

Partnering to Promote Affirmative Litigation

I. Aaron's Story

II. When should you consider a partnership? Why not just hand off the case?

A. Type of Case/Causes of Action

B. Who is the Client(s)? (legal services provides)

1. Language capacity
2. Cultural awareness/sensitivity

C. Resources Needed (firm provides)

1. Better, less expensive experts
2. Support staff

D. Client Eligibility

III. What projects interest the private bar and what does the private bar get out of the partnership?

A. Legal Service Perspective

1. Challenges for firm personnel
 - a. New subject areas
 - b. Fighting injustice, issues are more clearly cut
 - c. Morale builder
2. Publicity and recognition
3. Firm's understanding of poverty law clients and issues
4. Better stories to tell family and friends

B. Private Bar Perspective

1. Amazing litigation experience
 - a. Provide young associates with an opportunity to get first hand trial and motion practice experience: When I first started, I went to court on a pro bono case and argue motions – which was an excellent training opportunity that offered an invaluable experience. Also a chance to work with clients – i.e., most of our client are huge Fortune 100 companies and young associates sometimes never get a chance to meet the client.

- b. Trial experience – many legal service cases are on the verge of trial. When a private firm steps in, associates at the private firm get an excellent opportunity to either first chair or second chair a trial. Also, with these types of matters, private firms get an opportunity to learn how to try a case under pressure.
- 2. Pro bono requirements
 - a. State bar requirements – Many states have either mandatory or an “aspirational” requirements of 50 hours a year. Getting involved in these cases help private bar attorneys meet that requirement.
 - b. Law firm requirements – In addition, many firms require junior attorneys to commit a certain amount of hours to pro bono work. These partnerships allow junior associates to meet that requirement.
- 3. Awards
 - a. Individual attorneys – individual attorneys often receive awards for work on legal service matters that help bolster their career and recognition in their legal community. *[Story about a friend who did almost all legal services work his first few years and won many awards as a result. He ended up running for local office and winning based on his name recognition in the community].*
 - b. Law Firm recognition – many firms also receive awards for their excellent and commitment to pro bono work. This helps these firms with recruitment and retention of attorneys (often problems for large law firms).
- 4. Variety of cases and doing work that helps the everyday person
 - a. Different types of cases than typically work on – by doing pro bono work, opportunity to learn about other types of legal issues such as housing laws, immigration law, adoptions laws, etc. – many areas that I would have never even looked at if I had strictly worked on private bar cases.
 - b. Making a difference – This kind of work can be quite rewarding. Although it sounds trite, it is really a good feeling to see someone granted permanent immigration status in the US, or to see someone who really needs medical care, receive the necessary money for that care. This plays a big role in getting private firms involved in partnerships.

IV. How to “sell” your case to the private bar?

- A. Tell a compelling story: You are speaking to lawyers and individuals. So tell both a rational story and an emotional story. Get their interest as lawyers and as mothers, fathers, sons and daughters.
- B. Tell a story that will reflect well on the firm: Simply obtaining money for people who lived in slum conditions is not sufficiently different than winning money for a corporation. But, fixing homes, protecting children and so forth sets the firm apart.

- C. Learning opportunities for associates: As Justin has pointed out this is a big selling point. Identify these opportunities in your case, be willing to hand over the opportunities to firm associates and point out these opportunities when telling your story to the private firm.

V. Organization's track record is key to "selling" your organization to the private bar

- A. Reputation for strong cases and clients
- B. Expertise in area of law

VI. What to look for in co-counsel?

A. Legal Services Perspective

1. Expertise in the area of law: Just as the private attorney desires legal services expertise in unfamiliar areas of law (rent control, landlord/tenant, public benefits), the legal services attorney gains from working with a private firm with expertise in the area of law. For example, a landlord/tenant case may be founded in contract or have important, ancillary personal injury theories. Areas in which some private firms can provide extraordinary insight and experience.
2. Committed resources: Go in knowing what resources private counsel has committed to the case. Is one associate expected to find time to work on the case and cover her regular work? Or has the firm assigned the case to a partner who has several associates and a paralegal at her disposal?
3. Must it be pro bono? Consider partnerships with firms that will recover attorneys fees if they are awarded or even those that will represent on some issues "low bono" or "modified contingency"

B. Private Bar Perspective

1. Need to make sure cases are screened: Because private firms can only work on so many pro bono cases a year, need to make sure that they are screened for merit.
2. Need to work with people who are also trust worthy and reliable. Private bar tends to work with people who are well-known and respected in the legal service community. Many times private bar needs to rely on facts that legal services provides (in many instances, the case is often going to trial the next day). It could be extremely embarrassing and detrimental to the client if the legal service group provided inaccurate information.

