

LAWDRAGON

Standing Tall: Cravath's 200 Years of Pro Bono



Photo of Darin McAtee, Damaris Hernández, Peter Barbur, Julie North and Antony Ryan by Laura Barisonzi.

By Katrina Dewey

If a tale of a nation is the story of its people, the work of its lawyers is the framing of its hopes and the reconciliation of its reality.

Accessible sidewalks in Manhattan to families reunited in El Paso, Texas. Release and remuneration for the wrongly convicted in New York to justice for those victimized while incarcerated in its notorious Rikers Island facilities. The right of LGBTQ couples to serve as foster parents in South Carolina to equal employment for firefighters in Birmingham.

You want to talk legacy? For 200 years while handling the world's most complex deals and vexing lawsuits, Cravath lawyers have given their time for those causes and many, many more.

Long before the firm officially opened its doors in 1819, its attorneys were in court defending individuals who needed a lawyer but were unable to afford one. Their plight foretold those of tens of thousands who would turn to Cravath lawyers in their darkest hour.

It started by 1803, with founder Elijah Miller defending the first Native American man tried for murdering a white man in New York State. Then, in 1846, William Freeman, an African-American man who had been abused in prison, was charged with breaking into a house and killing four people. Cravath founder William Henry Seward defended him, pleading with the jury, “He is still your brother, and mine.” The case formed the basis of the insanity defense and laid the foundation for Cravath’s decades-long battle for criminal justice reform and civil rights - which continues today.

Not many lawyers have seen a client gain justice and celebrate with cartwheels in the rain. Darin McAtee and Antony Ryan have.

Kareem Bellamy was convicted of murdering a friend, James Abbott Jr., in 1995. He never stopped protesting his innocence – crying out “I didn’t do it” as each of the 12 jurors affirmed their guilty vote and, as he was led from the courtroom, apologizing to Abbott’s mother, “Ma’am, I didn’t kill your son.” From prison, Bellamy wrote hundreds of letters to lawyers pleading for help. In 2004, McAtee and Ryan signed on. They brought a post-conviction challenge, and won Bellamy’s release after 14 years in prison based on a mistaken eyewitness identification.

“He’s got his life back,” says Ryan. Justice for one man, and the rebalancing of those infinite scales.

“Almost every single subject important to humankind, there’s been some Cravath associate or partner who that’s the cause they’re interested in, and that’s the one they want to champion,” says McAtee, who has won important battles for the disabled, including hearing-impaired cops and accessible sidewalks throughout New York City. His paying clients include NCR for which he advocates environmental litigation and Colgate-Palmolive in product liability matters.

But it all started with pro bono, and a hearing in which he sought an order of protection for a client of Her Justice, which helps victims of domestic violence. “I went in there, all eager and I put on a big display about how bad this guy had been and all the things he had done to her and all the evidence we had and I had photographs and all kinds of hospital records. I had all this in front of the judge and the judge turned to the abuser and said, ‘All right, your turn, sir. Mr. McAtee just laid all this out, what’s your response?’”

And the man responded, “May the Lord help me, all of it is true.”

Today, Cravath’s reach exceeds 500 lawyers – among the world’s best-trained and most admired legal corps – creating substantial amplitude for the Cravath legacy. As with all Cravath clients, the focus is persistently on finding the right answer, rather than merely the most expedient or efficient.

“We have lots of resources and we bring those resources to bear on issues, whether it's systemic or whether it's an individual,” says Julie North. “Those resources are paired with passionate people who will stay up day in and day out until they think that they have got the best argument that they can make in aid of whatever the cause that they happen to be working towards.”

North knows a thing or two about tough court battles, having defended the outside directors of Massey Energy Company following the deadly explosion of the Upper Big Branch Mine in West Virginia, and Credit Suisse following the 2008 financial collapse. She considers the hardest case she's ever handled to be her pro bono lawsuit on behalf of foster care children in New York City.

“It is, without question, the hardest thing I have done in my 30 years as a lawyer here,” she says. And while she attributes that mostly to politics involved in the foster care infrastructure, her leadership of litigation against the city and state of New York has unquestionably required extreme tenacity. She had represented indigent individuals pro bono for 10 years, and was asked by an ACLU contact if she would consider taking on the culture of entrenchment in New York foster care. She filed suit in July 2015 against the Administration for Children's Services and the Office of Children and Family Services. After four years of battles with the city and state, she persuaded the court to allow discovery to establish a record on which she could seek class certification, for which she refiled last year.

