

Contents

The Great American Chocolate Trust	1
Associate Q&A: Karen Prena ..	2
Letter from Kadish	3
Back in the Running	4
The Usual Suspect	5
Field Work on the Edge	6
Appellate Opportunities	7
Higginson's Rules of Order	8
Capital Cases	8
Still the Killing Fields	9
MBP and PILI – Urging a Renewal of Commitment to Pro Bono Work	10
“Paying for His Foolishness” ..	12

The Great American Chocolate Trust

As one of ten children growing up in a poverty-stricken, fatherless family outside of Harrisburg, Pa. in the '60s, John Halbleib had at least one thing going for him: the opportunity to attend the Milton Hershey School, just down the road in Hershey, Pa., founded in 1909 by Milton and Catherine Hershey to provide a residential and educational environment for financially needy orphans and other disadvantaged children.

John seized his opportunity, graduating from the Milton Hershey School (MHS) in 1971 and going on to earn graduate degrees in both business and law from Northwestern University. He eventually joined MBP in 1996 as a Partner in our securitization group. In January of this year, when John agreed to serve as a Board member of the Milton Hershey School Alumni Association, he found himself thrust into the middle of a raging controversy as to whether the MHS Trust's ample endowment was being used in accordance with the wishes of the founder's Deed of Trust.



Statue of Milton S. Hershey located at MHS Founders Hall

The original \$60 million endowment in shares of the famous chocolate company — Milton Hershey's entire fortune — had mushroomed into a diversified portfolio now worth an estimated \$5 billion. But in the five decades since Milton Hershey's death, the Board of Managers of the MHS Trust had implemented a number of deviations from the Deed of Trust — including substituting the Board of Managers for the School as the sole beneficiary of the MHS Trust — with most of the decisions made behind closed doors and without leave of the Orphans Court, which oversees charitable trusts.

Hershey Junior College, one of the first junior colleges in the U.S. when it opened in 1938 and free to all residents of Derry Township, had been closed by the Board of Managers. Mentoring and transition programs, including the Hershey School's Placement Department, had been terminated. School real estate had been sold, contrary to the provisions of Mr. Hershey's Deed.

see "Hershey" on page eleven

Associate Q&A: Karen Prena

What is it like to take on a pro bono criminal case with Marc Kadish? We recently explored this question with Karen Prena, an environmental associate, who asked to work with Marc on several matters when he started at the firm.

Q: What are the types of pro bono cases you've handled?

K.P: Within a few days of Marc's arrival at the firm, we handled what eventually turned out to be a simple criminal traffic matter in Markham. Marc helped me negotiate with the States Attorney and then I handled the matter in Court. On June 17th, Marc and I handled a civil forfeiture case that stemmed from the seizure of a different client's car after a small amount of drugs had been found in his pocket. Again, I did all the talking before the Judge. Now we are working on an Aggravated Battery case which is set for trial on November 30th. We are also working on a murder case which is probably a year from trial.

Q: Have your pro bono cases influenced your views of the legal system in any way?

K.P: Absolutely. The experience has been enlightening and eye opening. I had never been involved with the criminal justice system before. I had never even thought about doing legal work in this area. Visiting our client in the murder case in jail had a strong effect on me. Interviewing his family and looking for witnesses on the street also had an impact on me. I'm not sure how I'll react when the murder case is concluded. I never thought I would be able to maintain "emotional neutrality," but I have become more involved



than I thought I would. The whole experience is making me think about the criminal justice system and my work as a lawyer.

Q: Have you been satisfied with the legal experience?

K.P: The skills I'm learning by doing pro bono work are directly transferable to the litigation I am working on right now. I am appearing before judges, writing and arguing motions, engaging in case planning and strategy and preparing witness testimony for trials. These experiences make me more valuable to my practice area.

Q: You're essentially learning about criminal law as you go. Is it overwhelming?

K.P: Without Marc Kadish's presence, it would be. However, since Marc spends all his time on pro bono matters and training, it is not. That is why the other half of his title is so unusual for a law firm. As the Director of Clinical Legal Education for the firm, he operates the same way as any other good clinical law professor. We do the work together. I learn by working with him on individual cases.

Q: Has your practice area been supportive?

K.P: Yes. Mark Ter Molen, a partner in my practice area (the environmental group) represented Verneal Jimerson in the now famous "Ford

Heights Four" case. Given Mark's accomplishments in that case, our group recognizes the importance of doing pro bono work. Mark encouraged me and others in our group to work with Marc Kadish. Rich Bulger and Kevin Desharnais worked with Marc on a very controversial matter in September. The three of them worked on this trial for a week and are now working on the appeal.

