

Law

Pro bono work helps law firms close justice gap

High-end practices are making up for shortcomings in state-funded legal aid

BRUCE LOVE

Thirty miles north of Manhattan, in the East Ramapo Central School district, 92 per cent of state school children are Latino or black. On the other side of the tracks, students in the district's private schools are 98 per cent white. Yet for over a decade, the district's white majority has controlled every seat on the school board that manages the area's state education system.

In East Ramapo, thought local resident Oscar Cohen, an entire generation of ethnic minority school children had been deliberately denied basic resources and a quality education – to the benefit of the white private school students. Enough was enough.

"The white majority was manipulating the voting system in the school district," says Mr Cohen of the National Association for the Advancement of Colored People (NAACP). "They were crowding out minorities and silencing their voices."

But even if it was clear-cut discrimination, a case like this would be hard to win. Preparing for a months-long trial and the inevitable appeal could cost millions of dollars. Mr Cohen feared he would not find the funds or expertise needed to help the community.

Andrew Clubok, a partner at Latham & Watkins who runs the law firm's global securities litigation



Latham & Watkins litigator Andrew Clubok says the pro bono work he did for the East Ramapo lawsuit was 'the most satisfying case... in my career'

business, offered to fight the school district. For free.

"Because of the principles we were fighting for and the good that we did, this was the most satisfying case I've been a part of in my career," says Mr Clubok, the go-to-litigator for some of the world's biggest companies. Lawyers of his calibre can charge upwards of \$1,000 an hour for corporate clients.

Fighting for a cause

Law firms regularly take on pro bono cases for what they consider important causes, from death penalty appeals to fighting deportation orders for undocumented immigrants.

Depending on the jurisdiction, lawyers may need to meet minimum pro bono requirements to maintain their licence to practise. The American Bar Association recommends at least 50 hours a year.

"We all blew through that in less than a week," says Mr Clubok of his team for the East Ramapo case.

Michelle Movahed, pro bono partner at McCarter & English in Newark, New Jersey, says while in the past many law firms capped the number of hours their lawyers could devote to free work, this is now rare among practices serious about pro bono. Her firm requires attorneys to do at least 25 hours annually, but most do substantially more.

McCarter's pro bono work runs the range of legal needs but for the past four years, the firm has emphasised serving particularly vulnerable groups: veterans appealing against denial of benefits, people with a criminal record seeking a pardon, or tenants facing eviction during the pandemic.

It works closely with independent non-profit legal aid programmes which help it identify needs, train attorneys and allocate resources. The US Justice Department estimates some 530 of these organisations offer civil legal help to low-income Americans, yet in 2020 it only funded 134. Ms Movahed says the biggest difficulty is that Federal government funding has "so many strings attached" that accepting it can prevent some

organisations from carrying out their missions. There is always a need for more resources.

"Non-profits are critical to helping private sector attorneys do our small part in trying to help fill the justice gap in America," she says.

Last year, as lockdowns caused a rise in domestic violence, McCarter's lawyers worked with local non-profits to help victims seeking restraining orders and other legal assistance.

Newly trained and younger lawyers expect to work for a firm which cares about social justice

Amy Grunske, Orrick

Other firms too have been tackling Covid-related problems. At Faegre Drinker Biddle & Reath, for instance, lawyers pushed for better anti-coronavirus protocols in prisons, says Kelly Tautges, the firm's pro bono counsel and director.

"From leadership to new associates, lawyers find causes for which to devote their time," says Ms Tautges. "It becomes a real point of pride to be responsive to the community's needs."

The American way

Pro bono is much more established in the US than elsewhere – largely because the US has some of the lowest government support for legal aid in the world and private lawyers have felt the need to fill the gap.

A Thomson Reuters Foundation survey found American lawyers devoted an average of 70.12 hours to pro bono in 2020, compared with 19.55 hours in England and Wales, and 20.77 in mainland Europe.

This month, Yasmin Waljee was named pro bono partner at Hogan Lovells in London – the first lawyer in Europe to hold such a title, which is relatively common in US law firms. She says that,

while British lawyers increasingly recognise the need for a firmwide pro bono focus, "in Europe, we have more to do to institutionalise pro bono across the firms".

Historically, the substance of pro bono work has been less direct in the UK than in the US, with lawyers having a long tradition of helping charities with their legal structures or assisting with legal education in developing countries. But as state funding for direct-to-the-public assistance has dwindled, pro bono representation looks likely to increase.

Take, for example, legal aid in the UK. Ms Waljee says UK lawyers re-evaluated their approach in 2013, when the government slashed support for cases like immigration, housing law and employment disputes. In response, firms took on more direct representation of low-income clients.

Now, access to justice must improve again in response to the impact of Covid-19, she says: "Firms will need to develop a credible pro bono offering to address societal expectation."

British and European firms are also realising that pro bono offers a way not only to fill unmet legal needs, but also to strengthen the firm and attract top talent, says Amy Grunske, who heads international pro bono efforts at Orrick.

"No matter their practice area, newly trained and younger lawyers expect to work for a firm which cares about social justice," she says. "They expect to be able to contribute to pro bono."

January 6 was bittersweet in East Ramapo. The same day white nationalists stormed the nation's Capitol, the US Court of Appeals decided in Mr Cohen's favour, agreeing that minority groups had been denied meaningful participation in school board elections. The school district was ordered to restructure into a more representative system. After 17 days in court, 16,728 pages of evidence, and at least \$3.7m in probono hours (according to court filings), the district holds its first fair elections on February 2.