Pro Bono – Law Firms

Pro Bono Service: The Right Thing To Do And The Best Indicator Of A Firm's Overall Strength

The Editor interviews ***Thomas W. Brunner****, Partner, Wiley Rein LLP.*

Editor: Mr. Brunner, would you tell our readers something about your professional experience?

Brunner: I've been in the private practice of law in Washington since 1973. After a number of years as an antitrust lawyer, I moved into insurance law, and that is where I have practiced for the past 25 years. During the early years that involved the representation of insurers in coverage disputes for asbestos and environmental cleanup exposure. In time, the practice evolved in a variety of directions, and today I am also engaged in regulatory activities, in professional liability issues, in the representation of European insurers with respect to their U.S. interests, and in a variety of lobbying and legislative initiatives.

Editor: In addition to a very busy insurance practice, you have been engaged in a variety of pro bono undertakings. How did this interest originate?

Brunner: At an early point in my career I had a wonderful mentor, Robert L. Wald, who was the founder of a highly respected firm in Washington, Wald Harkrader & Ross, where I worked at the time. In addition to handling an extensive private practice, Bob devoted a very significant amount of his time to community and pro bono activities and served as a role model for many younger attorneys. He got me started in this area.

Editor: Very good. Would you share with us some of the highlights of your pro bono career?

Brunner: Early on I was engaged in a considerable variety of cases involving individuals unable to secure and pay for legal representation. This included people with Social Security issues, for example, as well as cases involving racial discrimination in the workplace. This was, and is, highly gratifying work because individuals are involved, and your intervention is having a direct impact on a person's health and wellbeing, his employment, his security, perhaps even his freedom. There are few occasions when we represent clients – particularly corporate clients – in our compensated work where we can have that kind of impact, and it does have a very special meaning.

In recent years I have worked with the Washington Lawyers' Committee for Civil Rights and Urban Affairs on a number of high profile cases. One involved a chain of fast food restaurants in the South, primarily Alabama, which either refused to serve African American patrons or otherwise subjected them to discrimination of one kind or another. Over the past 40 years we have made tremendous progress in this area, and the type of discrimination that this case addressed – which was legal 50 years ago and normal practice 30 years ago in the South – is the exception rather than the rule today. It does exist, however, and it is something that organizations such as the Washington Lawyers' Committee continue to see.

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A second major undertaking involved MetroAccess, Washington, DC's paratransit system. Paratransit is a specialized system that provides transportation to riders whose disabilities are too severe for them to be able to use conventional subways and buses.

Editor: What is the background of the MetroAccess case?

Brunner: This case arose out of many years of perceived difficulty with the services provided by the MetroAccess system. The Equal Rights Center – called the Disability Rights Council at the time the matter came to a head – was in receipt of a steady stream of complaints and pleas for help, both from individuals and various organizations representing people with disabilities. The quality of service, and particularly its reliability and timeliness, was grossly inadequate. The Council and the Lawyers' Committee had discussions with WMATA – the Washington Metropolitan Area Transit Authority – and received assurances that, with the appointment of a new general contractor for the system, there would be a vast improvement in service and these concerns would be met. That did not happen. After additional discussions with WMATA, which led nowhere, suit was filed. For a long period of time I think that WMATA was not prepared to acknowledge that there were very serious deficiencies in its operations and in the statistics it used to evaluate operations, and we concluded that litigation was the only way in which the agency would acknowledge these deficiencies.

Editor: Concerning the Equal Rights Center and the Washington Lawyers' Committee, these are organizations that refer cases to the firm on a regular basis?

Brunner: Yes. The Equal Rights Center was our client in the case. It is not unusual for the firm to act on behalf of an advocacy group in these cases, and in the restaurant case I referred to earlier the NAACP was the client. Our relationship with the Washington Lawyers' Committee is a little more complicated. I am currently co-chair of the Committee and have served on the organization's governing board for a number of years, as does my partner Ted Howard, who was head of the DC Prisoners' Rights Initiative which merged into the Lawyers' Committee recently. As a consequence, we are well aware of what is underway at the Lawyers' Committee and able to bring the firm's resources to bear when we think we will be able to help a good cause.

Editor: Who participated in the MetroAccess case?