Q: Do you find yourself struggling to make time for this work?

K.P: No. So far it has not been a problem. First of all you have to remember that the firm supports the work.

Pro bono time is fully creditable. You don't have to squeeze it in between 6:00 and 10:00 p.m. Secondly, when you work with Marc you select projects which fit into your schedule. The traffic matter took a total of two hours. The forfeiture case involved a total of less than ten hours' work. The aggravated battery case and the murder case are taking far more work. But given the way criminal cases are done in Cook County, the work is spread out over a longer period of time. I will be able to work these into my regular work. Finally, Marc's availability and experience cuts down your learning curve. His mentoring bridges the gap so you can accomplish more at a faster rate. ●



To Our Readers:

This is the first issue of a revamped *Pro Bono Update*. It will be produced quarterly and will report on the increased activity of our pro bono practice. Frankly, it is intended to recruit as much as report: I believe that by reporting on the interesting work we are doing in the practice, we will inevitably attract more lawyers. This means attracting more people within the firm to do pro bono work. It also means attracting people to become members of the firm because of our program.

Nearly every piece in this issue dwells on some MBP person's reaction to the experience of handling his or her first criminal case, going before a judge, visiting a client in prison, or developing a defense by pounding the pavement. However, this issue also demonstrates that our program is not limited to criminal cases. In the next issue, we hope to explore the myriad ways in which we provide assistance to Providence-St. Mel, a

private African-American school on Chicago's West side.

Whipping up enthusiasm for pro bono work is a primary part of my job description. As many of you know already, I joined Mayer, Brown & Platt last June as our first full-time Pro Bono Director and Director of Clinical Legal Education. My predecessor, Tom Durkin, served ably in managing our work. What the firm now wants is the added capability of a former clinical teacher to mentor and develop our junior associates in particular. I'm here to teach lawyers as much as to represent clients. I was a Clinical Professor for twenty years. I've taught courses in Evidence Criminal Law, Lawyering Skills, and even death penalty seminars. I've practiced criminal law for thirty years.

Few areas of the law allow the practical training opportunities that pro bono work does. I'm persuaded that pro bono work is as much of an opportunity for our lawyers as it is for those whose cases we take on.

I think you'll find our stories interesting — and might even be inspired to become a part of them.

- Marc Kadish

Back in the Running

Dennis Mitchell is the premier United States Olympic hopeful in the 100 meters track and field event. A former bronze, silver, and gold medalist and national champion, Mitchell's intensive training was interrupted when a drug test detected sharply elevated testosterone levels in his system. The International Amateur Athletic Federation (IAAF) banned Mitchell from competition, even though USA Track & Field, Inc. (USATF), the national governing body for track and field, had exonerated him.

At USATF's request, Mayer, Brown & Platt undertook pro bono representation of the national body at a July 1999 hearing before the IAAF at its headquarters in Monaco. We sought to reinstate Mitchell in time for competition in the 2000 Olympic Games, and to uphold the integrity of USATF's testing systems and procedures. However, no national federation had ever won a case involving drugs that the IAAF opposed. It was the IAAF's first brush with American rules of evidence; many questioned whether the Swedish, German, and Singapore arbitrators or the London opposing counsel

would be receptive to the American approach of dealing with scientific and expert evidence.

The Isotope Ratio Mass Spectrometry Test was supposed to determine conclusively whether testosterone found in urine samples was synthetic or produced by the body. However, MBP attorneys Bradley J. Andreozzi, Walter M. Rogers and Erich G. Rhyhart discredited the test results, convincing the IAAF hearing panel that the test was still "in an infancy stage...based upon an insufficiently developed body of scientific tests and protocols." The team's evidence and reasoning put Mitchell back in the running in time for the upcoming Olympic preliminaries, while preserving the USATF's drug enforcement reputation. USATF has in turn asked MBP to handle future Olympic law cases.

The three MBP attorneys expressed their gratitude to the Firm, which "allowed them the opportunity and the financial resources to take on the high-profile, international, pro bono litigation." ●



The Usual Suspect

Abdur-Raheem Jehan is serving 25 years to life in prison for an incident that occurred 23 years ago. He was convicted of entering a Brooklyn drinking establishment with two other men in 1976, robbing the bar, then shooting the bar's co-owner. In 1996, Abdur-Raheem filed a *habeas corpus* petition to overturn his conviction.