3. Need to partner up with environmental groups or legal service groups that are knowledgeable and have been successful in what they do. Typically, the type of pro bono cases that big firms get involved with do not involve the areas of law that our firms typically work on. (e.g., housing issues, toxic torts, etc.). If took on a case that was unfamiliar territory without a good legal services support group, the case could be a serious uphill battle. The other side in these types of case will spend large amounts of money hiring the best firms who **DO** know something about the specialty legal issues at stake. With a knowledgeable legal service group, the other side's advantage goes away.
4. Have unique or ground breaking issues: While we do most of our work on smaller cases that do not have huge global effects, the private bar likes to get sexy pro bono cases that involve ground breaking issues (e.g., changing housing laws, cases of first impression, etc.).

VII. Logistics of forming partnership for a particular case

- A. Legal protections are necessary – even if you have long standing/good relationship.
 1. Co-counseling materials (Confidentiality and Common Interest Agreement handout). These types of agreements are helpful in maintaining all appropriate privileges as well as the confidentiality of documents involved in the case.
 2. Work out sharing expenses in writing (had a problem with a environmental group who was upset with the costs of an expert and thought we had run up the bill. We had an oral agreement to share costs and they refused. While we ended up working something out, it was a huge distraction from the issues of the case).
- B. Figure out a plan early on how to best divide up the case
 1. Dividing by strengths of groups involved
 - a. Look to strengths
 - (1) Have environmental groups work with technical experts
 - (2) Big law firms do pleadings and discovery
 - (3) Legal service groups work directly with clients (usually have Spanish speakers if necessary and good resources to help clients with daily needs)
 - b. Under this plan, it is necessary, however, to determine who will be lead counsel. While most likely there will not be any issue, it is important to raise this issue at the forefront so all of the attorneys have a common understanding during the course of litigation.

2. Sometimes it is useful to divide a big case up by clients -- For example in the lead paint poisoning case we divided by client because OMM had resources to take the lion share and Legal Aid already had a relationship with some clients already. Dividing by clients often dilutes any problems over who is lead counsel on the case.
3. Sometimes by dividing by cause of action is helpful – for example when a particular group (e.g., environmental group has an expertise in a particular area – say for example Prop 65).

C. Experts and expert retainers

1. Costs of Experts
 - a. Get experts to work at discounted rates. Appeal to pro bono spirit and chance to work on ground breaking case.
 - b. Private bar can help contribute to large expert costs
2. Finding the right experts is very difficult – especially on a case with a particular focus.
 - a. Publications (e.g., in LA, California, there is a great expert directory published by the Los Angeles Lawyer Magazine).
 - b. Good agencies (e.g., TASA who will often waive their finders fee for a pro bono case).
 - c. Asking around – talking to other attorneys (including defense attorneys who thought experts on the other side were particularly good).
3. Retainer letter - Draft a good expert retainer letter to make sure cover any potential legal problems (hand out sample).
 - a. Story – we had to fire a psychologist half way through a case because not doing good work and lied about qualifications. Because we had provisions to terminate for any reason, it was not complex legally.
 - b. On the flip side, however, you usually do not want to damage relations with experts (for obvious reasons that it could cause damage to firm's reputation) if do terminate them, so we let her down easy.
4. Motivating the expert to get involved and stay involved
 - a. Often experts do very little, especially when working at low rates
 - b. Need to stay on top of expert and make things easy for them to get what you need (e.g., drive children to be examined by doctor to doctor's office, get records doctor needs and hand deliver to office, etc.)

VIII. Kick It Up a Notch with an Integrated Strategy

A. Intro

In the contemporary judicial climate, lawyers can't litigate social ills away. In this political climate, the grass roots can't agitate or mobilize for a complete solution, nor can the lobbyist legislate one. But if we come together and integrate these methods for change, we can achieve progress. The Tulia, Texas story is a perfect case study.

B. Tulia: Case Study of an Integrated Strategy

1. Facts
2. Outcome
 - a. Mass Pardon and victims compensated
 - b. Cop indicted and convicted of perjury
 - c. DA loses reelection and facing disbarment
 - d. Narcotics Task Force dissolved
 - e. Several laws passed

C. The integrated strategy defined and lessons learned

1. Effective Coalitions
 - a. Trust
 - b. Collective Decision Making
 - c. Credit Sharing
 - d. Resource Sharing
 - e. Sun Tzu--formless army
2. Non-Traditional Allies
 - a. Red state reality--when in Rome
 - b. Religious Community
 - c. New Voices
3. Messaging
 - a. the Messenger
 - b. Polling data
4. Resources

D. The Problem with Lawyers

IX. Consider Implementing a Private Attorney Involvement Program

X. Questions