

Switching Sides

Lawyers share how to shift who you represent

by Jane Pribek

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They've walked a mile — and then some — in another's shoes.

They're lawyers who've changed the focus of their practices 180 degrees, joining "the other side." Some made the change mostly out of practicality, while others said their personal values played a central role in the decision.

A couple of universal themes emerge from all their stories — that change is to be embraced; and that the experience of seeing an area of law from different perspectives has made them better lawyers.

Working in academia gave David F. Loeffler the opportunity for some critical thought and reflection.

Loeffler, who'd already spent several years representing unions and employees, found that teaching at Wayne State University in Michigan taught him there's lots of gray in a world he formerly saw as fairly black and white.

"The job gave me the opportunity to think things through — I was much influenced by the so-called 'law and economics movement,'

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— Brian H. Mahany
Mahany & Ertl, LLC

but I'm on the liberal wing of that. That began my drift away from traditional labor law, in the sense of representing trade unions and even employees," Loeffler recalls.

He enjoyed academia, but came to the practical conclusion that he'd be in debt much longer if he didn't return to private practice. So Loeffler, a Wausau native, returned to Wisconsin in 1987, and very soon found himself at a management-side labor and employment firm, Krukowski & Costello SC, in Milwaukee.

He's still there, and considers himself "one of the last few generalists." He focuses his litigation practice on ERISA, wage-and-hour disputes, claims involving unions, and discrimination cases, involving individuals and class actions, as well as some white-collar criminal cases.

"It wasn't any huge ideological shift, and as a matter of fact, I believe in unions. They're important for giving people a voice," says Loeffler. "But, life being

what it is in a market/capitalist society, I believe sometimes unions are overly protectionist.”

A few of his former colleagues, either co-workers or lawyers doing plaintiffs’ work exclusively, raised eyebrows at the mention of his new job. That didn’t last long, nor did it faze him.

“I had, and still have, a lot of friends who do employee and union work,” he says.

Switching sides was mostly a matter of tackling a new challenge for Brian H. Mahany.

He’d served for two years as an assistant attorney general, four years as a state prosecutor, and four years as Maine’s revenue commissioner. While in Maine, he’d also served as special assistant to the senate president on tax matters, as well as director of the enforcement division in tax.

“I’d had the prosecutorial experience, plus the enforcement and policy-making and political experience. The only thing left to try was working on the defense side,” he says with a laugh.

Mahany also identified a niche he could fill.

“I saw that there are many former assistant U.S. attorneys and prosecutors who will plea bargain cases, but very few who will actually try them,” he says, noting he’s had many opportunities to try cases in the past couple of years.

Mahany tries high-stakes criminal and civil cases nationwide. At his prior firm, The Bernhoft Law Firm SC, Mahany was involved in representing Wesley Snipes in the actor’s 2008 Florida federal tax fraud and conspiracy case, where he was acquitted of all felony counts after a two-week jury trial.

He says he relies heavily on his past experiences on the “other side,” to the benefit of his clients.

“When you have those government ties, it does open some doors for you. It’s not special treatment, but is it more of a bump, in that prosecutors are more willing to talk to you. It’s easier to get that appointment, have them lay out their cases and have a more candid discussion.”

There’s probably no better place for a new lawyer to gain valuable litigation experience than in insurance defense. Just ask Lynn R. Laufenberg, a past-president of the state’s organization for plaintiffs’ lawyers, the Wisconsin Association for Justice.

Laufenberg came to Frisch Dudek & Slattery, a business and insurance-defense firm in Milwaukee, in 1977.

“I, like most young lawyers, became a dumping ground for all the cases the more senior trial lawyers preferred not to have to deal with. But I was enthusiastic and didn’t know any better. I think I had my first jury trial some 30 days after starting at the firm,” he says.

Laufenberg did insurance defense for the next half dozen years, he estimates, and was satisfied. Little by little, however, certain aspects of the practice started bothering him. He wasn’t wild about keeping track of his time. He also didn’t like reporting to mostly nonlawyer clients, some of whom were part of large bureaucracies and were mostly concerned with covering their backsides to their superiors, or who’d second-guess strategy decisions at inopportune times. Over time, his frustration grew.

The transition started with subrogation work for insurers, which essentially involves helping plaintiffs’ lawyers build their cases. Over time, some of those plaintiffs’ lawyers began referring cases to him and others at his firm. Eventually, he found he had to make a choice, and in 1988 he opted to join a plaintiffs’ firm.

“I found I had a higher comfort level on the plaintiffs’ side of the courtroom,” Laufenberg says. “There’s nothing better than doing something significant for people who have no other options, and seeing the difference you can make in their lives. It may sound hokey, but it really is true. I always felt professionally satisfied after a victory when I was on the defense side, but I never felt as personally and emotionally invested as I do on the plaintiffs’ side.”

He continues, “I think you have to believe in the cause to be a successful plaintiffs’ lawyer. And

you have to have a certain degree of empathy and identification with the plaintiffs. It can't be just about the money."

Jeffrey S. Hynes' career took off quickly after his law school graduation, first at the National Labor Relations Board, then at a cushy associate position at a prestigious management-side employment firm in Washington D.C.

He was making a lucrative salary, had a caseload of challenging, interesting matters, and had lots of staff to assist him and mentors from whom to learn.

Yet something was missing.

Hynes decided to switch to representing plaintiffs as a way of honoring the working-class values he'd been raised with in the late 1960s and 1970s in Buffalo, N.Y.

He thought his mother would be happy to hear he was making the change. Instead, his mother, a practical woman, told him to "Get rid of the Bob Dylan records and get with the real world."

Hynes called Lynn Adelman, now a judge in the Eastern District of Wisconsin and before that a lawmaker for whom he'd worked during college and law school. He was merely looking for leads on firms that might be hiring.

"It was the luckiest call of my career, because he hired me," says Hynes. "But this was a horse of a different color, in terms of

transitions. This time, I did my own recruiting, rather than the other way around. This time, I packed my own U-Haul, instead of having movers carry my stuff. And then there was the small matter of a 60 percent pay cut."

"[But] my new firm gave me truly what I needed: a supportive, yet no-frills work environment, where I could do the work I love and succeed or fail on my own merit. And though I briefly missed the marble floors and intensity that sort of epitomized a silk-stocking firm of the 1980s, that was temporary. And, the great advantage of a small firm is, if you're driven and you know your stuff, there's really no limit to your success. I no longer had billable-hour requirements or a partnership committee to impress, and could just devote myself entirely to client service."

There were unexpected bonuses that quickly came his way, such as full partnership in three years and the opportunity to have a life outside the office. He's made a living that doesn't equal what he'd likely be earning if he had stayed in D.C., but by Milwaukee standards, it is fine, he says.

"It wasn't out of any huge philosophical consternation with management-side law. But I can say, without hesitation, that I love my job now and get no greater joy than sitting across from someone who's lost their job or is facing egregious treatment at work, and I can use my best skills to make a

difference in their life."

By the way, he kept the Dylan LPs.

