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ARTICLE

The Importance of Pro Bono Work in Professional Development

During this poor economy, pro bono work provides an excellent means to develop one's craft.

by Brian J. Murray

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Any lawyer who watches the news, reads a newspaper, or surfs the web is aware of the difficulties currently facing the economy. This time lawyers are not immune; many young commercial litigators are sitting at their desks with time on their hands. With the constant drumbeat of gloom permeating the news cycle these days, perhaps these associates could be forgiven if their first instinct is to spend the work day updating their status on Facebook or trolling the various blogs to learn how many more law firms laid off associates. But I would suggest there is a better alternative —taking on pro bono matters to gain valuable experience and hone skills for the future while riding out this economic downturn. Daphne Eviatar, "Pro Bono Picks Up in Down Times," AmLaw Daily, Dec. 15, 2008.

Now, why should any young litigator listen to this advice? A fair question. One obvious answer is that taking on pro bono matters provides young litigators with the opportunity to do some good in the world—an important initiative in its own right, especially in these challenging times. Beyond that, though, there are important benefits to be had that are generally not available to young litigators through traditional work in law firms of any significant size.

The strategy of using pro bono work to develop and perfect one's craft as a litigator was established over a century ago by a young litigator named Louis Brandeis. Young Louis, who appears to have been one of the first lawyers to incorporate public service systematically into the private practice of law, cut his legal teeth on a wide array of pro bono matters. Melvin I. Urofsky, "Louis D. Brandeis: Advocate Before and On the Bench," 30 J. Sup. Ct. Hist. 31, 34 (2005). While it is difficult to dispute that he did some great work for his clients, it is also difficult to dispute that the work ultimately did as much good for his own professional development. So active was he in

taking on and relentlessly pursuing matters for public interest clients that people eventually dubbed him "the People's Lawyer." Most of us now know him better, not as Louis, the junior litigator, but as the person he ultimately became through perfecting his craft: Justice Louis Brandeis, an associate justice of the U.S. Supreme Court.

My own experience, albeit more limited, has also been influenced by the value of pro bono work in perfecting one's craft. While Justice Brandeis focused on trial work, my own expertise lies in appellate matters. I work in the appeals group of one of the world's largest law firms. But I was not always as experienced as I am today. Fortunately for me as a young lawyer, I was routinely encouraged by senior lawyers to always have at least one active pro bono matter, even when the economy was humming along. Pro bono is a large part of how I have developed my appellate skills over the years.

Both Justice Brandeis's work and my own more limited experience, then, suggest that pro bono work is not only good for the soul, but it can also be good for the career. In particular, three things about pro bono work stand out: (1) pro bono work can provide early opportunities for substantial and meaningful direct interaction with clients; (2) it often offers young litigators the opportunity to develop skills through experiences that simply would not be available to them from paying work; and (3) it can provide experience in a far wider range of subject matters than the standard commercial litigation fare.

Client Interaction

In contrast to paying work, pro bono work often provides an opportunity for immediate, meaningful client contact. Any young associate who has worked on large-scale commercial litigation knows that client interactions are typically the province of senior associates or partners on the team. And it is no secret that in many law firms, particularly the larger ones, associates frequently express dissatisfaction with the minimal interaction they get with the firm's large corporate clients and the lack of immediate impact of their work as a result of this isolation. *See* William C. Kelly Jr., "Reflections on Lawyer Morale and Public Service in an Age of Diminishing Expectations," *The Law Firm and the Public Good*, 90, 94 (Robert A. Katzman ed., 1995).

Pro bono work, in contrast, often provides young associates a chance to interact directly with their clients. Scott L. Cummings, "The Politics of Pro Bono," 52 UCLA L. Rev. 1, 112 (2004). Such interactions provide important learning experiences for young associates and great opportunities to develop skills critical to the litigator's arsenal, such as active listening, effective face-to-face

interpersonal communication, and, where appropriate, managing expectations. Esther F. Lardent, "Making the Business Case for Pro Bono [PDF]," Pro Bono Inst., 6–7. Moreover, client interactions can also be personally rewarding, allowing the young associate to connect directly with the person or people who will be immediately and directly impacted by the attorney's work. *See Kelly, supra*, at 94. In ways that large commercial cases tried on behalf of massive legal entities cannot, pro bono projects often present opportunities for face-to-face contact with clients and the chance to see firsthand the impact the work of the lawyer has in the lives of clients. *See id.* at 99.

