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Pro Bono – Law Firms

The Pro Bono Arena: Where A Lawyer's Skills Can Mean The Difference Between Life And Death

The Editor interviews Donald B. Ayer, Partner and Pro Bono Coordinator, Jones Day.

Editor: Mr. Ayer, can you summarize your career for our readers?

Ayer: After law school I clerked for Judge Malcolm Wilkey on the DC Circuit and then for then Justice William Rehnquist. From there I went into government for 10 years. I was an Assistant U.S. Attorney and then U.S. Attorney in California. I had the good fortune to come to Washington in the Solicitor General's Office doing appellate work and went on to become Deputy Attorney General. Around 1990 I came to Jones Day and have been here since.

Editor: Please describe your practice. How has it evolved over the course of your career?

Ayer: While I was in the Solicitor General's Office I was able to argue about a dozen cases before the United States Supreme Court. That got me interested in a long-term commitment to appellate practice. At Jones Day I have been part of the Issues & Appeals Section, which is engaged in a range of appellate and Supreme Court work, trial court briefing, summary judgment motions, motions to dismiss, and so on.

Editor: You have also had a parallel career in the pro bono arena. How did that come about?

Ayer: I have always felt a strong interest in doing a certain amount of unpaid work



Donald B. Ayer

in order to advance worthwhile causes. In addition, I find it extremely interesting to be involved in issues that I would not see in my representation of paying clients. For several years I have served as head of the local pro bono program. About a year ago Steve Brogan, the firm's Managing Partner, asked me to lead the firm-wide pro bono program.

Editor: As coordinator of the firm's pro bono program, you are in charge of an undertaking that extends across some 30 offices and 2200 attorneys. How is the program structured?

Ayer: Within the U.S. we have a pro bono coordinator in each of our offices. The coordinators meet at least once a year, and we speak by telephone on a regular basis. Each office conducts its pro bono program with a local orientation

and is encouraged to develop relationships with local organizations. Those organizations refer projects to us and help to introduce us to the communities that are in need of our services. Those services are very broad in scope, and I encourage individual lawyers to assume a leadership role with respect to a particular community or non-profit organization, or to a particular practice area within the firm, and serve as a conduit through which work can flow to other lawyers. This has worked very well. Each of our domestic offices has a series of ongoing relationships with local organizations. We count on the organization to screen the cases they refer to us; and they count on us to get the work done. It is mutually rewarding.

With regard to the overseas offices, I have come to learn that pro bono volunteerism is more common in the United States than elsewhere. There are some notable efforts going on in a number of offices, however.

Editor: Does each office have a certain autonomy in taking on pro bono matters?

Ayer: Yes. I believe that individual lawyers ought to be able to focus on the things that are important to them. Their commitment is likely to be very intense if the matter is something in which they have a strong personal belief. That belief can be very important in securing the voluntary participation of others as well. We tend to multiply our strength in this way.

Editor: Does the program have a particular focus or theme? Litigators seem

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to have plenty of opportunities, but transactional lawyers often do not.

Ayer: Litigation, including conflict resolution for people in difficult positions, has been the centerpiece of the program. In recent years, however, we have had good luck in bringing transactional lawyers into the fold. Much of what they do is for non-profit organizations, and this includes incorporation, obtaining and then maintaining tax-exempt status, contract drafting and negotiation and general corporate advice. This serves to provide a young lawyer with an opportunity to play the principal – as opposed to a backup – role with the client. The volume of this type of work has gone up dramatically in the past few years.

Editor: Would you tell us about some of the recent matters that Jones Day has handled?

Ayer: We are involved in a pretty broad array of activities. One important area is asylum cases, where we represent non-citizens who fear persecution if they are forced to return to their country of origin. This is extremely satisfying work because it involves helping someone in such a tangible way. Their education and language skills often prevent them from putting their stories together in a coherent and compelling way, but our attorneys can do that. After spending time with the client, and perhaps with a country expert, our people have a pretty strong grasp of the situation and are in a position to make a strong case to a hearing officer. We have had a very high success rate with these cases. Two of our lawyers, Angela Olsen and Julia Ambrose, recently represented Malik Jarno, a refugee from Guinea who had very cogent reasons to fear persecution. The case received considerable attention because the government determined to resist a grant of asylum with all of its resources. The case is now on appeal, and our two lawyers are the recipients of an award from the American Immigration Lawyers Association for their efforts.