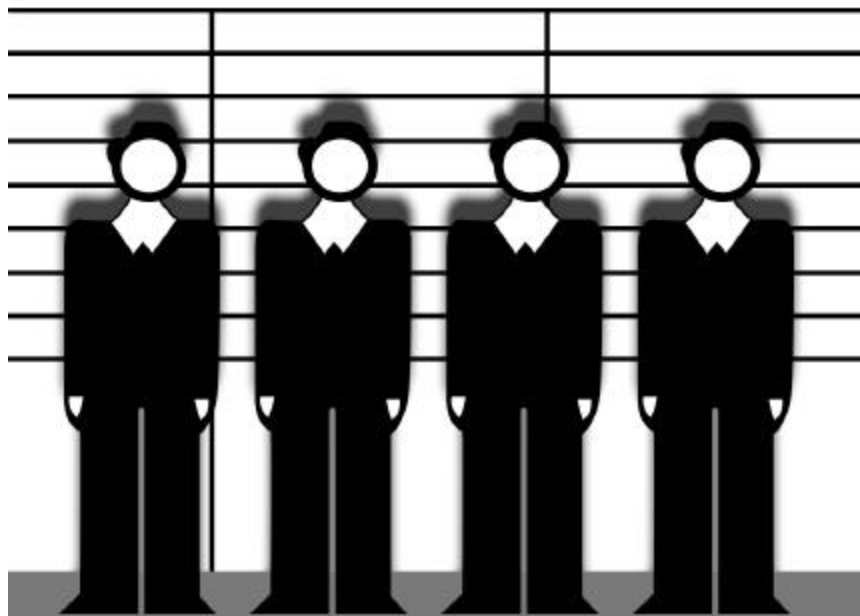
During his first trial in 1977, the State produced only two pieces of evidence tying Abdur-Raheem to the crime. The first was testimony by two witnesses who viewed a lineup three weeks after the shooting and identified him as the gunman. The second was testimony by a detective claiming that Abdur-Raheem confessed to the crime during a jailhouse interrogation. The state appellate court threw out the confession (because Abdur-Raheem's attorney was not present at the time of the interrogation) and ordered a new trial. The jury then convicted Abdur-Raheem again, this time relying solely on the testimony of the two witnesses who identified Abdur-Raheem as the gunman.

New York associate Norman Williams, who is handling the case, argues that the second conviction should be thrown out and a new trial ordered because the witnesses' identification of Abdur-Raheem as the gunman was not reliable. Williams contends that witnesses to the shooting had selected Abdur-Raheem from a lineup because he was wearing a jacket similar to that of the gunman, not because they truly recalled that he was the shooter. Williams points out that not

only had the two witnesses previously identified another man as the shooter (who was in jail at the time of the shooting), other witnesses at the bar did not identify Abdur-Raheem as the gunman at all.

The district court will issue its decision in the next few weeks, and no matter which side wins, there will be an appeal to the U.S. Court of Appeals for the Second Circuit early next Spring.

Williams inherited this matter at a stage where a large amount of work had already been done by an associate no longer with the firm; however the *habeas corpus* petition was completely his own work and something he'd never done before. Said Williams, "Although most of my work involves civil litigation, working on this pro bono case has been an invaluable experience." When asked if pro bono was much like what he expected, Williams replied, "I knew that it would be exciting, but I have especially enjoyed learning about *habeas corpus* and criminal procedure." He added, "The experience that I have gained in this case will no doubt prove useful in the future." ●



Field Work on the Edge

At an MBP social event, Marc Kadish was introduced to John Touhy, a commercial trial lawyer and partner. Touhy mentioned that he'd be interested in going to trial with Kadish on a pro bono case if Kadish needed any help. That was all Kadish needed to hear. The next morning, before Touhy's coffee had a chance to cool, Kadish phoned, rattling off the details of a criminal drug case too interesting to refuse.

Our client, 27-year-old Tiger O'Neil, seemed likely to lose at trial. Despite a prior felony criminal history, he insisted he was innocent of the charge of possession with intent to deliver cocaine. O'Neil was walking home when the police stopped him. The officers claimed they saw O'Neil drop a bag containing drugs; O'Neil said the police found the drugs hidden in some bushes next to where he was stopped. According to O'Neil and others familiar with the community, the southside Chicago neighborhood was well known for drug trafficking, and drug dealers never carried drugs on their person, instead hiding them in bushes, in trees or behind stoops.

In his favor, O'Neil was working full-time and had recently won a custody battle for his children, which would help him appear as a more sympathetic defendant to the jury. On the down side, O'Neil could not escape those prior felony convictions, and the police did have a bag of drugs. While they realized that a victory was a long shot, Marc and John went to work to present a favorable picture of O'Neil's story. They took on summer associate and third year University of Chicago Law School student Mariam Farah who, like Touhy, was brought into the pro bono fold without criminal law experience. They engaged the services of a paralegal who would help with the investigation.