Justice Brandeis understood the importance of client interaction. For him, the focal point of the job was not being seen as a lawyer, but using his position to help people. As he put it, "I would rather have clients than be somebody's lawyer." Clyde Spillenger, "Elusive Advocate: Reconsidering Brandeis as People's Lawyer," 105 Yale L. J. 1445, 1447 (1998) (citing Ernest Poole, "Brandeis: A Remarkable Record of Unselfish Work Done in the Public Interest," Foreword to Louis D. Brandeis, *Business—A Profession* at ix, l–li (1914)).Client interaction for him, though, was not the wining and dining typical of today's law firms. Often, Justice Brandeis would start his relationship with a client by demanding—directly and with no mincing of words—that the client convince him of the rightness of the client's claims. He often used this dialogue to decide whether to press ahead into litigation for the client (where the claims seemed strong), or to try to help the client through more effective means (where the claims did not seem strong enough to hold up to litigation), such as by working to find a solution that would be just and reasonable for both parties. *Urofsky, supra*, at 34. He dubbed this approach to client counseling as "counsel to the situation."

In one notable instance (albeit not a pro bono matter), Brandeis confronted his client—the owner of a large shoe factory dealing with a striking workforce—after visiting the factory and discovering the irregularity of the work provided to the factory's employees. David Luban, "The Noblesse Oblige Tradition in the Practice of Law," 41 Vand. L. Rev. 717, 722 (1988). Brandeis reprimanded his client for not knowing the situation of his workers: "Do you undertake to manage this business and to say what wages it can afford to pay while you are ignorant of facts such as [the irregularities of work]? Are not these things that you should have understood and that you should have seen that your men too understood, before you went into this fight?" *Id.*at 722–23. He then brought the union leader and the owner together to reach an accord on both the wages and regularity of work for the employees. *Id.*at 723. Interestingly, Brandeis's approach garnered criticism from some who opposed his nomination to the Supreme Court on the grounds that Brandeis was not working on behalf of his client alone but would advocate for both his clients and opposing parties at the same time. *See Urofsky, supra*, at 34.

My own experience with pro bono matters, while perhaps less adversarial than Justice Brandeis's, has provided ample direct client contact. My first in-person client meeting occurred in connection with an appeal I picked up through the Pro Bono Project at the U.S. Court of Appeals for the Ninth Circuit. I was a third-year associate, and the appeal was from a district court's order throwing my client out of court. *See Wolfe v. Strankman,* 392 F.3d 358 (9th Cir. 2004). It was an appeal only a law geek could love, involving highly technical questions about the *Younger* abstention, *Younger v. Harris*, 401 U.S. 37 (1971), and the *Rooker-Feldman* doctrine, which holds that a federal district court lacks jurisdiction to review a state court judgment. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); Esther F. Lardent, "Making the Business Case for Pro Bono,", 460 U.S. 462 (1983); *see also* Brian L. Shaw & Mark L. Radtke, "*Rooker-Feldman*: Still a Litigator's Merry Mischief-Maker?," Am. Bankr. Inst. J. 24 (July/Aug. 2008). I flew out to San Francisco the night before the oral argument—my first ever federal appellate argument—to meet with the client in our offices. The client was a retiree; he walked with a cane but had as sharp an intellect as I had ever encountered. He came up to the offices and ultimately found his way to the conference room where we were meeting. We shook hands, and he looked me over carefully. He remarked that he was expecting his lawyer to be someone older. But he quickly added that, if this really was my office, then I must be a better lawyer than my age would indicate, and he agreed to let me proceed with the oral argument.

I ended up having dinner with him that night, and he regaled me for a couple of hours with stories of some amazing life experiences, including starting the first independent newspaper on the West Coast, driving a taxicab, serving as the head of the tenants' committee in his apartment building, and, ultimately, the events that led to the lawsuit resulting in the appeal I was there to argue. Of course, I had prepared extensively, and from reading the facts in the record over and over again, I knew them cold. But it was an entirely different experience to actually hear them directly from the person who had lived them. It made the case just a little more real in a way I had not appreciated before. It forced me to listen actively to the client—to make sure I understood everything as he was saying it—so I could be the most effective advocate possible. And, of course, it provided an opportunity to learn to manage expectations. We were the appellant, and everyone knows most appeals result in affirmance. I have never forgotten that dinner or the lessons it taught me in how to deal with clients. Even now when I deal routinely with in-house client attorneys and general counsels, although the dollar value of the litigation may be higher, the approach is no different.

Lead Counsel Experience

Perhaps the most evident benefit that pro bono work offers to young litigators is the opportunity to take the lead in actual trials or appeals. Indeed, then-attorney Louis Brandeis made a name for himself in *Muller v. Oregon*, 208 U.S. 412 (1908), a case he argued before the Supreme Court for a non-paying client, the state of Oregon. *See Urofsky, supra*, at 34. Brandeis's approach in this case was novel for his time. He focused almost exclusively on the facts surrounding the challenged law rather than on the legal theories underlying the action. *See id.* at 36.