Another case concerns a habeas corpus claim that we recently handled before the United States Supreme Court. The case turned on what claims may be brought by a prisoner under habeas corpus versus under 42 U.S.C. 1983. I worked on the matter, and John Lewis of our Cleveland office argued it before the Supreme Court, where we won a 7 to 2

decision.

In yet another major undertaking that was settled on the eve of trial – and which involves an agreement not to discuss in detail – a team headed by Laura Parcher brought a housing discrimination allegation in federal court in Maryland. While I am not at liberty to go into this, I can point to the fact that we received an award from the Washington Lawyers Committee for our work.

Finally, we participate in a number of clinics where people with needs come in for advice. Under the auspices of the DC Bar Association, some 20 of our lawyers provide staffing on a quarterly basis for such a clinic. They meet with anyone who wishes to discuss some legal issue they face. We also send lawyers to a landlord/tenant clinic twice a month.

Editor: Have you found that a strong pro bono program is helpful in recruiting recent law graduates and young lateral hires? And then retaining them?

Ayer: Yes. Our experience indicates that the pro bono program is something that the people we interview find very appealing about the firm. As for retention, it is difficult to find hard evidence, but I believe that people who are happy in what they are doing – and we know that lawyers engaged in pro bono work have a great deal of job satisfaction – tend to be happy with their workplace.

Editor: Does the firm credit an associate's pro bono time against his or her billable hours expectation?

Ayer: Yes. Pro bono time is credited in the same way as billable time.

Editor: Speaking of which, how do you handle the inevitable situation that arises where a pro bono matter begins to consume more of the firm's resources than planned?

Ayer: We deal with it. At the outset – and this is true of all of our pro bono matters, but particularly true with respect to large projects – we try to assess how much time a matter is going to take and whether we have the particular expertise and the resources to handle it. There are times when we must turn down a worthwhile undertaking because it does not make sense in view of the people available and desiring to work on the project. Most of

our cases are small, however, and that is deliberate. Something requiring no more than one or two lawyers gives them the opportunity to be in charge, to deal with the client directly, to handle the negotiations, to stand up in court, and so on. Nevertheless, from time to time a matter takes on a life of its own. The Malik Jarno case to which I referred was one where we had no idea of the amount of work it was going to involve. Once the commitment is made, of course, we are in it for the duration.

Editor: Will you share with us your thoughts about the connection between pro bono work and firm morale?

Ayer: Pro bono is a source of morale both for those directly involved and for those who are not. Obviously, those who are lending a hand to people in need feel a great deal of pride and satisfaction in what they are doing. Everyone in the firm, however, takes pride in our institutional commitment to public service. As a consequence of our pro bono efforts, this is an organization that people desire to be part of. The contribution that our people make to pro bono service reflects well on them and on the firm, and everyone benefits as a result.

Editor: And the personal rewards of pro bono work?

Ayer: The principal reward lies in the opportunity to make a real difference in someone's life. In these asylum cases, for instance, you are addressing the fate of a person who, very often, is in a desperate situation. Your legal skills can be the difference between that person's life, and a chance for a happy and prosperous future, and deportation to a country where they face persecution, even death. I do not believe that there is any reward that exceeds the satisfaction of having made a difference of that magnitude.

There are other rewards, however. The opportunity to take on substantial responsibility in a pro bono matter at a very early point in one's career is something that will pay dividends for many years thereafter. The training is worth a lot. Pro bono work also affords a lawyer an introduction to organizations that are engaged in good things, and it is an opportunity to build long-term relationships. In time, a pro bono contribution might lead to membership on the governing board of a non-profit or community organization