible to track. While individual donations are important, institutional giving by law firms is crucial for legal aid groups, those organizations say.

We found that the bulk of firms' charitable donations are directed to other causes, including clients' pet charities and well-endowed law schools, records show. At the same time, the percentage of law firm pro bono work aimed at helping the poor is declining. Legal aid advocates, however, are largely reluctant to publicly criticize big firms, because they're so dependent on the funds they do get from them.

Lawyers and firms, especially America's biggest and most successful ones, have a special responsibility to do more, some observers say. "A big- firm lawyer ought to care that the justice system is working fairly for everyone," says John Levi of Sidley Austin, chairman of the board of directors for the Legal Services Corporation, a federally funded nonprofit that is the single biggest source of legal aid funding in the United States. He senses that many big firms could dig deeper into their pockets to support legal aid. "I'm not sure they are," he says.



David Stern, executive director of Equal Justice Works, a nonprofit that solicits firms to underwrite fellowships for young lawyers to work at nonprofit legal aid groups, says he appreciates the support he gets from big firms, but believes most firms should do more. "When you look at how little they give, it's pitiful," he says about law firm giving as a whole. "I have been doing this work for more than 20 years, and I am always astounded by law firms talking about charitable giving from a position of scarcity while their partners are bringing home more than $1 million in profits per partner."

Beyond pro bono

Judge David Tatel of the U.S. Court of Appeals for the D.C. Circuit tells lawyers that bono work is critical to addressing the civil legal aid crisis, but will never solve the problem. Rather, he urges law firms to donate more money to legal aid.

"What we need most of all is dramatically increased lawyer and law firm funding for state and local legal aid programs," he said in a speech at a fundraising dinner for local D.C. legal aid groups two years ago. Given the earnings of the biggest and wealthiest law firms, he said, "no one in this country should be denied access to the courts simply because he or she cannot afford a lawyer." Tatel pointed out that if the 12 biggest firms in D.C. donated one-quarter of 1 percent of their revenues to legal aid, this would more than double the number of poor clients that legal aid groups could serve. "The District's legal community can and must do more," admonished Tatel, previously a partner at Hogan & Hartson who led its pro bono program.

During a recent interview, Tatel underscored that the wealthiest firms have a special responsibility to

address this crisis. "Lawyers for whom this profession is extraordinarily profitable must fulfill their responsibility," he says. When asked about the response from the law firm community after his 2013 speech, Tatel said: "I have not heard any response."

Simpson Thacher & Bartlett partner Mark Cunha agrees that the law firm community needs to shift its focus to better help the poor. "An awful lot of discussion you hear about providing legal services revolves around pro bono," says Cunha, who serves on the board of Legal Services NYC, the largest provider of civil legal services for the poor in the country. "There should be as much emphasis on financial contributions by lawyers or firms and government. There's no question that legal services lawyers are more efficient in providing the kinds of services needed by low-income people."

The need is evident in courthouses everywhere. Take Philadelphia family court, where one day in June a 35-year-old woman sits with her 7-year old son. She grips a folder with evidence she wants to show the judge, including police reports about her ex-boyfriend. She looks anxious.

"I've never been to court before," she says. "I didn't even know where it was. I feel like I'm going to throw up."

"Me, too," her son says.

"You, too? I'm sorry, baby," she says, holding her son. She begins to cry.

The woman is here because her ex-boyfriend has filed for a protective order against her. The woman claims that the boyfriend has been abusive to her and her son, but she was scared to take legal action for fear of retaliation.

She seems unaware that she might need a lawyer. "The cops that served me [with the documents for this case] told me I didn't need an attorney," she says. Did she know that free legal help might be available? "No, I didn't know I could get free legal aid," she says. "I was scared for my life. I'm still scared for my life."

When her case is called, she stands before the judge along with her ex-boyfriend. Her hand shakes as she takes the oath. She agrees to let the case go to trial, but she seems confused about the implications. "What does this mean for me?" she asks as she walks out of the courtroom. She begins to cry again. "I don't have money for a lawyer. I don't know what I'm supposed to do. I can't even afford my rent. The judge wouldn't let me say anything or show my evidence. Why?"