Brunner: We assembled a large team because of the need to call upon different areas of expertise. The central person was Todd Bromberg, a labor lawyer by background, who took the lead in terms of managing the case. Evan Corcoran, a litigation partner and former Assistant U.S. Attorney in the District of Columbia, was engaged in much of the critical discovery practice. Three of our seasoned partners – Keith Watson, Hugh Latimer and Andy Krulwich – put in considerable time, and literally a dozen associates participated, at least on a rotating basis.

With respect to the associates, a pro bono case like this is something that permits younger attorneys to hone their skills, to take on responsibilities and to undertake, on a hands-on basis, courtroom efforts that might otherwise be years in coming. Pro bono work is its own reward, of course, but it has the additional benefit of providing access to the highest levels of professional practice for younger attorneys. It offers tremendous educational opportunities for the young lawyer, something that may be absolutely crucial to his or her career in attempting to establish a reputation within the firm and beyond.

Editor: That sounds like an enormous investment on the part of the firm. Why did the case take so long to reach settlement?

Brunner: That question ought to be directed to WMATA. From our perspective, WMATA was simply unwilling to acknowledge the problems here, and that meant that we were forced to litigate until WMATA saw the light. That meant taking the case through class certification, addressing a constitutional challenge on the part of WMATA on the applicability of the statute in question, extensive discovery in the face of the fact that WMATA had simply discarded important electronic communications, and so on. This was a very complicated and extensive litigation effort.

Editor: What did the settlement accomplish?

Brunner: The settlement, which is tentative until approved by the Court, accomplishes a number of things, the most important of which is creating a mechanism to assure that WMATA, which has made a very clear and genuine commitment to upgrade the MetroAccess system, achieves real progress and continues to improve its service record going forward. In addition, the settlement provides for an ongoing assessment and monitoring of the system by a variety of independent experts at various checkpoints during the next few years, and it allocates appropriate funding where problems are identified. It also involves some recognition of past problems, in terms of compensation, to the named plaintiffs, and to the entire membership of the class, the system's riders.

Editor: The MetroAccess case is a Washington, D.C., matter. Is that a particular orientation of the firm's pro bono program?

Brunner: Yes, but it is not the only orientation of the pro bono program. While we receive many referrals from local organizations, we are not reluctant to take on cases from around the country if we feel we can meet a need. Very often that mean making a determination that there is a match between the particular issues the case seeks to address and the firm's resources, i.e. the experience and the expertise of the attorneys in question.

Editor: In the past, there seemed to be plenty of projects for litigators, but corporate and transactional lawyers did not fare as well in the pro bono arena – there just were not many opportunities. Does that continue to be the case?

Brunner: I think that may still be the case to a certain extent, although there have been some very interesting examples of pro bono activities in areas outside of litigation. The very high profile involvement of Cravath, Swaine & Moore in representing the government of Liberia in some important commercial negotiations is a good example. Our partner Keith Watson has been taking the lead in an initiative for the International Senior Lawyers Project, where he essentially serves as the dean of a school that the organization operates in various African countries. The purpose is to bring in commercial lawyers from the U.S. and other common law jurisdictions to provide some training for African lawyers trying to move into more sophisticated areas of commercial practice. Many Wiley Rein lawyers serve on the governing boards of community and non-profit organizations or otherwise help such organizations incorporate or achieve tax-exempt status. More broadly, the Washington Lawyers' Committee has helped establish numerous very successful partnerships between law firms and corporate law departments and D.C. public schools. These are terrific opportunities for non-litigators to do extremely valuable work. There are plenty of litigation opportunities, to be sure, but corporate and transactional experience and skills are also in great demand in the pro bono arena. Given the needs, I would say there is something for everyone.

Editor: Would you share with us your thoughts about what a strong pro bono program can mean for a firm's morale?

Brunner: It is not something that can be measured objectively, but it is certainly very important. A law firm is an institution, and its qualities are defined by a variety of things. What the firm does for the community, and for those who, for a variety of reasons, are unable to arrange and pay for legal representation, says a great deal about the values to which it subscribes. Those values define the firm's collective sense of professional responsibility and inform its commitment to its clients, both paying clients and pro bono. If I may be permitted to make a generalization, I would say that if you point to a firm with a strong pro bono program, you are invariably pointing to a firm that is strong overall. And to one that has a very good opinion of itself and extremely high morale.

Please email the interviewee at tbrunner@wileyrein.com with questions about this interview.