In fact, his brief set forth only three pages of legal argument as compared to over 100 pages of fact-based analysis. This approach to briefing cases, now known as the Brandeis Brief, has made an undeniable impact on the American legal system as a whole. *See id.* (noting the use of Brandeis's facts-based approach by anti-segregationists in *Brown v. Board of Education*, 347 U.S. 483 (1954) and by the University of Michigan in defense of its affirmative action policies in *Gratz v. Bollinger*, 539 U.S. 244 (2003) and *Grutter v. Bollinger*, 539 U.S. 306 (2003)). But the unqualified success of Brandeis's argument and supporting brief in *Muller*—a unanimous decision by the Supreme Court in favor of the state of Oregon—translated into future successes for Brandeis as well. Brandeis himself successfully employed the same facts-based approach in later cases and causes. *See id.* (citing *Ex parte* Anna Hawley, 85 Ohio 495 (1914); *Hawley v. Walker*, 232 U.S. 718 (1914)).

Although most young associates will not have such a prestigious opportunity as arguing before the Supreme Court, many will get the chance to run a trial or argue an appeal for a pro bono client long before they would for a paying client. *See* Reni Gertner, "Pro bono work helps young lawyers to gain valuable experience," Minn. Law., Nov. 6, 2006; *see also Lardent, supra*, at 7–8. Indeed, law firms have seen opportunities for civil trial work decrease in recent years, reducing the in-court experiences available to many associates. *See id.* (noting the increasing instances of settlements and corresponding decrease in trials). The real-life experience offered in pro bono cases fill that void, which in turn can help catapult an associate to greater responsibilities and roles in the representation of the firm's paying clients. *See Cummings, supra*, at 111–13 (quoting a partner at Jenner & Block who noted the value of a young lawyer with hands-on experience gained through pro bono work to the firm's main practice areas).

My own experience here is illustrative. Thinking back to my first Ninth Circuit appeal, I took on the matter at the time because I wanted to do some good for the world. I was not really focused on the good it could do for me. But perhaps I should have been. The second federal appeal I argued came before the same court, the Ninth Circuit, in a matter my firm had handled at the trial level. *See Motorola, Inc. v. J.B. Rogers Mech. Contractors, Inc.*, 177 F. App'x 754 (9th Cir. Apr. 27, 2006).

After the jury rendered its verdict (in our client's favor) and judgment was entered, an appeal was clearly in the offing. I knew the lead partner on the trial team and had spoken with her several times about my earlier pro bono appeal. Although I had not worked on the trial, to my surprise, when the notice of appeal was filed, the lead partner on the case asked me to take the lead in drafting the brief for the appellee.

After the case was fully briefed and argument was finally set, the partner went out of her way to approach the client to get approval for me to argue it. As one might guess, the client, a multimillion dollar company that had won over two million dollars at trial, was rightly a bit reluctant. But I had unwittingly armed the lead partner with the unanswerable argument: I had argued before that court before, and she had not. The client was persuaded and agreed to let me handle the argument.

Of course, not every firm has such generous partners, who are not only willing to give up arguments for themselves, but also stick their necks out for junior associates. And arguing and winning one appeal in front of a court may not be enough to convince a client that a young litigator should be entrusted with arguing a second appeal. But the point is that, as with most things in the practice of law, experience breeds opportunities. In the last five years alone, I have argued seven federal appeals, as well as a few in various state appellate courts—all as an associate. Several of the initial arguments were pro bono, while the more recent arguments have been for paying clients. Suffice it to say that, even though I am still fairly young in terms of seniority, clients generally do not question my appellate oral argument experience level anymore. And I owe that in large part to my pro bono work.

Broader Substantive Experience

Pro bono work often provides opportunities to gain experience in parts of the law that are outside the normal scope of what a commercial litigator might encounter. *See Lardent, supra*, at 8; *see also Gertner, supra* (recounting the experience of an associate who represented a pro bono client in an appeal of a removal order before the Eleventh Circuit). Justice Brandeis himself put it well: "[N]o hermit can be a great lawyer, least of all a commercial lawyer. When from a knowledge of the law, you pass to its application, the needs of a full knowledge of men and their affairs becomes even more apparent." Donald W. Hoagland, "Community Service Makes Better Lawyers," *The Law Firm and the Public Good* 104, 109 (Robert A. Katzman ed., 1995) (citing Keynote Address, Judge Frank M. Coffin, Program on Professional Ethics and Responsibility, Boston University School of Law, Jan. 8, 1990). A fierce believer in the importance of immersing himself in the facts and circumstances