Even if this woman tried to get a legal aid lawyer, she'd likely be out of luck. Roughly 11,000 requests for protective orders are filed each year in Philadelphia County. Susan Pearlstein, supervising attorney for the family law unit at Philadelphia Legal Assistance, says they have to turn away 95 percent of the people who request their help. "We don't have the resources," she says. Overall, Philadelphia Legal Assistance has only 20 lawyers, and has lost 10 staff members over the last several years. Kathleen O'Malley, managing attorney of Philadelphia-based Women Against Abuse, says her group has three lawyers who work on protective order cases, but they can barely put a dent in the demand. What does her group need most? "Money. More grants and more funding, so we can hire more attorneys."

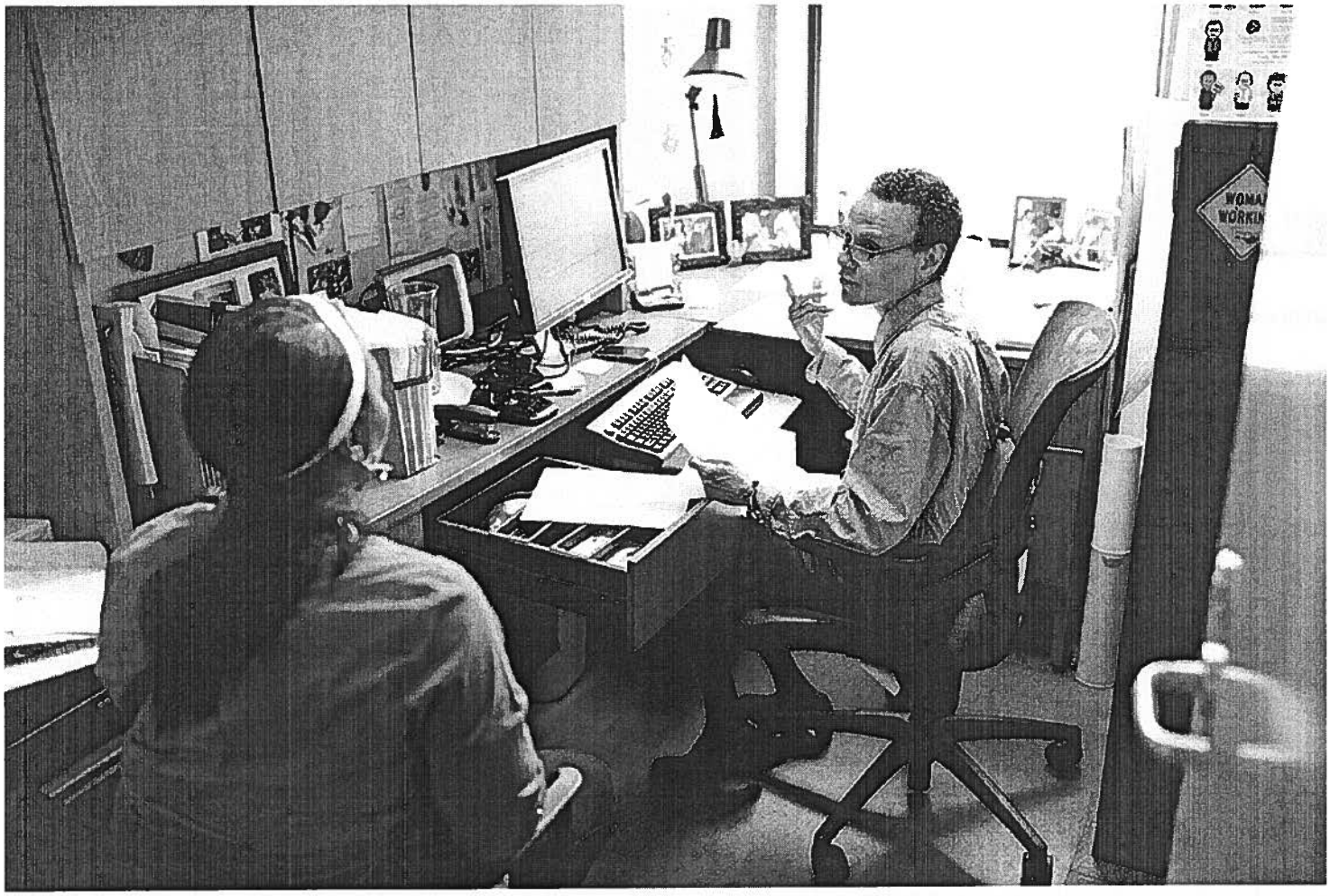
What law firms give

Voluntary contributions by individual lawyers and law firms of all sizes account for 7 percent of total legal aid funding: They gave $95.8 million in 2013, according to the American Bar Association, out of

$1.385 billion in funding from all sources. It's not clear how much of that $95.8 million was contributed by Am Law 200 firms. Even if the entire amount came from those firms, which it didn't, this funding would represent less than one-tenth of 1 percent of the firms' collective revenue of $96.3 billion that year.

The Pro Bono Institute, which is best known for encouraging pro bono work, also collects data about law firm financial contributions to legal aid groups. Each year it asks firms to answer an optional question about those contributions. The PBI's data shows that the median law firm contribution in 2014 was $155,000 based on responses supplied by 63 firms. Only five firms gave more than $1 million. The average contribution was $356,503.

When we asked the largest and most profitable firms how much they gave last year to legal services groups helping the poor, the response was mixed. Most firm leaders didn't want to discuss the topic on the record, let alone disclose data. Others made it clear they didn't welcome these questions.



Maria Smith and a client in Smith's office. "I could work 24/7" and not finish the work, she says.

