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Focusing on Pro Bono

Transactional Attorneys and Pro Bono Asylum Work— A Better Match Than You Might Think

By [Chad R. Doobay](#)

Each year, thousands of people flee persecution in their home countries and seek protection in the United States in the form of asylum. Applying for asylum in the United States requires an understanding of the laws of our country and familiarity with our legal procedures. Most applicants for asylum are financially strained and woefully unequipped to effectively represent themselves, making the need for pro bono representation in the field of asylum law especially crucial.

At major law firms, where practices are generally divided into either transactional or litigation groups, conventional wisdom holds that the work of representing asylum-seekers is best suited for litigators. After all, representing an asylum-seeker often involves traditional litigation skills, such as arguing a case in front of an adjudicator, writing a legal brief, and preparing a witness to testify.

However, there is much to be said about the unique skills developed by attorneys practicing in the transactional field that can be applied to pro bono work in asylum law. Such skills can render a transactional attorney uniquely well-positioned to serve as an outstanding advocate for an asylum-seeker, for whom legal representation could mean the difference between being allowed to live safely in this country or being returned to the arms of persecutors.

To be sure, there are certain skills that attorneys develop in either a transactional or litigation practice—including empathy,

intellectual curiosity, excellent listening skills, integrity, and a devotion to high quality work product—that are essential when representing asylum-seekers. Nonetheless, the nature of work in a transactional field provides special training for several important characteristics, as discussed below.

Attention to Detail

We transactional attorneys are the detail attorneys. We are trained to find the single item of concern in the far corner of a page buried in a stack of agreements, and to know quickly how to make connections within seemingly distant aspects of a financing. Our eyes are sharp, and so is our passion for finding even the most insignificant of discrepancies, knowing that such may be the most vital aspect of a transaction.

This skill is a true advantage in asylum work. Because a case depends largely on an adjudicator's determination of the applicant's credibility, completing an application for asylum requires careful attention to detail. In determining credibility, immigration judges consider, among other things, the consistency between an applicant's written or oral statements, the internal consistency of such statements, as well as any inaccuracies or falsehoods contained in the applicant's statements, whether or not material to the asylum claim. So, while seemingly minor details of an application—for example, names of towns or approximate dates of events—

may not be material to the specific events of an asylum-seeker's persecution, any discrepancy has the potential to lead to a finding of non-credibility, and, in turn, to a denial of an asylum claim. Having an attorney with a keen appreciation for detail—who looks carefully over an application, as well as between the application, the written affidavit and the various supporting documents—can better ensure an applicant is presenting an accurate and consistent narrative in a way that will avoid an application being denied for otherwise insignificant reasons.

Cultural Understanding

In the increasingly global market place, more and more of our transactional representations require us to think and act across borders. As our clients and financial markets cross borders, transactional attorneys are increasingly gaining experience interacting and negotiating with clients and attorneys from across the globe. Law firms are also merging internationally, giving transactional attorneys more routine cross-cultural interaction. As a result, transactional attorneys today are developing a sensitivity to cultural, religious, and other differences, in a way that our colleagues in the litigation field may not.

Such expertise is precisely the type of skill that can have a positive impact in a pro bono asylum case. Asylum-seekers do not come to the United States from

just one or two places. In fact, the top countries of origin in recent years have included China, Haiti, Colombia, India, Ethiopia, Egypt, and Somalia. In 2010, 148 different nationalities were represented among successful asylum cases in U.S. Immigration Courts. Accordingly, asylum-seekers speak a host of different languages and come from all walks of life. Asylum-seekers come to our country with varying concepts of social class relations, gender roles, and even the importance of date and time in defining events. Having an attorney who appreciates that such differences may exist and who is willing to find creative ways to address these differences can have an immeasurable impact on the outcome of a case.

Access to Business Expertise

In most transactional practices, attorneys work with clients over a long period of time. Our clients are in the world of business, and often have bodies of knowledge and expertise that can be put to excellent use in asylum cases. While relationships between attorneys and clients in the litigation realm may typically last only a brief amount of time, relationships in the transactional field are relatively longer-lasting. Especially at large law firms, clients in the transactional realm come to us for repeated transactions, and seek us out in between transactions as issues require attention.

The relationships we develop with business professionals can be of special use in an asylum case. Most observers agree that one of the most critical elements in a case can be identifying an expert witness who can help bring an added layer of credibility to an asylum-seeker's testimony. Often times, it can be especially difficult for an asylum-seeker to identify and obtain the assistance of potential expert witnesses, while a transactional attorney may have much better access. Transactional attorneys in media law might find that their media clients can serve as excellent resources when taking on pro bono cases for journalists fleeing their countries because of their political opinions. Transactional attorneys in educational law may have developed relationships with individuals

at universities, including professors and researchers, who could serve, or readily identify colleagues to serve, as expert witnesses in a variety of cases. In my field of public finance, many of my clients are hospitals. Many of my pro bono cases have involved instances of past physical abuse for which a medical evaluation was helpful in documenting past persecution. Several of my past pro bono clients have demonstrated symptoms of post traumatic stress disorder, for whom receiving professional mental health services has been critical. I have found that my relationships with transactional clients have helped me to identify medical professionals who can offer advice and support, including in the form of written affidavits or oral testimony. Such relationships can certainly make a difference, by providing corroboration for an asylum-seeker's narrative and by providing victims of abuse with the treatment they desperately need.

The need for the services of pro bono attorneys in the field of asylum law is great, and such need cannot be met by our colleagues in the litigation field alone. Unlike the criminal justice system, there are no provisions made by the government to provide asylum-seekers with legal representation. Even in removal proceedings, which are held before an immigration judge, the Immigration and Nationality Act states that asylum-seekers may be represented by counsel but that such representation shall be at no expense to the government. Not surprisingly, the U.S. Department of Justice's Executive Office for Immigration Review, which has oversight of the immigration court system, has stated that the large number of asylum-seekers appearing pro se is of great concern. In 2010, 57 percent of cases in immigration court were pro se, and in 2009, 60 percent of cases were pro se. Studies have found that having representation in court is the single most important factor affecting the outcome of the asylum-seeker's case. Indeed, one recent study found that from January 2000 through August 2004, asylum-seekers with representation were granted asylum at a rate of 45.6 percent, compared with only 16.3 percent for pro se asylum-seek-

ers over the same period.

Even for transactional attorneys worried about extending their pro bono practices outside of their transactional field, odds are they would ultimately feel satisfied with their pro bono representation of asylum-seekers. A 2009 report from the ABA on pro bono work looked in part at the types of pro bono engagements that attorneys take on. (SUPPORTING JUSTICE II: A REPORT ON THE PRO BONO WORK OF AMERICA'S LAWYERS (2009).) The ABA found that while about 80 percent of pro bono attorneys carried out their representation in an area within the scope of their regular practice, only 27 percent of the attorneys who practiced in pro bono outside of their field of expertise indicated that such representation caused them any concern. This should provide comfort for transactional attorneys looking to step outside of their day-to-day practice and take on the challenge of representing an asylum-seeker.

So clearly there is a place for transactional attorneys to make a difference. With the unique talents and experiences that come from transactional work, transactional attorneys are well-positioned to make excellent and needed contributions to the field. The work of a pro bono attorney can truly make a life-altering difference for someone in need.

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