



photo by Deirdre Norman

Changing Lives with Pro Bono, One Case at a Time

by Deirdre Norman

It was shaping up to be a very good year for Daniel Davis III. He was 23 years old, had a new car, a job that he liked, and a girlfriend that he loved. Yet on March 13, 2015, much of that changed when the grocery store where he had worked for two years accused him of stealing \$20 from the cash register behind the service desk. In a matter of months, Davis lost his job, his unemployment benefits claim was denied when the grocery store appealed it, and he was charged with the theft of \$20.

It might have been easier to walk away from the problem, look for a new job, give up on the benefits claim, and take a plea on the criminal charge. But for Davis this was never an option. When he was young he had watched his father be wrongfully accused of stealing by an employer. “[The store] said I did something that I know I didn’t do. I didn’t want anybody to think I was a thief,” Davis says.

On the other side of Richmond, Dominion Assistant General Counsel Cyril F. Coombs was busy as usual handling labor and employment cases in a fifty-person law department that serves one of the largest energy producers in the country with over 15,000 employees in fifteen states. Yet with the support of Dominion, which encourages all of its in-house counsel to give back to the community through pro bono, Coombs made the time to stop by the Legal Aid Justice Center (LAJC) on Broad Street where he was scheduled to meet with clients arranged by civil advocacy attorney Pat Levy-Lavelle of the LAJC.

In November of 2015, Coombs met with Davis at the LAJC office and discussed the details of his case. Davis, who was referred to the LAJC by the Virginia Employment Commission, says, “I was then, and I am still, a little shaky on the justice system. There are two sides to every story, but I was by myself — and there were a whole lot of people lined up on the other side.”

The grocery store chain had a surveillance video that it claimed showed Davis stealing the \$20. The videotape had been the basis not only of the criminal proceedings filed against Davis, but also the denial of his unemployment benefits in July of 2015. Coombs noted that when the assistant commonwealth’s attorney finally reviewed the tape on August 19, 2015, an order of *Nolle Prosequi* was entered, essentially freeing Davis from the criminal

charges, but leaving him unemployed, without benefits or unemployment compensation.

Says Coombs, “I am grateful that Dominion makes service to the community a priority. I knew as soon as I reviewed the case that my experience in the field of labor and employment law could be a tremendous help to Daniel and his family.” After reviewing Davis’s file, Coombs set out to help him with his appeal before the Virginia Employment Commission.

Davis had handwritten his original appeal to the commission *pro se*. Working from this appeal, Coombs began preparation for the hearing before the special examiner of the Virginia Employment Commission. The two issues up for consideration were: “Should the claimant’s request that the commission direct the taking of additional evidence and testimony be granted?” And, “Was the claimant discharged due to misconduct connected with work?”

In the appeal, Davis had asked for the opportunity to provide his bank statements to show he had no need to steal \$20 from his employer. The commission ruled that this evidence “was not relevant to the case,” but concluded that “the evidence of the videotape was both relevant and probative.” Although the employer had submitted the surveillance tape, the copy was not in the file at the appeals examiner’s hearing, meaning that the appeals

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examiner ruled against Davis without ever seeing the tape that supposedly proved the grocery store’s case. Based on Davis’s handwritten appeal, “The employer was instructed to provide a copy of the videotape to be played

at a hearing before the special examiner on January 28, 2016.”

At issue was whether Davis had taken \$20 from the cash register and put it in his pocket, as the employer asserted, or whether he had simply been reaching for the keys in his pocket to unlock the door of the service counter where he was working. Davis contended all along that he had been approached by a customer who had lost \$20 in the store’s lottery

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machine. He had removed \$20 from the cash drawer, written a note explaining the situation, and placed the note in the cash drawer before reaching for his keys, unlocking the door, and going to inspect the lottery machine with the customer.

Coombs says that although he never had a doubt about having Davis testify in front of the special examiner “...because he’s a credible individual,” Coombs was “...really nervous about what we were going to see on this video.” At the hearing, Coombs took the special examiner through the video “frame by frame,” with both sides contending that the video showed something different.

