

## Pro Bono Update

Spring 2008

The past several decades of African history present visions of almost unfathomable African-on-African violence. But with the formation of the African Union and the people's efforts to stop the bloodshed, there is hope. Hope for peace. Hope for justice. Hope for healing. Mayer Brown lawyers have been assisting these efforts by working with dictator hunters and torture victims, by securing the record of the abuses, and by lending their legal acumen to ensure the quality of the judicial and political systems in these regions. We invite you to read their stories, as well as those of others in our firm who are working for the public good.



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Gisagaro Gacaca

## The Healing Power of the Law

*"In spite of the fact that the law of revenge solves no social problems, men continue to follow its disastrous leading. History is cluttered with the wreckage of nations and individuals that pursued this self-defeating path."*

Martin Luther King, Jr. (1929-1968)

*"Forgiveness is primarily for our own sake, so that we no longer carry the burden of resentment. But to forgive does not mean we will allow injustice again."*

Jack Kornfield (b. 1945), Theravada Buddhist



The practice of law is a means to the pursuit of justice: the pursuit of justice, a means to healing. Recently, Mayer Brown has assisted in the quest for healing in Africa through a range of pro bono activities involving survivors of genocide and war in Rwanda, Liberia and Sierra Leone.

## Promoting Community Healing Through a Return to Tradition

Following the 1994 Rwandan Genocide, in which an estimated 800,000 Tutsi and their Hutu sympathizers were killed over a 100-day period, the newly installed government headed by the Rwandan Patriotic Front faced the challenge of humanely detaining and prosecuting more than 100,000 people believed to have committed genocide, war crimes and related offenses. The United Nations acted quickly to establish the International Criminal Tribunal for Rwanda (ICTR) in November 1994, but this body was formed to try only those charged with the most serious crimes of planning and leading the genocide.



*“I really liked the idea of reconciliation. I wanted to see how it played a role in these Gacaca courts and whether people were able to reconcile through the justice system.”*

Allison Benne

While Rwanda’s national courts tried approximately 10,000 suspects between 1996 and 2006, this represented fewer than 10 percent of all alleged genocidaires. To relieve the pressures on the system, Rwanda instituted the “Gacaca courts,” a system of justice descended from the tradition of community tribunals that are both punitive and reconciliatory. The Gacaca courts, which saw their first cases in 2006, were designed to hear and judge the cases of those charged

as perpetrators, co-perpetrators or accomplices of voluntary or intentional homicide, perpetrators of serious bodily injury without intent to murder and perpetrators of crimes resulting in property damage.

Those appointed to sit in judgment — *Inyangamugayo* (literally, “those who hate evil”) — are given basic judicial training, and while the defendants do not have lawyers, all members of the community can intervene for or against the defendant. For those found guilty, sentences range from community service to life in jail (Rwanda has outlawed the death penalty).

“Several summers ago, I was working at the ICTR. I went to Rwanda and had the opportunity to see one of the Gacaca courts,” explained Allison Benne, currently a third-year law student at the University of Chicago. “While I was there, a woman whose husband had been killed by the defendant stood up and said, ‘I want to reconcile myself to you. Just tell me what you did so that I can know the truth, and we can be reconciled.’ While this whole notion was foreign to me, I really liked the idea of reconciliation. I wanted to see how it played a role in these Gacaca courts and whether people were able to reconcile through the justice system, because we don’t do that in our own courts.”

Mayer Brown funded a three-week visit to Rwanda to learn more about the Gacaca system for Benne and third-year Boston University law student Alison Ross, both 2007 summer associates with the firm. The pair interviewed a wide variety of government officials, judges and Rwandan citizens about the effectiveness of the system, and also attended several trials as observers.



*Alison Ross and Allison Benne*

“What we were trying to figure out was whether this process was really working,” Ross commented. “How do people, especially those in rural areas, get past a situation in which neighbors killed neighbors? Now they’re back together after the genocide living again as neighbors, depending upon each other — how do they get to a place where they can do that? And how does the Gacaca process actually help them get to that place?”

“A lot of people that we talked to said that reconciliation is a very long process,” Benne added. “So we’re able to see small steps in their community, and they talked about how some survivors and family members of victims were able to find out the truth about what had happened. And so I think it’s a good idea, there are some problems but I really think it is making a difference and helping.”

“I think that there is something very powerful about the opportunity to confront the perpetrator,” Ross concluded. “The opportunity to have the perpetrator ask for forgiveness, to learn where your loved one was buried. The opportunity to forgive, and then to move forward. It’s not easy, but if we’re going to move forward these are the steps we have to take. You can’t bring back the dead, and you can’t kill everyone who killed because the whole country would be gone.”

Benne and Ross, who will both be joining Mayer Brown’s New York office after graduation, are each working on reports regarding the impact of the Gacaca system as part of their coursework and for potential publication.

## **Assisting the Search for Truth and Reconciliation**

Established as a democracy for freed American slaves in 1847, Liberia’s recent history has been marked by a pair of intertwined civil wars that took place between 1989 and 2003. During these conflicts, which took the lives of more than 200,000 Liberians, the country’s many ethnic and political groups committed a host of human rights violations. Liberia’s Truth & Reconciliation Commission (TRC) is now documenting these violations, creating a historical record of the conflict and making recommendations to reform many of the country’s political, civil and governmental institutions.

*“I think that there is something very powerful about the opportunity to confront the perpetrator.”*

*Alison Ross*





*"If you're talking to somebody who's been through an horrific experience, it can have a lasting impact on you."*

Holly Mills

At the TRC's request, a Minnesota-based organization called The Advocates for Human Rights is leading a project to collect statements from Liberians who left the country due to the civil wars. The project, which gives voice to Liberians in Diaspora as part of the truth, justice, accountability and reconciliation processes, marks the first time that the TRC has attempted to take statements from those who fled the country, and will be considered a future model for commissions dealing with human rights violations. Numerous Mayer Brown lawyers from the London office, including litigation and dispute resolution solicitor Sharon Gerbi and first-seat trainee Holly Mills, are participating in the Diaspora Project by taking statements from Liberians living in the United Kingdom.

"I've always been very interested in African history, politics and social issues. Particularly in countries that have experienced internal neighbor-on-neighbor conflict rather than invasion by a foreign army, and in how those countries manage to heal and move on after such a trauma," Gerbi commented. "When this opportunity came along it seemed like the perfect chance to combine this long-held interest with the development of my interviewing skills in a new context, and also to get involved in a very different and extremely worthwhile pro bono project."

The statement takers attended several training sessions that gave them the context and skills necessary to take witness statements, as well as a primer on international human rights law. "The Advocates for Human Rights ran a mock interview to show us what to expect, and they prepared us from the emotional point of view as well," Mills reflected. "They assisted us in understanding how post-traumatic stress disorder works for the victims, and how to avoid retraumatization. We were also trained on how to avoid vicarious trauma. If you're talking to somebody who's been through an horrific experience, it can have a lasting impact on you."