“It's important to me to do things that are going to make a difference in our own backyard, in our own city,” says North. “It's an embarrassment that New York City runs a foster care system in the way it does. There are too many smart people for us to have kids who languish and are maltreated in foster care in the way they are.”

Ryan, the firm's pro bono partner, also carries a premier private civil litigation caseload with a pro bono one every bit as accomplished. He led a class action against New York State and City agencies seeking pre-release planning and transitional services for parolees with serious mental illness; obtained a writ of mandamus on behalf of a prison inmate, in a decision establishing the legal standard for implied waiver of the psychotherapist-patient privilege; and is currently representing eight “juvenile lifers” – individuals sentenced for crimes committed between the ages of 13 and 17 to life incarceration – in a class action challenging the Parole Board's decision making. The eight individuals Cravath represents have all been released and the firm is working to obtain reform systemically.

“The only way they get out is if they get paroled,” says Ryan. “So we're trying to apply some recent cases about how juveniles are different from adults in terms of impetuosity, immaturity, being vulnerable to peer pressure and so forth. They need a meaningful opportunity to get parole if they can demonstrate maturity and rehabilitation.”

Ryan and the Cravath lawyers have become experts in the world of criminal justice, which in New York City means Rikers Island, the city's answer to Alcatraz; it's now slated to close by 2026. Recently, associate Brittany Sukienek won a settlement for “Jane Doe,” who was raped by a corrections officer while held in pre-trial detention there.

“There really have been just horrific stories in recent years,” says Ryan, who worked on the case with Sukiennek and the Legal Aid Society. “I don't think Rikers is a great place for many people who are there, but the conditions in the women's facility are particularly poor and there's a lot of, as I understand, abuse of power that goes on at various times by the corrections officers there and obviously egregious situations like this of rape.”

In few areas has the desire to help been seen more pointedly in recent years than immigration. The rising number of deportations, and their circumstances – especially the plight of children – have ignited passions often kept under the surface in the legal community. North recalls a recent team meeting she was leading for a paying client when she noticed an attorney who seemed distracted. “Why do you look so down?” she asked.

The attorney responded, “Honestly, it's the decision made last night with respect to the factors that one can consider regarding whether or not you're within a group that is going to get asylum or at least meet one of the conditions.”

North responded, “Let's find out who else has been working on these matters across the country, including the ACLU. We ought to be able to get a group of people together to talk about what is the best strategy to address this. You're not alone.”

Ryan has seen a huge uptick in associates interested in working on immigration cases. The firm has formed relationships with organizations, some working at the border, where Cravath is helping detainees. In other cases, the firm represents people detained at the Southern border who have been moved to jail in Albany County.

“Candidly, I didn't think about immigration law when I was in law school. Now we are seeing asylum cases from all over the world,” says Ryan. The firm has also paired with client American Express, joining firm associates and in-house counsel to represent indigent immigrants pro bono.

“It's the first time I've seen that sort of cross pollination with paying clients on pro bono cases,” says Peter Barbur, a longstanding advisor to AmEx as well as countless other private clients and a premier civil rights litigator. Barbur worked in public interest before attending NYU Law School as a Root-Tilden scholar. He's worked extensively on civil rights litigation, especially to protect LGBTQ Rights. He battled the Boy Scouts' discriminatory policies, and while battles were lost, a war – and dignity – was won. He's worked to win marriage equality and for recognition that Title VII of the Civil Rights Act prohibits discrimination based on sexual orientation or gender identity.

Recently, Barbur filed suit on behalf of Eden Rogers and Brandy Welch, a married lesbian couple who want to become foster parents in South Carolina. The couple are parents to two daughters and want to help more children. However, South Carolina's largest foster care agency, Miracle Hill Ministries, turned them away for failing to meet its religious criteria, which excludes all faiths but evangelical Christians as well as all LGBTQ couples of any faith. Miracle Hill denied the couples' application after the federal Health & Human Services – which funds foster care agencies - provided a waiver allowing it to discriminate. The lawsuit, brought by

Lambda, the ACLU and South Carolina Equality Coalition claims the state is violating the Establishment Clause.