Now that the crew was assembled, they began their firsthand research in O'Neil's neighborhood — "field work on the edge," according to Mariam. The team did indeed find a neighborhood full of gang and drug activity. Together, they canvassed door-to-door for witnesses and interviewed neighbors. They photographed the neighborhood and key locations in the case. They even took O'Neil's bus route.

Trial Strategy

On the morning of the July 13 trial, as they drove to court in Bridgeview, the team was prepared but uncertain. They knew O'Neil's story was a tough sell. The

enormous photos and charts they'd produced to support their client's story were almost too big to fit in their car, but they managed to arrive at the 5th District courtroom on time. With their exhibits in place and black notebooks visible to all, the case was called; they answered: "Ready for trial."

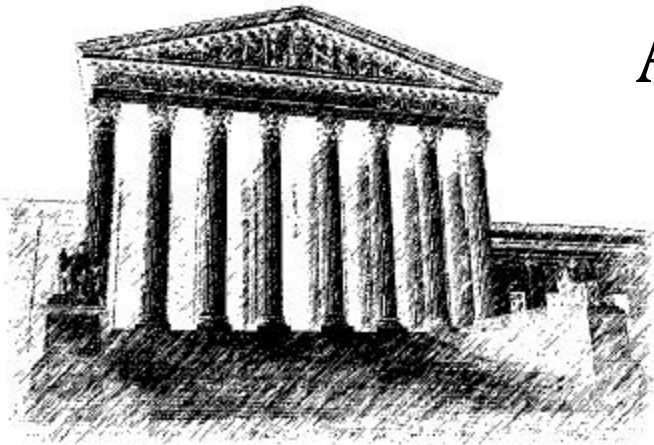
The state's attorney asked for a short break. After the break, O'Neil was offered a plea bargain: a plea of guilty and two years in the Department of Corrections. Kadish calculated that, after credit for "good time" and the time already spent in jail awaiting trial, O'Neil would probably spend a total of only three months in prison. In the event that O'Neil was convicted, he would most likely receive a sentence of 8 years.

Ultimately, after discussions with his lawyers, O'Neil felt his wisest course of action was to try to return to his family as quickly as possible, and with the least amount of risk. He decided to take the state's offer. Although Marc, John, and Mariam each felt that they might have won at trial, they agreed that the deal was simply too good to pass up.

Differing Lessons

John Touhy and Mariam Farah drew differing lessons from the case: John got a look into criminal practice, and Mariam got a glimpse into her own future as a lawyer.

When asked to describe her perspective, Farah remarked, "It provided me with the opportunity to be involved in every aspect of a criminal case, including conducting client interviews, witness interviews, and participating directly in the strategy. I filed a motion *in limine* which was an excellent project for a newcomer. I alone appeared with Tiger on the day he surrendered to begin service of his sentence. For the first time I got to see the day-to-day process that an attorney has to go through in order to prepare for trial. I recommend that other summer associates do pro bono work for the experience and for the cause." ●



Appellate Opportunities

Mayer, Brown & Platt affords its junior associates a singular opportunity in their professional development. Through the pro bono practice, they can handle cases under the supervision of one of the foremost appellate practices in the nation.

Pro bono work typically provides a "fast start" to associates, giving them hands-on experience, reducing the learning curve, and not restricting their first years to

research and writing on large cases where they don't have the opportunity to shape the litigation. The case *Cook-Seales v. D.C.* — a major employment discrimination and retaliation case last year — was handled entirely (and won) by two MBP associates, Miriam Nemetz and Ed Lee.

The appellate practice offers associates direct experience not only in learning trial strategy but also in shaping law. Associates are given latitude to enrich their experience and work as they do best, whether in junior teams or under senior supervision. They are responsible for the range of case management duties, including issue-spotting, fashioning arguments, and editing the finished product, as well as serving as counsel of record and conducting their own oral arguments.

Last year, associate Eileen Penner argued a pro bono habeas case, *Hohn v. United States*, before the U.S. Supreme Court. The practice has a number of other appellate cases also under way:

Washington's CERT Monitoring Project. Litigation associates Rob Bronston and Mike Lackey, under the direction of partner Alan Untereiner, have been heading the Circuit Monitoring Project in which D.C. associates read opinions coming out of the Courts of Appeals looking for "CERT-worthy" cases bound for the Supreme Court. When a case that had lost on appeal came to Rob Bronston's attention, through Marc Kadish and paralegal Alison Katon, he recognized that the matter held a number of interesting issues and that a Cert Petition would be worthwhile. Bronston decided to take the pro bono case. On November 1 the Government requested an extension to respond. Their new due date is December 6.