*Liberian Truth and Reconciliation Commission Hearing*

Teams of two entered the field, with one acting as the lead interviewer while the other concentrated on notetaking. Gerbi led both interviews that she participated in, working with Rani Mina, a commercial litigation solicitor, in one instance and Sarah Nagel, a litigation trainee solicitor, in the other.

"Of the two people I interviewed, the first was from the Krahn tribe and the second was a descendent of the Americo Liberians," Gerbi recalled, referring to groups that were on opposing sides during the conflicts. "To hear the stories from two opposing perspectives was fascinating. It was as if they were talking about two completely different sets of events, as their own experiences contrasted so greatly."



Sharon Gerbi

“From a personal point of view, it’s been a great hands-on, practical experience,” said Mills, who worked with a lawyer from another law firm to take statements from a mother, who survived the civil war, and her daughter, who left Liberia ahead of the conflict. “It has also been very rewarding because, in the context of a civil war in which so many human rights violations took place, individuals and incidents can get lost. The Diaspora Project is about allowing people to search for a way to move on and start healing, and to have their story told and recorded.”

*“The people who put themselves forward believe in the purity and value of this process, and the importance of creating a lasting record of what happened in their country.”*

Sharon Gerbi



Rani Mina

Following the interviews, the lawyers drafted the statements for entry into an online database. The interview subjects had the choice of signing or submitting their statements anonymously, and also noted whether their statements should be used in prosecutions. The statements will not be released to the public for 20 years.

“I think the very existence of the Diaspora Project is therapeutic for those making statements, as it provides an opportunity to give voice to their personal stories,” Gerbi said. “The people who put themselves forward believe in the purity and value of this process, and the importance of creating a lasting record of what happened in their country. On another level, it was clear how important it was for them to put forward their views on how the reconciliation process should evolve and how effective it has been to date. I spent some time discussing this with the second woman I met and she was eager to share her views of what the country needs in order to recover, move on and develop.”



*Liberian Truth and Reconciliation Commission Hearing*



Sarah Nagel

“The whole process has been extremely helpful for me in terms of picking up skills that typically I would not have developed until later in my career,” Mills concluded. “As a first-seat trainee, being trained in interviewing and having the opportunity to draft a witness statement has been a great experience.”

All told, more than 300 volunteer lawyers have conducted interviews in the United Kingdom, the United States and Ghana through the Diaspora Project. A final report on the project will be drafted by The Advocates for Human Rights and submitted to the TRC later this year.



## Fighting to Find Peace for a Former Boy Soldier

Among the most notorious abuses committed during Sierra Leone's 1991-2002 civil conflict was the forcible conscription of children. All sides, including the Revolutionary United Front (RUF), the Armed Forces Revolutionary Council and the Civil Defense Forces, engaged in this practice, through which children were captured, abused, brainwashed, given drugs and made to patrol, fight and commit atrocities.



*Brian J. Massengill*

In fall 2006, the Chicago-based National Immigrant Justice Center contacted Mayer Brown about a former child soldier from Sierra Leone who had come to the United States. Chicago partner Brian Massengill agreed to take on the case, assisted by associates Heather Lewis Donnell, Dana Douglas, James Hart and Anne De Geest (all from the Chicago office).

As a nine-year-old, the boy had been kidnapped at gunpoint and held for four years by RUF soldiers. After attempting escape from the rebel camp, he was branded on his right arm to serve as an example to the other boys — the first of many physical abuses he suffered — leaving scars he still bears. Mental abuse and forced drug use were also inflicted upon the boy, who was forced to attack government soldiers and civilians alike and bury the dead in mass graves. Fatal examples were made of those boys who refused orders.

"None of it was my choice. I did not want to do these things. The rebels made it clear to me that if I did not do these things, I would be tortured or killed," he stated. "Remembering what I have done makes me sad. I am very sorry for what I have done. I have regular nightmares reliving what I have done; these nightmares fill me with guilt and sadness."



*Dana S. Douglas*

After being freed by UN soldiers in 2002, he returned to his hometown — much of which, including his home, had been destroyed during the fighting. He learned from his mother, who was left blinded after having acid thrown in her face, that his father and four brothers had all been killed. Warned that former child soldiers were being killed by vigilantes and government soldiers alike, he left Sierra Leone, crossing through Guinea to Senegal, where he lived on the streets for years before stowing away on a ship. He was taken into custody by immigration officers when the vessel arrived in the United States in August 2006, and sent to the International Children's Center in Chicago. He now resides with a foster family and currently attends high school.



Heather Lewis Donnell

*“Representing an asylum applicant is an important service to help someone who, after suffering persecution in their homeland, is fighting for the freedom to settle here and make a new life.”*

Heather Lewis Donnell

Because he was physically marked by the RUF, he can always be identified as a former child soldier. Should he be returned to Sierra Leone, he fears being harmed by government soldiers and those who suffered at the hands of the RUF. With the help of Mayer Brown, he hopes to be allowed to stay in the United States to get an education and build a future for himself.

“Our initial attempts focused on obtaining special immigrant juvenile status for our client as an unaccompanied minor,” Massengill explained. “The Department of Homeland Security, which looks unfavorably upon him due to his background, prevented us from obtaining this status — which should have been available to him. Now, we await his asylum hearing in midyear, though it is likely that the Bureau of Immigration Appeals will extend this matter further into the future.”

In the interim, Massengill and Donnell report that he is doing very well. He is earning good grades and playing several sports — and was even elected to the school’s homecoming court by the student body. “What’s amazing about him is that he has a strong moral core that has survived all that he has been through. He’s tremendously engaging and a nice kid,” Massengill said.

According to Donnell, “working on this case has been one of the most rewarding experiences during my career at Mayer Brown.” Before attending law school, Donnell worked for a small non-profit organization helping refugees who were resettled in the Chicagoland area. “Representing an asylum applicant is an important service to help someone who, after suffering persecution in their homeland, is fighting for the freedom to settle here and make a new life.”

*“What’s amazing about him is that he has a strong moral core that has survived all that he has been through.”*

Brian Massengill

While employing their legal skills, Mayer Brown lawyers all over the world are seeing firsthand the powerful healing effect that the law can help bring. In confronting their victimizers directly, Rwandan villagers are finding peace and rebuilding their society. By sharing their stories, the Liberian diaspora community is finding a way to voice forgiveness. By pursuing asylum, a former child soldier from Sierra Leone hopes to rise above the sorrows of his past and to continue his life in his new home. ♦



Anne De Geest



James V. Hart



## Helping to Bring a Dictator to Justice

In July of 2006, the African Union ruled that former Chadian dictator Hissène Habré should stand trial in Senegal, his country of exile since 1990. The decision was a huge victory for the victims of his brutal regime, as well as the lawyers with Human Rights Watch who have been trying to bring Habré to justice since 1999.

