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Highlighting the 97% Litigators Winning Cases Without Going to War The First in a Series of Interviews

This Month: Robyn Crowther of Caldwell, Leslie & Proctor

by Jan Frankel Schau

After 20 years of practicing litigation and ten years as a mediator, I have reached the conclusion that most clients come to their lawyers not to “win a case” but to resolve some conflict they are experiencing, or to right some wrong that has occurred, in the most efficient way possible. As my late friend and mentor, Richard Millen, was fond of saying, “People don’t come to their lawyers with legal problems, they come to their lawyers with human problems. Lawyers make them into legal problems by fitting them into a particular cause of action or set of legal defenses.”

The most recent statistics available indicate that 97% of cases that are filed in Superior Court never get to trial. How do they get resolved? This column will explore the unique and intuitive ways in which a dozen prominent women litigators have made that happen. The reader may judge for him/herself whether the gender of the handling attorney in any way contributed to the outcome, but my hypothesis is that with so many prominent women in litigation in 2012, there is a different, perhaps more pragmatic, and some may say even “gracious” way of waging war today.

Here you will find some of the most fascinating “war stories” uniquely told by select women who have demonstrated both bravery and sensitivity in addressing their clients’ needs and desires.

MEET ROBYN CROWTHER, Shareholder, Caldwell, Leslie and Proctor

Jan: Robyn, how long have you been practicing litigation in Los Angeles?

Robyn: Since 1997. I practiced with Gibson, Dunn for a year and then took my position at Caldwell, Leslie. I was made a shareholder just after I delivered my first (of 3) daughters.

Jan: What was the most notable case in which you were able to avoid a trial and still get a great result for your client?

Robyn: I represented Obey Clothing in litigation with the Associated Press. It was a part of the larger dispute between Shepard Fairey and the Associated Press about copyright infringement during the Obama campaign. AP sued Shepard Fairey, the graphic artist and my client, Obey Clothing, for copyright infringement. claiming that the artist used a photo of Obama owned by AP. earning multi-

million dollars on the image.

Jan: What was the strategy you took to get the matter settled?

Robyn: A little background. The Associated Press sued Shepard Fairey initially and only brought in Obey Clothing, the exclusive licensee of Shepard Fairey, about eight months after they brought the initial action. From the outset, our clients took our advice and aggressively litigated the case pre-trial in order to set it up for a summary judgment motion. We had a joint defense agreement with the artist, and were planning to join in a motion for summary judgment, which was due on January 6, 2010. On January 2, 2010, we were notified that Shepard Fairey had reached a settlement agreement with the Plaintiff. We had to work round the clock in a team of 3 or 4 lawyers to get our motion filed in time. The motion was heard in New York and the district court judge denied both parties' motions on copyright infringement, but granted the AP's summary judgment motion on the issue of fair use. It was after that ruling that I reached out to opposing counsel and called her to suggest it might be a good time to discuss settlement rather than challenge that ruling on appeal.

Jan: How did you or your client come up with the idea?

Robyn: I really understood the dynamics between my client and its insurer by then, so I came up with the concept, but it took many, many calls and emails before we arrived at a settlement.

Jan: Why was it so effective?

Robyn: I leveraged the opposing party's win on the Fair Practices Act as a way to suggest that the settlement would benefit them because it would avoid the potential of an appeal and reversal, which may have had much further impact on the Company than this verdict if it didn't go their way.

Jan: What was the turning point that allowed the case to settle and avoid a trial?

Robyn: Although we were talking with opposing counsel every day in preparation for the pre-trial conferences, (we had even moved to New York for the trial by then), ultimately both parties seemed to recognize that the potential losses from going to trial were too great. For the AP, that was really a function of the possible appeal and reversal.

Jan: Did you or your clients have any regrets?

Robyn: My clients were very pleased. Of course, it was probably the most fascinating piece of litigation I may ever participate in, so I would have loved to at least put on my opening statement!

Jan: Was there an "aha" moment that resulted from avoiding trial and settling the case?

Robyn: Yes. Although the terms of the settlement are confidential, the parties issued a joint press release indicating that they were planning to collaborate on future projects, which, of course, may be of enormous financial value to all parties.

Jan: Do you think that being a woman made a difference to how this case was handled?

Robyn: Once Shepard Fairey settled out, all of the lead counsel on both sides were women. I think that allowed us to dispense with some of the posturing we see and cut to the chase.

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