Seventh Circuit Project. In the spring of 1999, MBP partner Tom Durkin, head of the pro bono activities at that time, arranged for the firm to take five appeals from the Seventh Circuit Court. When Marc Kadish took his place last summer, Tom began introducing

Marc to people at the Seventh Circuit in an attempt to formalize the program. We have now taken on another eight appeals from the Circuit, and have created a program so successful that we'd like to expand the program to some of our other offices.

Other Appellate Work

Lee Robin – Richard Bulger, Kevin Desharnais (environmental), and Marc Kadish represented a former physician in a conditional discharge hearing from the Elgin Mental Health Center. The man had been acquitted of murder by reason of insanity in 1988 and has been confined at the mental hospital since that time. The case was referred to Marc by Mark Heyrman, a Clinical Legal Professor at the University of Chicago. The hospital petitioned the Court after the mental health professionals treating the patient agreed that he was no longer a danger to himself and others. After a week long trial, which was covered extensively by the media, the Judge ruled that the State had not sustained its burden. The State has appealed the verdict. Professor Heyrman and his clinical students are preparing an amicus brief in support of our client. Kevin, Richard and Marc will write the appellate brief on behalf of our client.

Cody Dekens – On September 7, Kyle Waldinger (environmental) and Nerissa Coyle McGinn (litigation) argued before Illinois' Third Appellate District in a felony murder and drug conspiracy conviction. The appellate court has not ruled yet. Kyle and Nerissa are in the process of writing an article for the *Illinois State Bar Journal* regarding the law of felony murder in Illinois. ●

Higginson's Rules of Order

Last year, partner Tim Higginson (Information Technology) embarked upon a pro bono project in which he formatted and wrote the *Handbook of Model Rules of Procedure for Meetings for Chicago Local School Councils*. The *Handbook* is the first set of model rules to be tailored to the Chicago local school council setting.

Higginson became interested in creating the *Handbook* while serving on the Highland Park Cultural Arts Commission. In researching materials to make his own committee meetings for the Arts Commission run smoothly, Tim found that many organizations, particularly the Chicago Local School Council (LSC), were lacking efficient tools to guide them through their agendas. While the existing model (*Robert's Rules of Order*) is operative, its length and complexity are not suitable in the LSC context, nor does it conform to the laws that govern LSCs.

At a meeting with the Chicago Law Association last summer, Higginson's text gained the approval of the Chicago School Advisory Committee. From there it was distributed to a local school council focus group

that also responded with positive feedback. Many advisory group and school council members agree that the manual's flexibility is superior to that of other models. Organizations can choose to "keep the *Handbook* nearby as a helpful tool in running meetings," or they can "formally adopt it as LSC rules of procedure."

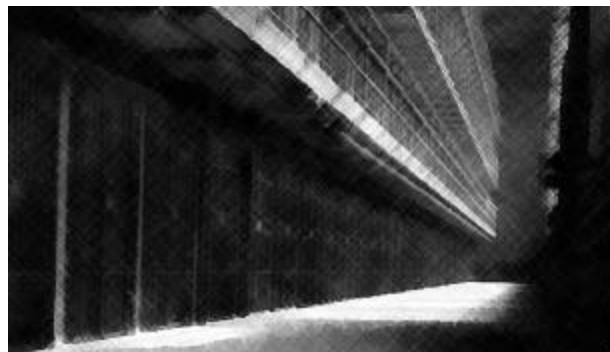
Co-edited by the Rev. Zarina Suarez O'Hagin, the *Handbook* is scheduled to be published by the Chicago Lawyers' Committee for Civil Rights Under Law this year and will also be placed on their website. Higginson said of his experience, "Most attorneys are unaware of the numerous transactional pro bono activities available to them, but by taking them on they are able to directly help their own communities." ●

Capital Cases

By now, MBP partner Mark Ter Molen's work in freeing Verneal Jimerson from death row is well known. One of the so-called "Ford Heights Four," Mr. Jimerson spent 12 years on death row for a murder he did not commit. Mark had Mr. Jimerson's charges dismissed, had him formally exonerated, and helped him win a large financial settlement for his wrongful incarceration. But this is not the only death penalty work we are doing:

- Last spring, associate Ken Merlino (litigation) and Marc Kadish tried a first degree murder case in the Cook County Circuit Court. Although convicted after a week-long trial, the defendant avoided the death penalty.
- Marc Kadish has also joined partner Michael Gill and litigation associates Ashish Prasad and Jim Barz in a pending death penalty case which was forwarded to MBP by Northwestern Law School's clinic. The team is heading toward a motion to suppress the defendant's confession and other evidence. A trial should take place in early 2000.
- Diane Smith (litigation) has taken over a Georgia state *habeas corpus* case that was scheduled to be

heard last September but was put on hold due to the former counsel's withholding of records. A subpoena has been issued; the hearing will not get under way until next year. This is the second pro bono death penalty case Diane has conducted upon request from the Georgia State Resource Center. ●



