

# TRYING A PRO BONO CASE: **LESSONS LEARNED AND SATISFACTION EARNED**

By Edward J. Sholinsky

**L**ast year, I tried a prisoner civil rights case in the Eastern District of Pennsylvania. After a three-day trial, the jury returned a verdict in favor of my client and awarded him \$30,000 in damages. It was a gratifying experience that taught me a few things my regular commercial litigation practice did not. Notwithstanding my commitment to pro bono work, I understood the challenges I faced as a commercial litigator taking on the constitutional claims of a prisoner. These cases involve very different risks and rewards.

I accepted the case at the request of the District Court after the Third Circuit partially reversed summary judgment in favor of the defendant, Warden of Berks County Jail, and remanded the issue of whether the Warden had violated my client's First Amendment rights by trying

to prevent him from testifying in the death penalty phase of a murder trial. My client had been transferred to the jail from state prison to testify and was put in solitary confinement, deprived of regular meals, and fed the "punishment meal." He had his cell stripped of its mattress, blanket,

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and pillow. He was denied medical care for his acute psoriasis, leaving him with swollen, painful, and bloody legs and feet.

My client was angry. I was, too. But, my client was a prisoner. I feared that his criminal history and potential liabilities as a witness would sway a jury against him. I accepted the challenge of living up to my client's expectations, and I knew that it was my job to meet them. We needed to translate his anger and his certainty into an effective strategy.

When I bounced the issues in the case off other lawyers, they told me what I already knew—winning was a long shot. But my client's certainty was infectious.

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My client wanted someone to listen to him. So I did. It was probably the first time in a long time that someone had paid attention to his ideas and understood his story. By building trust and confidence in each other, my client became a stronger witness at trial, and I became a better advocate.

Also, I'm used to cases with a lot of documents. There weren't a lot of documents here, so we had to make the most out of what existed and rely on the absence of documentation. Getting comfortable with—and using—the lack of documents was an adjustment, but also a valuable lesson. I looked for issues where there should have been documentation but there was none, and was able to present that lack of documentation to the jury to build our narrative. When combined with the documentary evidence we

actually did have, the jury could see that there was no reason for the unconstitutional treatment my client endured.

At times, I thought defendant's counsel expected me to phone it in or, at least, treat the case less seriously than I would a fee-generating case. I decided to be aggressive, and, by focusing on the posture of the case, won some key pre-trial motions. That approach carried over to trial, and my client's ability to stand his ground and drill down on the details aided his credibility with the jury.

After all of the work, hearing that jury return a verdict in favor of my client was extremely satisfying. Equally rewarding is knowing that by putting in the work, you are able to help a client right the wrongs done to him. This case was a good lesson in trusting your client, and in not allowing yourself to be persuaded by how you think others may perceive him.

I'm mindful of the emphasis the bar and my firm put on pro bono work. Accepting this case shows why representing uncounseled prisoners in civil rights cases is so important to the clients and to the Court.

So don't flinch when a pro bono opportunity comes across your desk. Your involvement in addressing the legal problems of those who are disadvantaged can be one of the most rewarding experiences of your life.

But ultimately, those things are secondary to the satisfaction you get from helping someone—particularly someone who thinks that the system doesn't work for him. ■

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