Reflecting on a recent 50th anniversary commemoration of Stonewall and the progress of civil rights recognition since, Barbur is reflective. “We definitely seem to be moving back on a lot of Civil Rights issues, which is unfortunate. But hopefully it's just a period of time, and things will swing back into the right direction eventually.”

Cravath has lived the long arc of justice. And perhaps no single case better explains the firm’s commitment and unique contributions than its fight for the civil rights of African American and female firefighters and police officers in Birmingham, Ala. In 1963, Martin Luther King called Birmingham “probably the most thoroughly segregated city in the United States, with no black police officers, firefighters, bus drivers or bank tellers. In the 1970s, the U.S., NAACP and a class of African-American municipal employees filed suit against Birmingham and its Personnel Board claiming race and sex discrimination. The plaintiffs won at trial in 1976, with a finding the firefighter and police-officer entrance exams impermissibly discriminated against African-Americans. The city then entered a Consent Decree, providing goals that it would need to achieve for oversight to be lifted.

In the late 1980s, Robert Joffe may have seemed to some an unlikely champion for African-American firefighters in Birmingham. However, the star litigator for companies like Time Warner and IBM was also a passionate advocate for public interest, having served two years working on legal reform in Malawi early in his career. In 1989, he argued in the U.S. Supreme Court against an attempt by white firefighters to claim the Consent Decree created reverse discrimination.

Now entering its fifth decade, the case has been handled by Joffe, who later became the firm’s first litigator to serve as presiding partner; he passed away in 2010. Rowan Wilson, another star litigator, picked up the baton in 1990 and oversaw Birmingham for 17 years before becoming a judge. It’s now in the hands of Damaris Hernández.

So obstinate has been the city’s progress, that in 2010, a court emphasized that the consent decree was not “a security blanket to be clung to, but a badge of shame, a monument to the [Personnel] Board's past and present failure to treat all candidates in a fair and non-discriminatory manner.”

“In the last 20 years, we've had two trials, 50 depositions, multiple briefs from district court briefs to appeal briefs,” says Hernández. To say the case has provided an abundance of training opportunities for associates is like saying the Titanic was a boat. But with a difference. Rather than being brought down by intransigence and obstinance, Birmingham symbolizes what a team of dedicated lawyers can do when failure is not an option.

Hernández knows something about that. Raised by her Puerto Rican parents in East New York, Brooklyn, she spent many hours helping out in the family’s bodega. The summer before her senior year of high school her father suddenly passed away, and while she was a sophomore at Harvard College her mom lost the bodega. Hernández took a leave to support her family before

moving them all with her to Cambridge two years later. She won admission to NYU Law School and an AnBryce scholarship intended to clear a new path to help minorities and others enter the legal profession. She nearly passed on a chance to interview at the firm for fears she would be seen as a sellout. And when the firm's then-presiding partner and top litigator Evan Chesler interviewed her, he remarked that it looked like she wanted to do public interest.

“Like, ‘Why are you here, basically?’” she recalls thinking, and responded, “‘I need to feed my family. You call yourself the best firm at training people, and when I go save the world, I know who I’m saving it against.’ Probably not the right answers during an interview.”

But she was spot on. And especially to Chesler, himself a blue-collar kid from the Bronx who sold hot dogs at Yankee Stadium; he’s now the firm’s first Chairman. Like her partners, Hernández today has a first-rate private litigation roster on behalf of American Express, the Republic of Argentina and PG&E alongside her public interest work. “To me, the Birmingham suit shows the meaningful, impactful and proud tradition we have here of doing pro bono. And that not only do we take on meaningful work, we will see it to the end,” says Hernández. She’s hopeful Birmingham will draw to a close by the end of 2020.

As the first in her family to graduate college, and Cravath’s first Latina partner, she’s sure every day will be the day the firm realizes she doesn’t belong. Of course, she does. And because of her voice and those of other committed lawyers for more than 200 years, there is a law firm with an enduring legacy that provides wisdom and perseverance to address the issues of today and tomorrow.

“When I went to law school, I thought that if you needed a lawyer, you were either locked up, or not getting services,” says Hernández. “I didn’t realize that Cravath existed. I thought that the only way you could help your community, and give them a voice was on an individual case-by-case basis.

“Having been at Cravath, I realize there’s a lot more I can do with my law degree and my resources. Being an attorney is a privileged position. It’s our obligation to give back. I want to do as much as I can as best I can because we’re able to help people’s lives.”

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