

Finding Your Calling: Pro Bono as a Path to New Practice Areas

By M.C. Sungaila – December 17, 2013

Lawyers do pro bono work for many reasons. Young associates may seek courtroom or case-management experience through pro bono litigation. Attorneys at all levels may wish to give back and serve the underserved. But few expect to find their calling or to find the area of practice they want to focus on. I did.

I was a midlevel associate at a large Los Angeles-based law firm. I had just completed a successful federal criminal trial where I had served as a key member of the defense team, arguing and preparing motions and jury instructions, crafting witness outlines, and preparing witnesses. This level of experience was nearly unheard of for a litigation associate at a big firm, much less at my level. I was grateful for the experience. I enjoyed arguing and preparing the motions and jury instructions and discussing legal issues with the judge, but I cringed when witnesses endured withering cross examination from the senior members of my team. We were working more than 300 hours a month and were in trial far from home. I yearned for the “jazz,” the payoff for all this personal sacrifice. My team members got it when they extracted a key concession from a witness or had a particularly combative day in court. But those things were not fulfilling to me. I wondered what would be.

I found the answer a few months later.

Another trial, thousands of miles away and years earlier, had ended in the conviction of a small-town judge for criminal civil rights violations. But that conviction was subsequently overturned by the Sixth Circuit Court of Appeals.

Judge David Lanier handled family law and custody cases in the town of Dyersburg, Tennessee. His brother was the district attorney, and his father was the town patriarch. It seemed that if you wanted to get anything done in Dyersburg, Tennessee, you had to go through a Lanier.

Judge Lanier was convicted of sexually assaulting female court employees and litigants in his court and in his chambers, sometimes threatening to take their children away, rule against them, or fire them if they failed to comply. Federal authorities heard stories from eight women about the judge’s abuse of power and sexual predation. On the strength of the women’s testimony, the judge was convicted of criminal civil rights violations.

But the Sixth Circuit, sitting en banc, reversed the convictions. The majority explained that, at the time the judge acted, it was not clearly established that what he did amounted to a constitutional violation of the right to bodily integrity. The dissenting judges disagreed.

The Solicitor General sought review from the U.S. Supreme Court. A pioneering civil rights organization decided to get involved. They called me to help get review and to represent them as amicus in the Supreme Court. The work required me to serve in a pro bono capacity. The issues raised by the case, and the opportunity to make a difference, made the decision easy. I dove in.

Time was short. I holed up in a conference room for six days. I contacted the Department of Justice to get data concerning other judges and officers who had pled guilty or been successfully prosecuted for similar violations, to help show that at least some folks thought the right to bodily integrity was clearly established.

I was 29 years old and this was the first appellate brief I had drafted entirely on my own. But I believed in the case and the cause.

We helped obtain review and reinstated the judge's conviction, 9–0. Once his conviction was reinstated, the former judge fled to Mexico, where he was reportedly nabbed by federal authorities while picking up mail in response to an ad he had placed for female companionship. He is in jail now, serving a 25-year sentence.

That experience hooked me on appellate law. My client, a giant in the civil rights realm, had confidence in me to present their case forcefully and well. From my clerkships on the district court and Ninth Circuit, I had gained a firm understanding of how to persuasively advocate to judges. I had a knack for writing. And most importantly, I hardly noticed that I had barely slept or eaten in a week in order to prepare the brief on a short time schedule. At the end of the day, an artfully crafted brief, a grant of review, and ultimately a reversal made it all worthwhile.

I left my firm to concentrate on appellate law at a boutique firm, where I worked alongside Ellis Horvitz, the advocate who pioneered the practice of appellate law in California. After 13 years with that firm, I spread my wings and joined Snell & Wilmer, where I have embraced new responsibilities of client development and participated in developing the vision and direction of the appellate group. None of that would have happened if I had refused that pro bono appellate opportunity nearly 20 years ago.

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