A few days later in its written decision, the commission determined that, “The greater weight of the evidence supports the claimant’s contention that he put his right hand in his back pocket to retrieve the key to the service area, and not to place the \$20.00 bill in his back pocket. Even more persuasive is the claimant’s actions in writing a note on the ‘no sale’ receipt and placing it in the cash drawer.” The decision concluded decisively that Davis not only did not take the money, “...he attempted to protect the employer’s property

by writing a note and placing it in the cash drawer, so that the employer could seek reimbursement from the lottery machine vendor.” Coombs had won a reversal of the appeals examiner’s decision and Davis was qualified for unemployment benefits.

Ultimately, “No one did their homework in this case,” says Coombs. “The employer failed Daniel; they fired him. The union representative failed him by not advising him he could file a grievance contesting his discharge. And then finally, at the commission, the appeals examiner believed the grocery store’s version that they observed Daniel stealing the \$20.00 on the video without ever viewing the video. No one would believe his version — which was the truth.”

Asked why he makes the time to take on pro bono cases, Coombs answers, “I’m an African American male and I saw myself in Daniel’s shoes. I was born and raised in Harlem. I’ve seen the injustices. I’ve seen the good stories and the not so good stories. What motivated me to go to law school was to some extent to make a good living, and in doing so to help others who cannot afford legal representation. It is rewarding and it’s effective.”

According to George Marget, managing general counsel at Dominion and its pro bono coordinator, the fifty lawyers at Dominion endeavor to donate 2 percent of their time to pro bono. “We have a general policy and value at Dominion of giving back to the communities in which we serve, so why not do that in the law department as well?”

For the last six years Dominion’s law department has been part of the “Pro Bono Promise” administered by the Greater Richmond Bar Foundation (GRBF), which also includes the corporate law department of CapitalOne, as well as a number of local law firms who belong to “Firms in Service,” including Hunton & Williams, McGuireWoods, Troutman Sanders, Thompson McMullan, Spotts Fain, Christian & Barton and WilliamsMullen, among others.

“Pro bono helps lawyers get out of their comfort zone,” Marget says. “Although Cyril

and I are comfortable in a courtroom setting, we have an army of regulatory and corporate/transactional attorneys who are less so. But they find ways to help in such areas as no-fault divorces, the pro bono hotline, the wills clinic, and the Richmond Bar Association's Pro Bono Clearinghouse that links volunteer lawyers with non-profits in need of legal advice."

Marget also gives credit to CapitalOne for working with the GRBF and the Legal Aid lawyers in creating JusticeServer®, an online case management system that allows legal aid lawyers and their staff to upload cases and files so that participating pro bono lawyers may select and work on cases while never having to leave their desks. According to Marget, "JusticeServer® has dramatically streamlined the efficiencies in the pro bono process and serves as a leading example of how the collegial forces of our legal community can come together for the betterment of all."

Marget is particularly enthusiastic about his team's work with the "Drive to Work" clinic that helps educate soon-to-be-released prisoners on the steps they need to take to get their licenses reinstated upon release. "The number one reason inmates go back to prison is driving on a suspended license. This program helps them stay out of jail and on the job," he says.

Coombs and the lawyers of Dominion will continue giving back via pro bono because, as Marget says, "The legal needs of the indigent have never been greater and we have the ability and the talent to help serve that need, which is fundamental to the core value of Dominion in serving our communities in which we work and live."

As for Daniel Davis, he and his partner, Jennifer, welcomed a baby boy, Tyler Elijah Davis, in December, 2015. And Davis has found new employment — he greatly enjoys working for retail giant Amazon. Winning his appeal "made me feel like I could live again. I felt like I didn't have to look over my shoulder anymore," Davis says.

Coombs estimates he spent approximately 30–40 hours working on Davis's case from



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November 2015 to February 2016, when he factors in drafting the opening and closing statements, witness outlines, client preparation, and phone calls, and since that time he has continued to use his labor and employment law experience to help walk-in cases from the Legal Aid Justice Center.

Says Coombs, "You do what you can to help the Daniels of this world."