Still the Killing Fields

Two decades of civil war and a brutal reign of terror inflicted on the nation by the late Pol Pot have left the countryside of Cambodia riddled with landmines. The estimated 10 million mines that now lurk in Cambodian soil have isolated whole sections of the country and have produced thousands of victims, many of them children. Over 35,000 amputees await treatment, while more than 200 more Cambodians lose limbs to landmines each month.

To help these victims, the Cambodian Trust was established in 1989 to produce artificial limbs and operate three clinics in Cambodia to rehabilitate amputees. For the last five years Mayer, Brown & Platt has been assisting The American Friends of the Cambodian Trust, a U.S. not-for-profit corporation established to raise funds in support of the activities of the Trust.

At the suggestion of Cambodian Prime Minister Hun Sen, the Trust was established in England by Peter Carey, an Oxford don and former classmate of MBP partner Peter Darrow at Trinity College, Oxford, and Stan Windass, an English consultant, Oxford graduate, and friend of Peter Carey. Carey and Windass persuaded a UK prosthetics manufacturer to donate its prosthetics machinery to the Trust, and then had it shipped to Phnom Penh, where newer, lighter prosthetics are now manufactured by Cambodians trained by the Trust.



Landmine victims in Phnom Penh reside in a military hospital adjacent to one of the foundation-sponsored clinics.

In England the Trust's celebrity-heavy membership has been very successful in generating support. Carey approached Peter Darrow three years ago about assisting in reviving the dormant U.S. entity. Peter accepted and now serves as special counsel, along with Rob Cordell in the New York Office.

The Trust's board of directors includes Dith Pran, subject of the movie *The Killing Fields*, as well as its director, Roland Joffé. Working with Trust executive director Christine Ho, Peter has organized several successful fundraising events in New York — most recently, an art auction at the showroom of New York fashion designer Moschino that raised nearly \$27,000. Your help is welcome, of course. For more information, contact Peter Darrow at (212) 506-2560. ●

MBP and PILI — Urging a Renewal of Commitment to Pro Bono Work

Mayer, Brown & Platt has encouraged the goals of the Public Interest Law Initiative (PILI) since its founding in 1977. PILI is a cooperative venture among the Chicago Bar Association, the Donors Forum of Chicago, the Chicago Bar Foundation, law schools and public interest agencies aimed at providing "law students and new lawyers with experience and training in the legal institutions serving the public interest."

Ty Fahner, our Co-Chair, was one of the five conveners of a special PILI luncheon held to renew commitment by the city's major firms and corporate legal departments to pro bono work. Ty spoke at a press conference on October 25 to publicize the luncheon and Jason Kravitt, Co-Chair of the firm, spoke on behalf of the firm at the November 3 luncheon. On both occasions, Ty and Jason pledged to continue the firm's involvement with PILI, increasing pro bono support in both civil and criminal law projects.

They noted the important roles MBP partners and former partners have played in PILI's development. John Clay was president of PILI from 1986-88 and retired from MBP to become PILI's Executive Director from 1988-97. Tom Nicholson succeeded John as president from 1988-91. Marc Kadish, our Director of Pro Bono Activities, served as PILI's Educational Director from 1985-86. Pat O'Brien, Senior Counsel at the firm, currently serves as a member of the Board of Directors.

PILI Fellowship

They specifically stressed MBP's dedication to developing innovative community services such as the PILI

Fellowship Program. Any graduating law student who accepts a position with MBP is eligible for a PILI Fellowship. MBP furloughs, at the firm's expense, incoming associates to work at a public interest agency throughout the summer they study for the bar exam. A PILI Fellowship at the start of a new lawyer's career provides an unparalleled opportunity to practice a range of advanced lawyering skills in public interest law, while providing much needed additional resources for the agencies.