One of the few leaders who discussed this topic publicly was William Voge, the chairman of Latham & Watkins, the top-grossing firm in The Am Law 100. "I think Big Law should do more. Whatever we're doing can't be enough, given the demand for legal services out there," he says. Last year Latham's revenue jumped 14 percent, to $2.6 billion, and profits per partner grew 16.5 percent, to $2.9 million. Voge did not disclose Latham's legal aid contributions, saying that it would be difficult to collect that information and would be misleading without counting individual contributions from partners, which would be even harder to determine. "You could not look at the firm's contribution alone and have it be

representative of what the firm does," he says.

(Some firms underwrite legal aid fellowships for young lawyers. Click here for stand-out firms.)

Four firms did agree to disclose their level of giving to legal aid: Kirkland & Ellis ($2.6 million); Paul Weiss Rifkind Wharton & Garrison ($1.5 million); Reed Smith ($300,000); and Sidley Austin ($2.1 million). The highest level of giving as a percentage of revenue was at Paul Weiss: its $1.5 million donation represents 0.14 percent of its revenue; Kirkland and Sidley were close behind at 0.12 percent.

"Our giving to legal aid has increased dramatically in recent years," says Brad Karp, the chairman of Paul Weiss. "While we and our peer firms can always do more, I'm proud of the work that we and others in our community do to try to make legal services available to those members of our community who desperately need them."

Uncertain public support

Private contributions to legal aid have become increasingly important, given the precarious nature of public support. The federally funded Legal Services Corporation is the largest single source of legal aid funding, but represents less than one-fourth of total support. The balance comes from a patchwork of sources, including state and local appropriations, interest on client funds, and private fundraising from lawyers and law firms. Adjusted for inflation, LSC's funding has shrunk 40 percent in 10 years, and it's not clear how it will fare in the current federal budget process. President Barack Obama has asked that its funding be increased from $375 million to $452 million for the new fiscal year, which begins October 1. The House Appropriations Committee has adopted a bill that would cut LSC's budget by $75 million, down to $300 million, while the Senate Appropriations Committee approved $385 million. At press time, it wasn't clear how this would be resolved.

