

A Key Element is Missing from Sotomayor's Pro Bono Vision

A call for a donating time sidesteps the fact that legal aid desperately needs money.

BY STEVEN H. SCHULMAN

Justice Sonia Sotomayor's recent statements on the ethical duty of lawyers to provide pro bono publico service were refreshing and a needed message of leadership from the U.S. Supreme Court. ["Sotomayor Urges Mandatory Pro Bono for All Lawyers," *The National Law Journal*, May 17.] Yes, pro bono has to become part of every lawyer's "being," as she said. And, absolutely, her dream of universal pro bono is commendable.

But her dream of "forced labor" for lawyers to help the poor is incomplete (as many dreams are). The missing ingredient from this vision is full funding for legal aid lawyers, who make pro bono service possible. Representing the poor may not be highly remunerative, but it is by no means a simple task. Our housing laws, immigration regulations and public benefits systems, for instance, have not been simplified just because they pertain to the poor. To the contrary, advocacy in these areas requires specialized knowledge and training, which is precisely where legal aid lawyers step in.



UNDERFUNDED: Inflation-adjusted appropriations for Legal Services Corp. have plunged by 40 percent.

Anyone who has participated in the remarkable two-decade growth of law firm pro bono (from less than 1 million hours per year by the Am Law 200 firms in 1994 to nearly 5 million hours in 2014) knows that this transformation has been possible only with the support of legal services lawyers who identify clients, provide training and mentor volunteer lawyers. Legal services lawyers are the lifeblood of any significant law firm pro bono practice.

Scott McNeilly of Washington Legal Clinic for the Homeless, for example, has trained hundreds of D.C. lawyers in Social Security claims since he started work in 1994. Even firms with deep experience in this work continue to rely on Scott for his wise counsel and mentorship.

Anwen Hughes of Human Rights First in New York spends hours of her work days (and nights) on the phone with volunteer attorneys representing

refugees seeking asylum in the United States, walking them through the tangle of immigration law and procedure.

At Dallas Volunteer Attorney Project, Kristen Salas trains and supervises pro bono lawyers helping indigent clients with uncontested divorces and other family law matters, allowing them to wade into this new area with comfort and confidence. She then reviews volunteers' pleadings before filing to ensure that the clients are well represented.

There simply are not enough Scotts, Anwens and Kristens in our country to support Sotomayor's dream of universal pro bono service. The situation is, in fact, quite dire. The main source of legal aid funding in the United States, the Legal Services Corp. (LSC), has seen its congressional appropriation drop from \$400 million in 1995 to \$375 million in 2015. This represents an inflation-adjusted decrease in funding of 40 percent. Sadly, this decreased LSC funding understates the problem, as the number of Americans eligible for free legal aid has increased well more than 50 percent since 1995.

And even *that* doesn't capture the scope of the need. Only those who are at or

below 125 percent of the federal poverty line are eligible for LSC-funded legal aid. A family of four earning \$29,438 is at the poverty line, but even a family with an annual income twice that amount would struggle mightily to afford a competent lawyer to handle its critical civil legal needs, such as housing, immigration, custody or consumer debt issues. As a result, nearly every study on the issue estimates that about 80 percent of the civil legal needs of the poor go unmet.

A PERSISTENT PROBLEM

Accordingly, full funding does not mean that we need only enough legal aid lawyers to train and supervise pro bono volunteers. Pro bono service, important as it is for both the bar and the poor, can never meet the need. Need proof? The District of Columbia has perhaps the most robust pro bono bar in the country. But even here, the vast majority of the poor are unrepresented. Walk into the Landlord-Tenant Branch of the D.C. Superior Court on any given weekday morning. Plenty of lawyers are present, but almost all represent the landlords. At most, 10 percent of tenants are represented. This is not because D.C. law firm lawyers don't want to

represent these tenants, because in fact many attorneys in D.C. do volunteer in the Landlord-Tenant Branch.

The hard fact is that demand for free legal services for tenants far outstrips the supply—and this is just one element of a legal system imposed on the poor. The situation replays itself in family court, in immigration court and at the Social Security Administration. Pro bono can be part of the solution, but is not a full answer.

The United States is a nation founded on the principle of equal justice under law, so much so that our Constitution begins by charging our government to “establish Justice,” a duty that comes before providing for “domestic Tranquility ... common defence or ... the general Welfare.”

I applaud Sotomayor for bringing attention to the plight of the poor who cannot afford legal services. But this call for pro bono overshadows a much more critical imperative: the obligation of all citizens to ensure that the foundation for quality free legal services for the poor—funding for full-time legal aid lawyers—is taken as seriously as our obligations of common defense. Only then will we meet our country's first duty: to establish justice.



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