Last summer, associates Andrew Gruber, Nicole Martinez-Martin and John Schomberg were awarded PILI Fellowships. All three associates agree that their PILI experiences were of immense value. Andrew worked with The Community Economic Development Law Project, an organization that provides transactional legal assistance to low-income individuals starting small businesses. Andrew commented, "I was fortunate to be involved with a PILI entity that focused on community revitalization and education. I can apply the things I learned in the Fellowship to my transactional practice as well as to a diversity of pro bono undertakings." ●

Mayer, Brown & Platt PILI Fellows 1988-1999

1999

Chris Gavin	The Appleseed Fund for Justice
Andrew Gruber	Community Economic Development Law Project
Nicole Martinez-Martin	MALDEF (Mexican American Legal Defense and Education Fund)
John Schomberg	Cook County Commission of Human Rights

1998

Kirsten Chappel	International Human Rights Law Institute
Britt Miller	ACLU
Susan Nystrom	International Human Rights Law Institute

1997

Gerald Brown	Community Economic Development Law Project
Aaron Hammer	Northwestern University Legal Clinic

1996

Ken Merlino	Chicago-Kent College of Law, Law Offices
Joshua Silverstein	ACLU

1993

Kira Druyan	BPI
Ashish Prasad	Corporation Counsel's Office, City of Chicago
Lyman Welch	BPI

1990

Thomas Dimond	ACLU
Richard Timmel	Office of the Public Guardian

1989

Daniel Delaney	Mandel Legal Aid Clinic
----------------	-------------------------

1988

John Lawlor	BPI
-------------	-----

Hershey

continued from page one

Despite a growing community of financially and socially disadvantaged children, enrollment at the Milton Hershey School was down. Incidents of criminal activity within the school were up. And a 1992 independent report and a 1998 accreditation report both showed school quality and effectiveness as mediocre to poor.

In early 1999, the Board of Managers sought to add a new and competing purpose to the MHS Trust. Arguing that the "trust has partially failed because they cannot prudently spend all of the income in support of the School," they filed a *cy pres* petition asking the Orphans Court to give them broad discretion over an open-ended, new purpose in direct competition with the MHS Trust's original purpose.

Specifically, they sought to divert \$25 million of Trust assets to fund the creation of an Institute to serve as a think tank for the study of the education of underprivileged youth, as well as \$25 million per annum to operate the facility. As precedent, they cited a \$50 million project they funded in 1963 (without a public hearing) to build a medical school for Penn State University.

Working pro bono on behalf of the Alumni Association, John Halbleib brought in the expertise of wealth management Partner Scott McCue and a Mayer, Brown & Platt team of summer associates to oppose the Board's actions. Scott pored over the entire history of the case dating back to 1909, and confirmed that the Alumni Association had a sound legal basis for their actions. The MBP team wrote an amicus brief and numerous other filings, adding to the Court's records a vast factual and legal history that had been lost over time.

This information provided a larger context for the Office of the Attorney General of Pennsylvania (OAG) as well as the Orphan's Court to evaluate the Board's activities and true aims. It also raised the profile of the proceedings, attracting the attention of *The Wall Street Journal* which on August 12, 1999 ran a front-page article on the dispute.

In a surprising turnabout, the Attorney General opposed the *cy pres* petition, embracing the arguments forwarded by the MBP team. The OAG then took the added step of stating that the legal theory employed by the Board of Managers in 1963 when it directed \$50 million to fund the Penn State medical center was not applicable to the MHS Trust.

On Tuesday, December 7th, the Senior Judge of the Court of Common Pleas, Orphans Court Division, denied each of the Board of Managers' requests opposed by the Alumni Association. "The vision of Milton and Catherine Hershey was to relieve poor children from all of the conditions of poverty," the Judge wrote in his ruling. "The proposed Institute does not approximate the Hersheys' express intention for the Milton Hershey School and would do violence to it. Any discretion of the Board of Managers is servient to the dominant intent of the Hersheys to care for as many children as the income will permit."

"The winners here are the disadvantaged children who will get a chance to lift themselves out of poverty," concluded MBP's Scott McCue. "That is what pro bono work is all about." ●

What Would Mr. Hershey Do?

What would Milton S. Hershey have thought of the pro bono efforts of John Halbleib and MBP on behalf of the Milton Hershey School?

We'll never know, but the following note forwarded to MBP and John Halbleib by Graham W. McIntyre, President of the Milton Hershey School Alumni Association (MHSAA), may offer a hint. It was penned by William E.C. Dearden, former President, CEO, and Chairman of Hershey Foods Corporation, Alumnus of the Year in 1964, and former Chairman of the Board of Directors of the Hershey Trust Company.

Mr. McIntyre writes, "In this simple but elegant note, Bill Dearden, a man who knew Milton S. Hershey, captures the intimate nature of the continuing relation between Mr. Hershey and his children — the Alumni."

10/12/99

Re. *Cy Pres Petition*

Dear John —

A short note — can't write long ones anymore due to Parkinson's — to congratulate you and your associates on the outstanding work you are doing, and the response you received from the AG of Pa.

Keep up the good work — Mr. Hershey would be very proud of you, as I am too.