Another dire funding problem for legal services is the dwindling money from IOLTA—interest on lawyer trust accounts—which have long been a significant source of legal aid support. When lawyers hold money in trust for clients, the interest earned must by law be turned over for legal aid funding. The negligible interest rates that have persisted since the financial crisis have decimated this funding source. In 2008 IOLTA produced $240 million for legal aid; by 2013 the amount was down to $74.5 million—the lowest figure since the ABA started tracking legal aid funding in 2002.

The ABA's Model Rules, which aren't binding on lawyers, say that a lawyer should voluntarily give financial support to organizations that provide legal services to people of limited means. But it doesn't suggest a level of support.

LSC president James Sandman is reluctant to suggest how much law firms should give to legal aid, but wishes they would make legal services groups a priority in their giving. The former managing partner of Arnold & Porter notes with dismay that legal aid groups are increasingly competing for charitable funds with firms' corporate clients, who pressure firms to donate to their favored causes. "While these nonprofits are doing good and valuable work," he says, "these expenditures are more in the nature of marketing or client relationships."

The 10 Most Profitable Firms

The 10 Firms With the Most Lawyers in the U.S.

What they gave: Click on the thumbnails for charts detailing legal aid giving by the most profitable and largest U.S. firms.

Big Law's beloved charities

Many firms direct the bulk of their charitable contributions to a range of groups other than legal aid, according to public filings made by foundations that some firms have set up for charitable giving. Kirkland & Ellis, for example, has one of the most generous law firm foundations. According to the foundation's most recent filing with the Internal Revenue Service, the firm donated $8.2 million to 304 charitable groups in 2013. Of those donations, 21 percent, or $1.7 million, went to groups that provide legal services to the poor.

The firm's largest contribution, $591,500, went to Northwestern University, where firm chairman Jeffrey Hammes earned his law degree. The Legal Aid Society of New York received the next-largest contribution ($448,117), and Kirkland's third-largest gift went to the Bain Capital Children's Charity ($298,200). Bain Capital is a major Kirkland client. Other recipients include Stanford University ($277,000), the Navy Seal Foundation ($50,000) and the American Football Coaches Foundation ($6,667).

The Jones Day Foundation, which distributed $3.5 million in 2013, gave $750,000 to Johns Hopkins University and $350,000 to the Holocaust Memorial Museum. Legal aid groups received $270,000. The firm says it gives money to legal aid outside of its foundation, but wouldn't say how much.

Wachtell, Lipton, Rosen & Katz, which has the highest profits per partner of any firm in The Am Law 200, at $5.5 million, also has a charitable foundation, which distributed $1.85 million in 2013. It gave $1.05 million to New York University, where firm co-founder Martin Lipton is chairman of the board of trustees, $200,000 to NYU Langone Medical Center and $300,000 for Prep for Prep, which helps students of color attend private schools. Wachtell's foundation didn't contribute to legal aid groups. Daniel Neff, co-chairman of Wachtell, says the firm makes most of its charitable contributions outside the foundation, and declined to say how much Wachtell donated to legal aid.

Wachtell, like most major New York firms, participates in a pledge program to raise money for The Legal Aid Society of New York, the city's second-largest civil legal aid provider, according to the society's website. Fifty-two law firm "sustaining members" promised to donate $600 for each lawyer they have in New York, and these pledges raised $8.4 million last fiscal year. An annual gala raises millions more. In all, law firms contributed $12.4 million to the group last fiscal year.

Seymour James Jr., who heads The Legal Aid Society as its attorney-in-chief, praises the legal community for its financial contributions and pro bono work. "They have been tremendously supportive," he says. Still, the organization is woefully underfunded. "There are hundreds of people we are unable to serve every week," he says. About 2 million New Yorkers are living in poverty, he says, and The Legal Aid Society's roughly 280 civil lawyers aren't enough. He estimates it would take well over 1,000 lawyers to meet needs.