of—as well as the law applicable to—each of his cases, Brandeis used his mastery of cases to persuade judges and justices before whom he appeared of the rightness of his clients' positions. *Urofsky, supra*, at 36 (noting the effectiveness of the original "Brandeis Brief," a 100+ page treatise on the facts of the *Muller v. Oregon* case, which drew note in Justice David Brewer's opinion, unanimously holding in favor of Brandeis's client, the state of Oregon). Justice Brandeis once wrote, in a memo to himself, "Know not only whole cases, but whole subjects . . . . Know not only those facts which bear on direct controversy, but know all the facts and law that surround." *Urofsky, supra*, at 33 (citing undated memorandum, "What the Practice of Law Includes," Louis D. Brandeis Papers, University of Louisville Law Library, Louisville, Kentucky). Later, Justice Brandeis used this same technique to educate other justices, and consequently shape their opinions, on fundamental jurisprudential issues. *Urofsky, supra*, at 38–40 (discussing the evolution of Brandeis's First Amendment jurisprudence and noting that Brandeis used long dissents to educate the Court and illustrate the factual basis for his opinions).

Perhaps even more so today than when Justice Brandeis practiced, law—especially big-firm law—has become a highly specialized affair. Firms have myriad practice groups, dividing and subdividing specialties until young litigators find themselves experienced only in pharmaceutical products liability cases, Title VII retaliation cases, or some other narrow swath of expertise (or at the very least, limited to general products cases or general labor and employment cases). *See Hoagland, supra*, at 115 (noting attorneys' increased attention to more specialized areas of expertise).

Pro bono provides a readily available way to supplement this experience, oftentimes granting access to areas of the law one would never encounter in law firm practice. This broader understanding of the law and society can help strengthen an attorney's ability to effectively counsel and be a better advocate for his or her paying clients. *See id.* at 114. For example, a trial lawyer might want to take on a pro bono appeal from a federal appellate court. A patent lawyer might want to take on a habeas corpus or section 1983 conditions of confinement case, whether at the trial level or the appellate level, for a client in need of representation. The possibilities are endless.

In my own practice, I have focused in recent years on immigration cases, especially matters involving political asylum, in cooperation with a local organization called the National Immigrant Justice Center (NIJC). I handled one such case in which we won a reversal of the denial of asylum for a Cameroonian woman. *Tchemkou v. Gonzales*, 495 F.3d 785 (7th Cir. 2007). The client had become active in Cameroon's student movement in 1993 when she was a senior in high school

and participated in a march to support striking teachers. The Cameroonian police arrested, beat, and detained her for three days without food or water. After she was released, she was hospitalized for two weeks to treat dehydration and other injuries she sustained in the extraordinarily inhumane conditions of the jail. In 1996, she resumed her political activities and was arrested and severely beaten on two separate occasions. In 2001, she obtained a visa, escaped her persecutors, came to the United States, and applied for asylum.

An immigration judge denied her asylum request, and the Board of Immigration Appeals (BIA) affirmed. After meeting with the client, listening to her story to fully understand the facts, and, of course, doing my best to manage expectations, we crafted an appeal brief that we thought was persuasive. A few months later, I delivered the oral argument to the U.S. Court of Appeals for the Seventh Circuit.

When the court handed down its opinion reversing the BIA, it was a moment of pure elation for everyone involved. When I called my client to tell her the news, she literally had to sit down because she was so emotional. She was in tears and was so grateful for the legal help that she received. Without this pro bono experience, I surely never would have been able to grapple with the legal complexities of the Immigration Code. I wouldn't have learned about Cameroon, about the political difficulties the country faces, or in particular, about my client and the obstacles she overcame to be here. And without getting involved through NIJC, I never would have had the chance to contribute to changing the course of my client's life—quite literally from a path certain to lead to injury or death at the hands of her persecutors to a path that ends here in America. Not that my large commercial cases are not every bit as important as this one, because they are. But this one just felt especially good to win.

For all of these reasons, then, I encourage young litigators to get involved in pro bono work, and the sooner the better. Pro bono work can help a young associate's career in very tangible ways. Specifically, by taking on pro bono projects, a young associate also takes on the responsibilities of the case that are, in the realm of paying clients, usually reserved for more senior members of a team. With these responsibilities come great learning and training experiences for the young associate and also the chance to work in areas of the law typically not encountered in law firm commercial litigation practice.

There is, of course, no guarantee that taking on pro bono cases will mean that a young litigator will eventually sit on—or even argue before—the Supreme Court as in the case of Justice Brandeis. But there can be little dispute, as I can personally attest, that pro bono work will provide an

excellent means to develop one's craft, not to mention that the right cases can go a long way in nourishing the lawyer's soul, even in these challenging times. As Louis Brandeis put it himself: "The great opportunity of the American Bar is and will be to stand again as it did in the past, ready to protect also the interests of the people.". Luban, *supra*, at 721 (quoting Louis Brandeis, "The Opportunity in the Law," *Business—A Profession* 315, 321 (1914)).

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Brian J. Murray is an associate at Jones Day in Chicago.