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*“Our lawyers are working on a number of fronts, including lobbying the United States government ... attempting to recover the assets Habré stripped from Chad’s treasury, establishing the authenticity of recovered documents ... making Freedom of Information Act requests and helping a key witness.”*

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Marcia T. Maack

Despite the President of Senegal agreeing to prosecute, two years later the trial still has not occurred: partly for political reasons, and partly because the Senegalese government claims that it needs international assistance in preparing a case of this size and magnitude. In an attempt to push things along, Human Rights Watch has requested assistance from Mayer Brown. “Our lawyers are working on a number of fronts, including lobbying

the United States government to both pressure and provide support to the Senegalese government,” commented Mayer Brown Assistant Director of Pro Bono Activities Marcia Maack. “We are also attempting to recover the assets Habré stripped from Chad’s treasury, establishing the authenticity of recovered documents so they can be used as evidence, making Freedom of Information Act requests and helping a key witness, without whom this case would likely never have gotten off the ground.”



*Isabelle M. C. Yeterian Wallace, Céline L. Bondard, Souleymane Guengueng*

## Eight Years of Terror

Habré first made a name for himself as a leader of the Chadian rebel movement *Forces Armées du Nord* during the early and mid-1970s. He seized power in Chad in June 1982, creating a secret police force, the Documentation and Security Directorate (commonly known as the DDS). Over the next eight years he conducted a reign of terror, killing an estimated 40,000 political opponents and torturing and/or imprisoning some 200,000 others. In 1990, his former general Idriss Déby ousted him and assumed the presidency while Habré fled westward to Senegal.



Susan Charles

## A Victim Finds His Voice

In August 1988, Souleymane Guengueng, an accountant with the Lake Chad Basin Commission, was falsely accused of opposing Habré's government, arrested and jailed. For more than two years he endured torture and atrocious treatment at the hands of the DDS. Stretches of solitary confinement alternated with periods during which he shared a

Guengueng co-founded the Association of Victims of Political Repression and Crime (AVCRP), which set to work documenting the experiences of nearly 800 victims, widows, and orphans who suffered under Habré.

one-man cell with 10 other captives. Sometimes the prisoners were kept in complete darkness: other times under bright lights. Starvation and dehydration were the norm, and Guengueng saw hundreds die around him due to malaria, exhaustion, malnutrition and torture. Freedom came only when Habré was overthrown in December 1990.

A year after his release, Guengueng co-founded the Association of Victims of Political Repression and Crime (AVCRP), which set to work documenting the experiences of nearly

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Caroline E. Brown

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800 victims, widows, and orphans who suffered under Habré. But with many of Habré's henchmen still holding positions in the new government, the AVCRP put aside its plans of pursuing compensation. Guengueng hid the files for eight years until he was able to get them into the hands of

Human Rights Watch attorney Reed Brody, who is sometimes referred to as the "Dictator Hunter" for his work on the Habré matter and for having spearheaded the effort to bring former Chilean dictator Augusto Pinochet to justice.





*Timothy J. Tyler*

## Mayer Brown Joins the Effort

In November 2007, Brody met with a number of Mayer Brown lawyers during a multi-office video conference to request the firm's pro bono support in the effort to build the case against Habré.

"I was aware of Hissène Habré before this case came up, and I jumped at the chance to work on it as a natural progression of the pro bono work that I've been doing," commented associate Caroline Brown, who worked several internships in Africa during law school and went to Sierra Leone twice last year to monitor the elections on behalf of the National Democratic Institute for International Affairs (see "Witnessing Hope in Sierra Leone" on page 13). Along with partner Mark Gitenstein, her fellow Washington-based colleague, Brown is working to obtain support from the US government to assist with the Habré trial.



*Mark H. Gitenstein*

"We're trying to get the Senate Foreign Relations Committee and likely the House Committee on Foreign Affairs to send letters to Secretary of State Condoleezza Rice asking that the administration pressure the Senegalese government to proceed with Habré's prosecution," Gitenstein revealed. "We hope to get senators from both parties to sign on to the letter." The effort is complicated by the fact that the US government actually supported Habré during his reign because of his opposition to Libya's Muammar al-Gaddafi.

Houston-based counsel Timothy Tyler is coordinating efforts to recover Habré's assets and verify the authenticity of written documentation that may help implicate him. "Asset recovery is an area in which we thought that our commercial abilities might be useful," Tyler commented. "There are private firms that do this kind of stuff all the time and they seem to be able to do it reasonably well. We might be able to get them interested in doing the project on a pro bono basis, and we've been talking to several of them about this."

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"Human Rights Watch discovered thousands of DDS documents that need to be closely examined," Tyler said. "Can those be connected up with Habré so as to show direct responsibility? Is his handwriting on the files, which speak of atrocities to be

committed in a bloodless, Stalinist way? And can those documents be tied to a chain of custody sufficient to constitute real proof?" Tyler is working to secure the support of an outside expert on document authentication to assist with this work, which will help to eliminate any potential forgeries. He anticipates that both the asset recovery and document authentication efforts will ultimately come to involve a number of European offices.

After conducting extensive research on US support for Habré's regime, Human Rights Watch submitted a number of Freedom of Information Act (FOIA) requests seeking to uncover how much the US knew about Habré's human rights abuses. Requests regarding direct US involvement with the DDS were met with heavily redacted responses, which Susan Charles, an Environmental partner in the Chicago office, is appealing while also submitting some new FOIA requests.

*"It's not just about lawyer hours, but this network of global affiliations and knowledge and understanding and contacts that might be able to help [Human Rights Watch] on these kinds of cases."*

Timothy Tyler

"The FOIA requests are primarily intended to look at issues of what Human Rights Watch is calling western complicity with the regime," Charles said. "Human Rights Watch has alleged there was US support of the regime in terms of dollars and perhaps training. We don't know the extent or truth of any of this, but that's what the FOIA requests will be intended to investigate."

Céline Bondard, an attorney in the New York office, has been working as a liaison with and advocate for Guengueng, utilizing her language and interpersonal skills to help the French-speaking witness and victims' rights leader work with lawyers and government officials. "He's the person who started it all, in Chad. And he's a very special man," she commented.