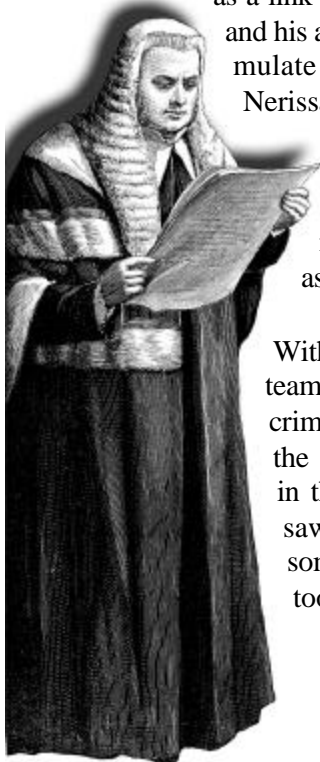
Warmest Regards,

Bill

“Paying for His Foolishness”

Among the pro bono cases Marc Kadish brought with him from Chicago-Kent College of Law was a federal drug matter in which Miguel Medina, an immigrant from Mexico, was charged with helping unload a semi-trailer containing a large amount of marijuana. Marc assembled a team consisting of associates Ken Merlino and Nerissa Coyle McGinn from the litigation group and first-year associate Joe Brown from transactional. Joe was the only member of the team who understood Spanish, and their defendant, Mr. Medina, knew no English.

For reinforcement, Joe enlisted Hans Goebel, a Mexican transactional attorney working at MBP as a foreign intern. Hans was able to provide translation for much more than just dialogue. Hans explains, "I served as a link between Medina, his family, and his attorneys. I knew how to formulate the questions Ken and Nerissa were asking, but I was also sensitive to the cultural circumstances that moved Mr. Medina to participate in the crime — so I began asking my own questions."



With Hans as their guide, the team learned that Medina had no criminal history in Mexico or in the States, nor was he involved in the drug business: he simply saw an opportunity to make some money for his family and took it by lending his leased

warehouse space to a stranger who sought a place to store marijuana. "It is fair that Medina pay for his foolishness," said Goebel, "but not by spending 10 years in prison. That kind of sentence would be suitable for the people who planned the drug deal only."

After getting to the bottom of the story, the four attorneys explained to Mr. Medina why his best option was to plead guilty. Together they negotiated his sentence with the U.S. Attorney's Office. After these negotiations, and because of Medina's agreement to cooperate with the federal government, his penalty was dropped from 10 years to approximately 48 months.

Marc had high praise for the attorneys' work. "Nerissa and Ken basically took over for me, handling the negotiations on their own. Joe Brown and Hans Goebel are two transaction lawyers who, before this, had not worked on any litigation matters. As a team, the four of them did a great job of communicating with Mr. Medina and reaching a plea agreement with the U.S. Attorney's Office." ●

Copyright © 1999 Mayer, Brown & Platt. This Mayer, Brown & Platt publication provides information and comments on legal issues and developments of interest to our clients and friends. The foregoing is not a comprehensive treatment of the subject matter covered and is not intended to provide legal advice. Readers should seek specific legal advice before taking any action with respect to the matters discussed herein.

CHICAGO • 190 South LaSalle Street • Chicago, Illinois 60603-3441 • (312) 782-0600 ❖ CHARLOTTE • 100 North Tryon Street • Suite 2400 • Charlotte, North Carolina 28202 • (704) 444-3500 ❖ HOUSTON • 700 Louisiana Street • Suite 3600 • Houston, Texas 77002-2730 • (713) 221-1651 ❖ LOS ANGELES • 350 South Grand Avenue • 25th Floor • Los Angeles, California 90071-1503 • (213) 229-9500 ❖ NEW YORK • 1675 Broadway • New York, New York 10019-5820 • (212) 506-2500 ❖ WASHINGTON • 1909 K Street, N.W. • Washington, D.C. 20006-1101 • (202) 263-3000 ❖ COLOGNE • Kaiser-Wilhelm-Ring 27 - 29 • 50676 Cologne, Germany • 011-49-221-577-1100 ❖ LONDON • Bucklersbury House • 3 Queen Victoria Street • London EC4N 8EL, England • 011-44-171-246 6200 ❖ INDEPENDENT MEXICO CITY CORRESPONDENT • Jáuregui, Navarrete, Nader y Rojas, S.C. • Paseo de los Tamarindos No. 400-B • 05120 Mexico, D.F. • 011-525-267-45-00 ❖ INDEPENDENT PARIS CORRESPONDENT • Lambert & Lee • 13 Avenue Hoche • 75008 Paris, France • 011-33-1-53-53-43-43