One factor in this funding crisis is that The Legal Aid Society's $600 per lawyer law firm pledge level hasn't changed in 19 years, since it was set in 1996. Chairman Richard Davis acknowledges that the board, which consists mostly of partners from Am Law 100 firms, has been reluctant to raise this amount. "People say, 'Why don't you increase it?'" says Davis, a former Weil, Gotshal & Manges partner who now has a solo practice. "But we don't want to compromise our relationship [with these firms] by increasing it to more." Vice-chairman Blaine "Fin" Fogg of Skadden says he's discussed raising this amount with a few board members, but hasn't brought the issue to the whole board. "Would I be happy if the sustaining law firms gave us more? Sure," he says. "But there has been some reluctance to ask for an increase lest some firms say, 'Enough already.'"

Six hundred dollars represents four one-hundredths of 1 percent of the $1.3 million average revenue generated by a lawyer at 18 of the biggest New York firms. This $600 is also less than the target amount for law firm giving set by legal aid providers in Chicago ($1,000 per lawyer) and Boston ($800), and the same as the main legal service provider in Atlanta ($600), where lawyers on average make much less.

Fogg and others stress that most big New York firms contribute to many legal aid groups, not just to The Legal Aid Society, so their total legal aid support isn't reflected by these numbers. But no one, it appears, tracks collective giving.

Outside New York, two legal communities have found that a coordinated approach has spurred giving to legal aid. The Chicago Bar Foundation, the charitable arm of the Chicago Bar Association headed by Robert Glaves, said that last year at least 11 firms met the challenge of paying $1,000 per local lawyer for collective contributions to local legal services groups. More than $5 million was raised from all firms, a 43 percent increase since the program was started in 2008.

In Washington, D.C., Georgetown University Law Center professor Peter Edelman devised a novel program to track law firm giving to local legal aid groups. In 2011 the D.C. Access to Justice Commission, which Edelman chairs, started its Raising the Bar in D.C. program, which asks firms to donate amounts ranging from 0.075 percent to 0.11 percent of their local D.C. revenues to legal aid groups. (The firms report their donations to Ernst & Young.) The commission set the top percentage after finding that the two or three most generous firms gave 0.11 percent of local revenue.

Last year the Raising the Bar program raised $5 million for local legal services groups, a 66 percent increase since the program's first year. Jessica Rosenbaum, the commission's executive director, says that gathering the information to set those benchmarks was crucial. "Firms were in the dark about what was a generous giving level," she says. After the information was out, she says, "it created a healthy competition among firms."

Timothy Hester, the chairman of Covington & Burling, is a strong advocate for pro bono work, but he says he's not convinced that law firms have a special obligation to support legal aid, especially given their status as partnerships owned by individual partners. He sees legal aid funding as a societal

problem. "We're making the decision [to contribute] on behalf of every partner," he says. "It's important for law firms to contribute, but I like to encourage partners individually to contribute. Not everyone will have the same view." He notes that Covington participates at the highest level in D.C.'s Raising the Bar program, giving 0.11 percent of its local revenue, but suggests that is the limit. "You can't expect a lot more than what we're already doing," he says. "You can't expect giving to be unduly high."

'The crisis is so bad'

Although pro bono hours by the Am Law 200 firms have been generally robust from 2008 to 2013, it appears that a shrinking percentage of that time was spent helping the poor with basic legal needs. In 2013 only 46 percent of the hours reported by 80 firms to the Pro Bono Institute were aimed at helping the poor—the lowest percentage since the PBI started tracking this metric in 1995, when it was 71 percent. In 2014 the percentage jumped to 70 percent; PBI officials say they have been educating firms on the importance of keeping tract of that type of work.

Data gathered by The American Lawyer for its annual pro bono survey supports the PBI's findings. When asked to list their biggest pro bono project of 2014, the majority of firms cited a project that focused on something other than helping the poor with everyday legal needs. More than 20 listed a death penalty case. (While that is valuable work, it's not in the nature of legal aid work.) Other examples of top projects include voting rights disputes, environmental litigation, marriage equality cases, a Holocaust reparations project, and a transgender name change project.

Several firms, however, listed projects aimed at addressing the access-to-justice crisis of the poor. Davis Polk & Wardwell lawyers logged more than 2,000 hours last year helping more than 100 low-income homeowners victimized by fraudulent mortgage modification practices. Hunton & Williams runs two clinics for low-income individuals in Virginia; other firms periodically offer clinics, too.