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## How You Can Help Survivors of African War Crimes and Genocide

The following organizations represent just some of the many non-profit concerns that are active in relief efforts in Africa:

- ♦ **Africare:** [www.africare.org](http://www.africare.org)
- ♦ **CARE:** [www.care.org](http://www.care.org)
- ♦ **Concern Universal:** [www.concern-universal.org](http://www.concern-universal.org)
- ♦ **Equip Liberia:** [www.equipliberia.org](http://www.equipliberia.org)
- ♦ **International Committee of the Red Cross:** [www.icrc.org/eng](http://www.icrc.org/eng)
- ♦ **International Rescue Committee:** [www.theirc.org](http://www.theirc.org)
- ♦ **Medecins Sans Frontieres:** [www.msf.org](http://www.msf.org)
- ♦ **Medical Emergency Relief International (Merlin):** [www.merlin.org.uk](http://www.merlin.org.uk)
- ♦ **Oxfam International:** [www.oxfam.org/en/](http://www.oxfam.org/en/)
- ♦ **Save the Children:** [www.savethechildren.org](http://www.savethechildren.org)
- ♦ **Tearfund:** [www.tearfund.org](http://www.tearfund.org)
- ♦ **World Food Programme:** [www.wfp.org/english](http://www.wfp.org/english)

Individuals interested in assisting Chadian native Souleymane Guengueng, featured in this issue ("Helping to Bring a Dictator to Justice") may contact Céline Bondard by emailing [cbondard@mayerbrown.com](mailto:cbondard@mayerbrown.com).

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Guengueng is trying to improve his standard of living so that he can bring his wife and children from Chad. "He does all these things; he travels a lot. But then he comes home and he lives with virtually no money," she continued. "Because he's so involved in the case and he travels, he can't hold a job."

"In addition to pursuing justice for Habré's victims, we're also trying to bring the speed and initiative of the private sector to Human Rights Watch," Tyler concluded. "They're great at what they do and we wouldn't pretend to be any better at that, but there's a whole dimension of the private sector and actors in the private sector who just are not in their normal field of interaction. That's what the firm wants to be able to offer to pro bono clients. It's not just about lawyer hours, but this network of global affiliations and knowledge and understanding and contacts that might be able to help them on these kinds of cases." ♦

## Witnessing Hope in Sierra Leone



Caroline E. Brown

*At the invitation of the National Democratic Institute for International Affairs, I recently served on its international delegation to observe and monitor democratic elections in the small African nation of Sierra Leone.*

At the start of my journey, I took it as an auspicious sign that the cab driver who drove me to the airport was Sierra Leonean. A resident of Washington DC for 12 years, he was originally from Port Loko in the northern region of Sierra Leone: a region that historically supported the All People's Congress — the opposition party in Sierra Leone's 2008 presidential and parliamentary elections. After I told him that I was headed there as an international election observer, he said, "The elections will go well. They must. The people of Sierra Leone deserve better."

What I experienced during my time in Sierra Leone made his simple statement profound. The Sierra Leoneans I encountered clamored for a violence-free election that would maintain the peace that was so valued after more than a decade of bloodshed and economic ruin.

Sierra Leone was at its moment of transition. And as the transistor radio repeatedly reminded voters across the country while I was there, "The whole world [was] watching." Could this small West African country the size of Rhode Island, ravaged by a decade-long, diamond-fueled civil war that leveled its villages through the rampages of its doped-up and heavily armed child soldiers, hold its own democratic elections?

The presidential and parliamentary elections that took place on August 11, 2007, were the first since the war to occur without the presence of the United Nations, which withdrew its troops two years ago. Taking place shortly after the start of the trial of Charles Taylor, the architect behind the war, at the Hague, the timing of the elections made them all the more symbolic and pivotal.

After spending four days in Freetown receiving detailed briefings, my partner and I loaded our deployment kits and satellite phones into our SUV, placarded with International Observer signs, and headed up-country along Bo road, which connected the dilapidated port city capital with the southern region of the country. Though the trip was not that many kilometers, it took us almost seven hours to reach our destination — the scars left by the rebels were prevalent everywhere.

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The energy that ran throughout the country in the days preceding the elections was palpable. Political rallies and parades filled the streets of Freetown and Bo, creating rivers of orange, red and green, the colors of

the three main political parties vying for power. We were constantly approached by people proudly brandishing their voter registration cards and repeating the mantra that coursed through the country, "We just want peace. We do not want another war."



In contrast to the predictions of post-conflict area experts, what I observed during the elections was a success story that even the most skeptical Africanist would champion. At 6:00 a.m. on election day, my partner and I arrived at our first polling station. We were not alone. Throngs of people stood in line waiting to vote. Despite the fact that the election took place in the heaviest part of the rainy season, the torrential downpours didn't dampen anyone's spirit. One woman in her eighties told me that she had walked six miles from her village to get to the polling station at its opening. Indeed, throughout the day, I watched as scores of Sierra Leoneans cast their votes and emerged from the stations proudly displaying their inked fingers.



*A woman is helped by a member of the polling staff.*

The significance of the day was not lost on anyone. “Why do we have diamonds, minerals, all this the world wants and yet we are all living in abject poverty?” David, a schoolteacher in the village of Matru, asked me. “We are smart, we have the ambition, we have the determination, but we don't have the opportunity.” It was a question that was repeatedly directed at me as an international election observer. “If we elect a strong leader, will we have that then?” In the shifting landscape of African politics, finding the right answer to that question was not easy.

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*“The elections will go well. They must. The people of Sierra Leone deserve better.”*

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But the beginnings of a new future for Sierra Leone were evident that day. In almost every polling station we visited we were met with the same scene — lines of people early in the morning, high voter turnout, well-equipped

and secure polling stations, correct dissemination of sensitive voting materials. We heard similar reports from other observers deployed across the country. Missing were the anticipated violent clashes and outbreaks.

At the close of the day, there was much to celebrate. Although a victor would not be declared for two weeks, it was evident that the election day, marred only by isolated incidents of violence, had gone more smoothly than anyone had predicted.

The tale, while celebratory, is also cautionary. The factors that caused Sierra Leone to be vulnerable to the war, which, as one APC supporter told me, was the result of the imperial ambitions of Gaddafi, aided and abetted by a bloodthirsty Charles Taylor, are still present: extremely low employment, a disgruntled population under the age of 25, poor healthcare, no funding for schooling and rampant corruption. The people of Sierra Leone deserve better.

Nevertheless, as our delegation debriefed in Freetown following the elections, we celebrated the moment of West African history that we had just witnessed and felt what made the people of Sierra Leone emerge from the polling stations with renewed enthusiasm for a better future. Hope. ♦

## A Trademark Litigation Triumph for the Palo Alto Office



*Tim Oey*



*Eric B. Evans*

A team from Mayer Brown's Palo Alto office scored a major trademark litigation victory in the Ninth Circuit on behalf of pro bono client Tim Oey, who had been accused of "tending to disparage" the validity of a trademark claimed by The Freecycle Network and for promoting the generic use of the word "freecycle."

### Free Goods, Restricted Speech?

It started as a simple idea to help reduce waste and encourage reuse back in 2003: people in Tucson, Arizona, would use online

communications to freely offer up items they no longer wanted. The practice, referred to as "freecycling," became formalized when Deron Beal announced that he was creating a nonprofit organization called The Freecycle Network on May 1 of that year.

The concept quickly spread to more than 50 countries, resulting in the formation of thousands of local online groups with millions of members. Oey, of Sunnyvale, California, joined The Freecycle Network in early 2005 and participated in a committee formed to develop guidelines designed to protect the organization's intellectual property, including trademark rights. But after resigning in mid-September 2005, Oey began to post Internet messages arguing that "freecycling" was a generic term that should not be trademarked.

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It started as a simple idea to help reduce waste and encourage reuse back in 2003.

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"Oey was initially involved in Freecycle's trademark process, but then decided that it was actually antithetical to the ideals of the movement and also inconsistent with US trademark law," associate Eric Evans commented. "Because of that decision,

he was expelled by The Freecycle Network, which informed Yahoo! that Oey's e-mail list, FreecycleSunnyvale, was making unauthorized use of Freecycle's trademarks, inducing Yahoo! to deactivate Oey's access to his account."

At that time, Oey approached Mayer Brown about pro bono representation. The firm filed a declaratory relief action in the Northern District of California on behalf of his non-profit organization, FreecycleSunnyvale, seeking a declaration of no trademark infringement and injunctive relief. Freecycle then filed a trademark infringement action in district court in Arizona against Oey and his wife.



Donald M. Falk



Patty and Tim Oey

its logo and name were subject to protection based on more than three years of use and the fact that the publication of its trademark application in the Principal Register was approved by the US Patent and Trademark Office. The district court granted a preliminary injunction, enjoining Oey “from making any comments that could be construed as to disparage upon Freecycle’s possible trademark and logo,” and to remove all related public postings.

During an April 2006 court appearance in which Oey was represented by separate Arizona-licensed counsel, Freecycle cited the Lanham Act, which protects against unauthorized use of a “registered mark in connection with the sale ... or advertising of any goods ... [where] such use is likely to cause confusion, or to cause mistake, or to deceive.” Freecycle argued that although its trademark application was still pending,

## Elevating the Matter to the Ninth Circuit

“After reading the Arizona district court injunction, I said, ‘This violates the First Amendment,’” recalled intellectual property partner Ian Feinberg, who first met Oey years earlier while representing Adobe Systems Incorporated. “It also arguably prevented Oey from assisting in the Northern District of California lawsuit.” With that, Feinberg and Evans enlisted the assistance of appellate partner Donald Falk.



Ian N. Feinberg

*“We thought it was important to establish the right of people to use ‘freecycle’ as a one-word description of the generic, socially responsible act.”*

Ian N. Feinberg

The team’s next course of action was clear: to take the matter to the Ninth Circuit to have the injunction against Oey vacated. But they were not going in alone; a pair of *amicus* briefs signed by more than 40 intellectual property law professors and advocates, including Stanford’s Lawrence Lessig and the non-profit free speech advocacy and legal organization Electronic Frontier Foundation, were submitted to the Ninth Circuit Court of Appeals.

“I felt that that injunction wasn’t staying in place,” Falk said, commenting on his expectations coming into the September 2007 Ninth Circuit hearing. “It seemed like there was no way that it could survive in anything like its breadth because of the First Amendment issues.”

The appearance before the Ninth Circuit confirmed Falk’s expectations. “I stood up, and started answering a couple of preliminary procedural questions. Almost immediately, one of the judges said ‘You know, maybe it might be most useful if you reserved your time for rebuttal and let us talk to your opponent about whether there is such a thing as trademark disparagement in the Lanham Act.’ I was happy to let the court do what it wanted on that, and that’s where they ruled that the stated legal basis for the injunction didn’t exist.”

*Continued on page 44*



## “Senior Tour” Lawyers Not the Retiring Types

The next several years will see a great number of lawyers from the “baby boomer” generation reach retirement age. Will this be their time to move off to sunny climates and concentrate on improving their golf games? Or will they choose to put their skills, experience and networks to work for the public good?

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*“The combination of a very large group of lawyers who are healthier and more long-lived than ever before, and who have a range of experience, makes for a once-in-a-millennium opportunity as this group retires.”*

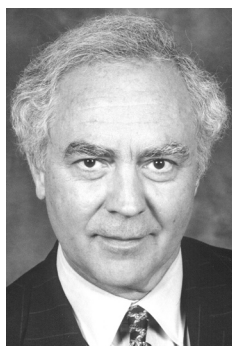
Esther Lardent

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“Mayer Brown developed the senior tour idea to ease the transition for partners at retirement age, giving them an option to wind down their careers while remaining with the firm,” commented the Chicago office’s Trent Anderson. Now co-chair of the firm’s pro bono committee, in 2001 Anderson chaired an ad hoc committee of near-retirement-age partners to examine the

feasibility of creating a new role for themselves and others who would be in a similar position in the future. This exploratory effort led to the development of the senior tour program.

“We left the actual program design very flexible to let each individual determine what he or she would do in their newly reduced role,” added Anderson, who joined the senior counsel ranks in 2007.



J. Trent Anderson

“The combination of a very large group of lawyers who are healthier and more long-lived than ever before, and who have a range of experience, makes for a once-in-a-millennium opportunity as this group retires,” commented Esther Lardent, president and CEO of the Pro Bono Institute. With the assistance of a grant from Mayer Brown, PBI launched the Second Acts program in 2005 to facilitate institutional support for transitioning and retired attorneys who want to work for the public good.

“The Pro Bono Institute is looking at potential opportunities in several areas,” she continued. “The first involves lawyers who have a background in transactional work and litigation and policy experience, getting them to bring those skills to the table to create a broader array of pro bono opportunities and outcomes. The other ties those people to their own firms so that they’re there to maintain and sustain the pro bono culture among younger lawyers and to be catalysts for more pro bono work at the firms themselves.”

For Philip Lacovara, being in the senior tour means that he is as busy as ever but does not face the billing pressure that he once did. “As senior counsel I participate in coordinating the pro bono program, particularly here in the New York office,” he noted. “I serve as a member



*Phillip Lacovara*

of the newly reconstituted firmwide pro bono committee. I personally supervise pro bono cases. I work as a firm representative on the board of Human Rights First. In addition, I participate in the training of associates from all practices in effective writing and litigation skills, and I do some client assistance and representation as well.”

Lacovara found the firm to be highly supportive when he took early retirement from his partnership in late 2003. “I indicated that I wanted to continue having some kind of role as a practicing lawyer, and among the things that I thought I would be able to contribute to the firm involved the pro bono work that I had been doing as one of the active pro bono partners in the New York office,” he said. “I think my role has essentially been a continuation of what I was doing when I was an active partner, so that I’ve continued to work on all of these different pieces of the pro bono project: administration, supervision and direct pro bono involvement.”



*Werner Hein*

Working with the Sovereign Military Order of Malta, a 900-year-old sovereign entity devoted to protecting human rights and the poor, Lacovara also recently joined the permanent observer mission to the United Nations as counselor and legal advisor. In this capacity, he assists on legal issues regarding human rights and economic development.

For Werner Hein in our Washington office, joining the senior tour last year allowed him to continue working with corporate clients in the telecommunications and information technology industries and teaching courses abroad about the US legal system, including trips to Russia, Turkey and China. In the pro bono arena, Hein has begun working with the Pope John Paul II Cultural Center.

In the pro bono arena, Hein has begun working with the Pope John Paul II Cultural Center.

“I’m currently helping to establish an intercultural dialogue between Christians, Muslims and Jews, which would be centered in the cultural center in Washington DC,” he commented. “Last year, we started a

Catholic-Muslim dialogue where some of the leading Muslim scholars met to discuss what can be done to improve relations.” Hein also revealed that he has been working with representatives from the Christian, Jewish and Muslim faiths through the center to help improve access to the holy sites in Jerusalem.

Since joining the senior tour in 2005, Marvin Katz of our Houston office has continued to work on the blend of client matters, teaching and pro bono community efforts that have long characterized his practice. “Real estate law is my primary area, and I’m continuing to service the clients that I’ve represented for many, many years. I’ve been blessed with clients that have been very loyal, and this is my forty-ninth year of practice,” he said. “I also do a lot of estate work and estate planning work, as well as business planning and corporate work and joint ventures and that sort of thing.”



Marvin M. Katz

*“I’m continuing to service the clients that I’ve represented for many, many years. I’ve been blessed with clients that have been very loyal, and this is my forty-ninth year of practice.”*

Marvin M. Katz

city planning commission he is now an *ex-officio* member of that body, and now chairs the city’s parking commission. He also works for the Corporation for Supportive Housing, a nationwide Mayer Brown pro bono client, and performs mediation for low-income residents of Harris County.

“I guess the big difference being on senior tour versus remaining as a partner is that I feel less guilty if I get to the office at 8:15 instead of 7:30, which is my usual hour,” Katz concluded with a smile.

Katz added that while he still works with his old clients, he typically passes prospective new clients on to another lawyer who can build a relationship with that client.

In addition to teaching a course each semester at the University of Houston Law Center, Katz continues to contribute long hours to the city of Houston and other organizations. After 14 years chairing the

*“Efforts to improve the rule of law and administration of justice around the world are particularly useful opportunities for retiring senior lawyers.”*

Phillip Lacovara

“There are probably more unmet needs that can be fulfilled by a senior lawyer in the pro bono field than in almost anything else that a retired or retiring lawyer might do. So I would fully expect that we will see a significant number of retiring baby boomer partners spending at least some time after they give up full-time paying client representation becoming involved in pro bono projects, and that ranges all the way from direct counseling to participation in law-reform projects,” Lacovara concluded. “There are a number of international projects that people at the firm become involved with that train lawyers and government ministries in developing countries. Efforts to improve the rule of law and administration of justice around the world are particularly useful opportunities for retiring senior lawyers.”

“I’ve told the folks at Mayer Brown that in a few years they’re going to be very proud that they were the spark that got this all rolling,” Lardent said. “The fact that they funded an empirical study (“Pro Bono Institute Firm Survey on the Viability of a Second Acts Program to Transition Attorneys to Retirement through Pro Bono Work,” available from the Pro Bono Institute) and gave us time to actually study these issues enabled us to get foundation funding that will enable us to develop very effective answers to the impending opportunity that this wave of retiring lawyers will provide.” ♦



## Recent European Initiatives



*Julie Dickens*

Last year saw the founding of a new European pro bono committee comprising representatives from Mayer Brown offices in each European country (Jean-Philippe Montfort from Brussels, John Faylor, Bernd Thalmann and Malte Richter from Frankfurt, Jean-Philippe Lambert and Natalie Perreau from Paris, and Julie Dickens and Philippa Charles from London). The committee's aim is to encourage and promote pro bono work in our European offices, and it has been formulating a working definition of pro bono work for European cases where no national definition yet applies. Malte Richter represented the committee at the first European pro bono conference in October (see "Pro Bono on the Rise in Eastern Europe" on page 30).

The inter-firm European pro bono roundtables, which began in 2006, have continued throughout 2007 and have included meetings in Paris, Brussels and Frankfurt (see "Pro Bono in Germany" on page 21 for details of the latest Frankfurt initiatives). More recently the roundtables have extended to Eastern Europe and now to China.

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The committee's aim is to encourage and promote pro bono work in our European offices.

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In London, a new Corporate Social Responsibility committee has been established to bring together those responsible for the different strands of CSR

(such as pro bono and community work, diversity, charitable giving and the environment) and to formulate overall CSR policy. The committee includes the Partner-in-Charge (Sean Connolly), Pro Bono Partner (Julie Dickens), Director of Human Resources (Annette Sheridan), Head of Facilities (Laura Conder), the partners responsible for diversity (Sarah Byrt) and environmental issues (Cate Sharp), and partners from each department.



The new CSR committee's first acts were to produce a CSR policy ([www.mayerbrown.com/london](http://www.mayerbrown.com/london)) and to select a UK Charity of the Year (following presentations from a number of London charities) — Groundwork London ([www.groundwork-sel.org.uk](http://www.groundwork-sel.org.uk)). This charity is one of a number of Groundwork Trusts across the UK that run employment programmes enabling unemployed people to develop their confidence, skills and experience in order to help them find work and contribute to the regeneration of their neighbourhoods. The particular project to which Mayer Brown funds will go is the creation of a training centre in South London where unemployed residents will be trained to develop their grounds maintenance and landscaping skills. Staff and partners have already raised £2,400 in a Christmas auction (which will be matched by the firm), and further events, including a site-clearing day, are being planned.

On October 24, 2007, the London office hosted a delegation of lawyers from 11 African countries who are taking part in a three-month placement to gain experience and skills to take back to their own countries and legal practices. Our contribution this year was to host a one-day

*Continued on page 44*

## Pro Bono in Germany – The Frankfurt Pro Bono Roundtable



Dr. Malte Richter

In Germany, the rendering of free legal advice, with only a few exceptions, has always been prohibited by German legal ethics laws — mostly for historical reasons. Nevertheless, German lawyers have repeatedly worked on pro bono cases in the past by giving free legal advice to charities or indigent people. These services, however, mostly took place on a “don’t ask, don’t tell” basis. The recent enactment of the new Legal Services Act has loosened historical restrictions to some extent, but has not significantly changed the situation for law firms, which were not the primary beneficiaries of the Act.

In order to explore opportunities to put pro bono work (within the meaning of rendering free legal advice) on a more solid legal basis, several international law firms, among them Mayer Brown, have been participating in a pro bono roundtable in Frankfurt (the “Roundtable”). The Roundtable is hosted by a different law firm every six to eight weeks. Among other things, the members have debated and agreed upon a pro bono definition suitably addressing the particularities of the German legal environment.

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In Germany, the rendering of free legal advice, with only a few exceptions, has always been prohibited by German legal ethics laws.

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Representatives of the Roundtable have met with the Munich Bar Association as well as with the Frankfurt Bar Association in order to explore the possibility of reaching a consensus with these authorities on pro bono work within their jurisdictions.

Their initial responses have been encouraging. At the recommendation of the Frankfurt Bar Association, it was decided that the Roundtable would publish an article in the *Neue Juristische Wochenschrift* — the leading German law journal, read by almost every German lawyer — which would open the debate on pro bono to the public and also ensure that the debate takes place in an unemotional and scientific manner. It was further decided that the article would explore the social and legal background of pro bono in Germany and make proposals for a more modern approach by the government. The article is expected to be published in early spring 2008 and it will be interesting to see how it will be received by the German legal community.

The success of the Frankfurt Roundtable is expected to initiate similar roundtables in other major German cities, such as Hamburg, Berlin and Düsseldorf. This would not only allow the respective law firms to approach other local bar associations with regard to the pro bono issue but also to put the entire debate about pro bono in Germany on a more widespread footing. ♦

## Talking Pro Bono: Marc Kadish Interviews Jim Holzhauer



James D. Holzhauer

On February 25, 2008, Marc Kadish sat down with Jim Holzhauer to discuss the firm's pro bono program and the recent changes to the US pro bono policy (see sidebar on page 26). The 50-minute interview covered some of Jim's early professional life as both a Police Commissioner and City Manager for two upstate New York towns, through his clerkship in the US Supreme Court, to his chairmanship of Mayer Brown. An excerpt of their discussion is presented here.

*Marc: You became chairman in 2007. What are your goals as chair of the firm? What would you like to see happening to the firm at this particular point?*

Jim: Well, I think that our objective as a management committee, as a chairman with my two vice-chairmen, is to secure Mayer Brown's position as an elite global law firm. Our combination with JSM in December was an important part of that, as were our previous combinations with Rowe and Maw, Lambert & Lee, and the Gaedertz firm in Germany. But we clearly have been on a mission to establish Mayer Brown as one of the elite global law firms and we've accomplished that, and the plan is for more of the same.

*Marc: With all the demands on your time, you've still chosen to be a member of both the pro bono committee and the diversity committee. What kind of message are you trying to send with your activity on these two committees?*

Jim: Well, I hope it sends a message that pro bono work and diversity are each important, critical values at Mayer Brown, because they are. And my participation in those committees, my support for pro bono work, my support for diversity efforts, is designed to send that signal to people within and outside the firm.

*Marc: During the period of time when you were in private practice, or when you were teaching at the University of Chicago Law School, did you perform any pro bono work?*



Jim: Yes. I did a variety of things. I represented the ACLU in some cases back then. I did some employment-related civil work involving different kinds of employment discrimination issues. I remember being involved in some of the early cases involving drug testing, particularly of government employees. I also

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*"I think being a proponent for pro bono as chairman of the firm is an important part of what I can do."*

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wound up doing some, and supervising a lot of, immigration appellate work after I came to Mayer Brown. It was a good opportunity for lawyers who were less experienced than I was and who weren't getting opportunities to get into the courts of appeals, or even the Supreme Court, to get to do that.

*Marc: How did this pro bono work affect you?*

Jim: I enjoyed it greatly. It was great not only to do some of the work myself and do some trial work, but also to supervise people. One of our former partners and now a client, Javier Rubenstein, was determined to get a Seventh Circuit argument, and we finally got it, an immigration argument under my supervision. Then he got a Supreme Court case. He wound up getting a couple of them.

*"It's very important that lawyers in this firm not think that they're going to be penalized for doing pro bono work, that they know that it is fully valued; and I think that's also got to be true of the partners who supervise this kind of work."*

*Marc: You played a large role in establishing the new pro bono policy at the firm. Why did you support the proposal to begin counting pro bono just like regular client chargeable work?*

Jim: Well, it seems to me that when a lawyer takes on a matter, there's no such thing as "first best matters" and "second best matters." A lawyer has to do absolutely the best work on each matter. But also, it's very important that lawyers in this firm not think that they're going to be penalized for doing pro bono work, that they know that it is fully valued;

and I think that's also got to be true of the partners who supervise this kind of work.

As you know, part of the new pro bono policy that I was very much involved in is the idea of taking on matters as an institution, rather than just reacting to what individuals want to do. When we see something that we think



warrants our pro bono involvement as a law firm, we'll take on the matter and we'll staff it accordingly, and it will be fully valued. You can't take on a matter as a law firm, ask people to work on it and then tell them, "Oh, but it doesn't count." That wouldn't work.

*Marc: The notion of a pro bono culture is just starting to become important in Europe and even in Latin America, and I know we've been involved in some of that work with the pro bono roundtable meetings in Germany and Hungary with other law firms. There's even one taking place in Hong Kong. Given this, do you see the new pro bono policy spreading to the non-US offices?*

Jim: It could. I think we have to follow the market in those other places. If it's the kind of activity that's done and valued in those markets, we should be at the forefront. I'm not saying that we should impose US styles of practice on anybody else, but I think it's something that the firm values as a whole, and should value it wherever we are.

*Marc: It's one thing to announce a new policy but it's another to implement it and make certain that everyone in the firm understands it and participates in it. What steps do you think we should take to make certain that partners are involved as heavily as associates, because, in a sense, pro bono has been viewed as the territory or domain of the young, and I think it should be spread throughout the entirety of the firm, all ages, all levels?*

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*“We need to tell people, pro bono work is a very, very good way for people to get experience and experiences that they wouldn't otherwise be able to get, and it's something the firm really values.”*

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Jim: I agree completely and I think we have to keep telling people that we value it, we think it's a very important part of their career and a very important part of what they should be doing as lawyers. We've seen in recent years that some very senior lawyers, lawyers at or even beyond retirement age, have dedicated themselves in increasing measure to pro bono and I think that's something we're going to see done.

*Marc: But in what ways? Because sometimes my concern is that partners say: “Well, I get satisfaction from pro bono but it doesn't seem like it's taken into account, either in my annual review or anything like that,” so what concretely could be done to get the message to partners?*

Jim: Well, I think it is counted, it is considered part of what we measure in an annual review. Partners who are interested in doing pro bono should make that part of their goals and objectives during their reviews. That's

what the goals and objectives memo is for. Certainly, if someone came to me and said, “I want to handle, as part of my goals and objectives for 2008, a pro bono immigration case,” or “I'd like to supervise two associates working on a housing transaction,” that would be wonderful. And at the end of the year we'd come back and ask, “did you accomplish your objective?”

*Marc: And would that be considered a valid goal or objective for that partner?*

Jim: Absolutely.

*Marc: Now, how does pro bono work get taken into account for associates and counsel in their regular annual reviews? Is that concretely part of their review process?*



Jim: It's part of their review process, and I think it should be as valued as anything else. But what we really need to do is to lead in this area, rather than trying to dictate in this area. I think we need to tell people, pro bono work is a very, very good way for people to get experience and experiences that they wouldn't otherwise be able to get, and it's something the firm really values. I don't want anybody doing pro bono work because they're saying “I have to do it.” I don't want anybody drawn kicking and screaming into the pro bono practice.



*Marc: Along those lines, there is a movement among the New York firms where pro bono is becoming mandatory. How do you feel about that?*

Jim: I'm not a "mandatory" person. I think we should provide incentives. I think we should make it easy, we should make it count and I think that we'll have a lot of lawyers who are very eager to do pro bono work. I don't know that it necessarily works to make something mandatory. I don't want anybody handling an immigration case, for example, because they're told they had to, even though they don't want to.

*"People who have an interest in their communities and in serving the public as lawyers are extraordinarily desirable recruits"*

*Marc: How does the message get sent to practice leaders, who may have more emphasis on profits and losses, to make certain that they are in step with the policy and taking steps to encourage the lawyers on their teams to do more pro bono work?*

Jim: One of the important things in convincing some of the practice leaders, and many don't

need any convincing, is to demonstrate that we're able to give their lawyers, particularly their associates, but even their partners, important professional experience that will benefit the practice.

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*"There's a lot of competition. Making sure that our pro bono program is viewed as one of the best in the country, the best in the world, is an important way to attract the best lawyers."*

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Another is to make sure that they understand that this is important in attracting high quality legal talent. It's a very difficult market for legal talent out there. Law firms are hiring more and more associates. The classes have increased dramatically and there's great competition. The law schools have not grown dramatically, and some of the law schools that we generally recruit from have not produced bigger classes. There's a lot of competition. Making sure that our pro bono program is viewed as one of the best in the country, the best in the world, is an important way to attract the best lawyers.

*Marc: Speaking of which, what kind of associates do you think the firm should be looking for to assist us as we seek this worldwide platform? Can you say there's any special type that you would want?*

Jim: Well, one thing that our platform and our breadth of practices allows us to do is to achieve a great diversity geographically, and I think that's important to our business model. So there's room for all sorts of



associates, associates who want to do lots of things. I think in future years you'll see more and more associates who come to Mayer Brown because while they might be based in Washington or in Los Angeles, they'd like to spend part of their careers in Hong Kong or in Paris or in London.

*Marc: Do you think that when we are recruiting associates that pro bono plays any role in the recruiting? Do we look for people who would have that kind of interest?*

Jim: People who have an interest in their communities and in serving the public as lawyers are extraordinarily desirable recruits, and being able to tell them that we really do have a great investment in pro bono, and a very, very strong pro bono program, is helpful to bringing those people in.

*Marc: I've often thought that part of making a commitment to pro bono work includes learning how to balance all kinds of different things, with pro bono being just one of the*

*aspects. So, you shouldn't do too much pro bono, but I don't think we should do too little. It just has to become part of what you juggle and handle as a lawyer.*

Jim: Exactly. As a law professor, I frequently heard from students who were very interested in a career in public service but very frustrated by the fact that if they did that they wouldn't be able to pay off their loans, and so they were torn between going into private practice or doing something that they felt was worthwhile for the community. And I always thought that was a false trade-off. There are a lot of people in big law firms and other places around the legal profession who have very satisfying public interest careers combined with their careers as practicing lawyers and we see many people around this firm who have done that for many years.

*Marc: Jim, thanks very much for your time.*

Jim: Not at all. Thank you very much. ♦

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## US Pro Bono Policy Initiatives

- Office and practice leaders have been asked to create and reinforce an environment that fosters and encourages participation in the pro bono program, and to work towards meeting the firm's 3 percent pro bono commitment.
- A partner in each US office has been given the responsibility to lead that office's pro bono program, in conjunction with Marc Kadish and Marcia Maack, and to serve as chair of the office's pro bono committee.
- The firmwide Pro Bono Committee has been restructured to include office pro bono partners and practice area representatives, as well as senior counsel, counsel and associate representatives.
- Associates will receive full credit for approved pro bono work towards the minimum billable hours requirement and bonus.
- The Pro Bono Committee will work to identify and develop significant firmwide and office-specific pro bono matters and projects. As with all pro bono matters, these projects will be staffed and credited like any other client matter.

## Mayer Brown Presents US-Wide Pro Bono Awards



*James D. Holzhauer introducing the awards.*

Mayer Brown lawyers devoted more than 51,000 hours to pro bono clients in 2006. They helped refugees escape persecution, battered women seek safety and foster children find permanent homes. They fought for the rights of death row prisoners and Guantanamo Bay detainees, helped the poor and disadvantaged in developing countries and worked to establish funding for supportive housing in the United States and improved health care in Africa. Lawyers and staff also participated in numerous community service projects



*Evan M. Tager*

To recognize these efforts and acknowledge the work of those who went above and beyond the call, the firm held its Annual Pro Bono Awards Program on November 15, 2007. Hosted by Chairman Jim Holzhauer, the event, the firm's first US-wide award program, featured awards spanning six categories, with winners coming from nearly every US office. In addition to a plaque, each award recipient was given a sum of money to donate to their legal services organization, public interest organization or charity of choice.

The Houston office earned the Office of the Year Award, averaging 97 pro bono hours per lawyer, with a 60 percent overall participation rate and a 78 percent participation rate among associates. In addition to the lawyers' efforts with immigration and asylum cases, assistance for victims of Hurricanes Katrina and Rita, and sex discrimination cases, their most significant pro bono matters involved death row prisoners.



*Linda Rhodes*



*"We hope to set the standard for other offices as well as other firms."*

*Michael E. Niebruegge*



*Peter H. White*

The award was accepted by the office's partner-in-charge, Mike Niebruegge. "Pro bono is an essential part of the fabric of our office," said Niebruegge. "We hope to set the standard for other offices as well as other firms. Not only those who can afford our services deserve to benefit from Mayer Brown's top-notch attorneys." The office donated its prize money to the South Texas Pro Bono Asylum Representation Project.

The Practice of the Year Award recognized two very deserving groups. The first was awarded to the New York Real Estate practice, which averaged 83 pro bono hours per attorney and had an 83 percent increase in pro bono hours from 2005. The majority of those hours were spent working on loan transactions for the Corporation for Supportive Housing, an organization that provides funding to help communities create housing with services designed to prevent and end homelessness. The New York award was presented to Doug Wisner.

The second went to the Washington Litigation practice, which averaged 100 pro bono hours per lawyer, had an overall participation rate of 70 percent and a nearly 100 percent associate participation rate. The group's pro bono cases ranged from saving poor tenants from eviction to arguing an immigration case before the Supreme Court. The Washington award was presented to Evan Tager and Peter White.



*Douglas L. Wisner*

Project of the Year went to the Los Angeles Adoption Project. Since 2001, the Los Angeles office has worked with the Alliance for Children's Rights to help finalize adoptions of more than 200 children in foster care. The award was accepted on behalf of all the involved lawyers by Anthony Napolitano.



*James E. Tancula presents an award to Anthony J. