

MOVES TO TRIM PRO BONO WILL PROVE COSTLY IN MANY WAYS

by

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“It started thirty year ago, or som’ers along there. There was trouble ‘bout something, and then a lawsuit to settle it; and the suit went agin one of the men, and so he up and shot the man that won the suit - which he would naturally do, of course. Anybody would.”

Mark Twain, *The Adventures of Huckleberry Finn*

Whining over being forced to pay hefty salaries to first-year associates, several large law firms have recently announced the “restructuring” of their support for pro bono work. As any casualty of the corporate culture can attest, “restructuring” is most accurately defined by the equation Restructuring = (Elimination + Discouragement) x Spin. The logic of this coordinated ploy at this particular time is, to use the gentlest of descriptive terms, elusive, and so presents a vacuum of thought into which it is appropriate to inject a few observations on the benefits of pro bono work.

Back in 1982, when both my brow and my shingle were far less weather-beaten, it occurred to me that I needed more experience than I could reasonably expect clients to pay me to acquire. So, in response to a mailer from the Chicago Bar Association, I signed up with Chicago Volunteer Legal Services Foundation. Within what, in retrospect, seems like minutes, I got a call from a staff attorney at Legal Assistance Foundation, who was leaving for vacation and got my name from Margaret Benson at CVLS. We met at the courthouse the next morning, and before I could tell him how clueless I was, he handed me a wad of pleadings and discovery requests, each with my name at the bottom, and introduced me to my client, Clara N. Unceremoniously tossed into the deep end of the pool, I defended my first forcible entry and detainer case. Fourteen months later, following an order of demolition in building court, our judge in eviction court entered a dismissal order, with prejudice. I am told that I still hold the modern record for both duration and outcome in eviction court, although in fairness, my win was simply the natural consequence of someone else’s. Clara, now a homeowner, still calls me when she needs help, addresses me as “Lawyer Harding” and periodically sends around acquaintances who would like to enroll as a paying client.

Fresh from my “victory” in eviction, I thought I would stretch a little. Roberto M. was sued for striking two gentlemen with his car. As came to light in his deposition, Roberto, a native of Puerto Rico, made a less than complimentary remark regarding people from Mexico as he got into his car in front of the neighborhood watering hole. Two gentlemen from the deep, deep South began harassing Roberto, jumping on the hood of his car, challenging him to get out and face them, etc. As he pulled away from the curb, one of the fellows kicked at the fender, missed and slid his foot into the wheel well. He skinned his shin, fell back onto his friend and both tumbled to the asphalt. The neighborhood shill for a PI mill dropped by to sign them up, and each visited St. Elizabeth’s Hospital and (repeatedly) a chiropractor. At our second meeting, Roberto inquired as to my drink of choice. My response was, of course, Jack Daniels -- neat. Just before each of the next three Christmases, as his case droned on, he gave me a fifth of J.D. On the day the case was called for trial, one plaintiff was out of town, in flight from a child support order, and the other was in the Metropolitan Correctional Center for trying to spend photocopied money in a bar. Plaintiff’s counsel took a voluntary dismissal and never refiled. The seals on two of the bottles remain unbroken.

Five years ago, Margaret Benson, the same villain who got me hooked on pro bono, gave my name to a second year associate at a mega-firm. Young associate had a CVLS case in which a man on disability and with no hard assets had been sued for just under \$10,000.00. Four days before scheduled jury trial, Young

Associate was mortified, never before having tried anything in a real court. I asked her three questions: - In your present position, how long before you can reasonably expect to act as lead counsel for a paying client? - Even if you foul up completely, will your client be worse off than he is now? - Would you like me to second chair? She saw in the answers to the first two questions the opportunity to move forward and get some experience in a situation where she could not hurt her client, regardless of the outcome. She replied "No, thank you," to No. 3, and that was a pity. I would have liked to be there to see her win -- and she did win.

Eighteen years and dozens of pro bone cases later, what does it all mean? Others may, and I am sure will, disagree, but what I take from it is that while pro bono is real work, it can be entertaining and offer real opportunities. Sometimes, the opportunity is simply an unconventional risk alignment, which if recognized, allows a young attorney to shift focus from "not losing" to "winning," a hurdle every young person must leap before accomplishing anything of value. Three bottles of booze don't add up to much, but 17 years of referrals do. Success, even backhanded, can shape the heart of a young attorney, and hands-on experience teaches in many ways. Even if pro bono offered the young attorney nothing more than "bonus" time in court, it would be worthwhile.

It takes time spent in a real courtroom to learn the nuances of communicating with the bench and one's fellow attorneys. It takes a lot of court time for most of us just to learn that persuasion has a lot more to do with listening than with talking. And it takes a few shots from the hip to learn in a "living it" kind of way (more effective than reading about it) that there is neither any substitute for preparation nor anything fatal about embarrassment.

In addition to lessons in approach, zero-budget litigation also offers valuable lessons in technique. It was in a pro bono case that I picked up a nearly fool-proof method for defending my case against the "snow 'em under with discovery" approach to litigation. Cross-examining a witness with no prior statement to fall back on forces a lawyer to develop the habit of looking for internal inconsistencies in testimony. I could go on, but it is fair to say that there are as many valuable practice lessons available in pro bono litigation as there are cases, and I suspect the same is true of pro bono work outside of litigation.

Finally, we come to the relevance of the quote from Huckleberry Finn -- the more global, less personal reason for pro bono legal services. As attorneys, we are personifications of the legal system, and most people like and trust their own lawyers. The thing is, you have to have a lawyer before you can like and trust your lawyer, and if you do not have a lawyer, you have no reason to trust the legal system. Without pro bono, the 30 percent or more of the population that makes up what we call the working poor contacts the legal system in a state of perpetual default, overwhelmed by the complexity of a system that we view, through educated and experienced eyes, as simplicity itself. When people see the courts rigged against them individually, they take the law into their own hands. Historically, when classes of people see the legal system as rigged against them, they follow the first tyrant who offers a false promise of fairness. It is, for that reason, comically absurd that some of our largest law firms, which have the most to gain in maintaining our legal system and the most to lose if it fails, have chosen to abandon the most effective, least expensive means available of ensuring continued public confidence in the legal system.

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