Getting big firms to handle evictions, custody and child support issues, and consumer debt cases can be a hard sell to lawyers who would rather work on sexy headline-making cases. "It can seem too unfamiliar, even for an experienced litigator, says LSC's Sandman. "People don't want to embarrass themselves." Sandman says he's made it his mission to urge firms to devote more pro bono time to helping the poor with their basic legal needs, and accepts every opportunity he's offered to speak at law firms about this.

Covington & Burling chairman Hester says he was inspired by Sandman's talk at his firm to represent a tenant in housing court. It was satisfying, he says, but admits it wasn't as stimulating as death penalty defense work, which he's done for more than 30 years. "It doesn't grab your intellectual attention in the same way as a thorny death penalty appeal," he says. Still, he and others at Covington have been discussing ways to get the firm's lawyers to do more work like this. "The question is, how do we encourage people to see this work for the poor in our local community as sufficiently engaging?"

Lisa Dewey, the pro bono partner at DLA Piper, says she's been increasingly thinking about ways the firm can address the basic legal needs of the poor. "People shouldn't avoid this work because it's not sexy enough," she says. "This is really important stuff." The firm has helped create and run legal clinics in Baltimore and Chicago and at Veterans Administration hospitals. In March, DLA Piper and Arent Fox announced a novel collaboration with Georgetown University Law Center to open a "low bono" law firm that to serve low-income people who make too much to qualify for free legal aid, but who still can't afford a lawyer at market rates. The D.C. Affordable Law Firm is slated to start taking clients in the fall.

DLA Piper's Dewey says the firm is also thinking beyond traditional models of legal help. "The crisis is so bad," says Dewey. "There's no way everybody who needs a lawyer will get one. We'll have to come up with new solutions, whether we're using nonlawyers or self-help resource centers."

Collen Cotter, executive director of the Cleveland Legal Aid Society, says some simple changes wouldn't cost much but could make a huge difference. Court forms, for example, should be written in plain English. "The terms 'petitioner' and 'respondent'—it's not clear to most people what that means," she says. LSC's Sandman agrees. "We have a system that is largely built by lawyers for lawyers." he says.

Hoping and praying

On a Saturday morning in late May, dozens of people sit quietly in a waiting room at the Stephanie Tubbs Jones Health Center on the east side of Cleveland, where the Cleveland Legal Aid Society is holding a clinic. It's staffed mostly with young lawyers doing pro bono work from Squire Patton Boggs, in-house lawyers from the Cleveland Clinic and local law school students.

One young woman has a dispute with her former employer, who runs a beauty salon where she apprenticed. "He made me work without pay, and I didn't get my final paycheck," she says. Although she was working for minimum wage, she says she was forced to sign a noncompete agreement preventing her from working at other salons. "I'm very nervous right now," she says. "I feel like he's trying to intimidate me."

Another woman clutches a stack of papers. "I've got all this paperwork, and I don't know how to fill it out," she says. The 38-year-old mother of two says her husband died in March and didn't leave a will. His bank won't release his money until she goes through probate, and the forms confuse her. She lives in a nearby county, and was sent here by her county's legal service provider because it didn't have the resources to help her. She shuffles the papers. "They make it very difficult for common people to go through this."

Maria Smith of Cleveland Legal Aid says she's discouraged that society doesn't see more value in providing legal services for such people. But she says she tries to stay optimistic. "The young lawyers coming through [legal aid] now are just incredible," she says. How does she keep from becoming overwhelmed? "I pray a lot," she says. "Most frustrating is that it would not take much away [from others] to change this."

Correction: An earlier version of this article incorrectly identified the largest civil legal aid provider in New York City. It is Legal Services NYC. An earlier version also incorrectly stated the number of lawyers on staff at Philadelphia Legal Assistance.

(For additional coverage, including our editorial on Big Law and legal aid, click here.)

Reporter Anita Abedian contributed to this article.

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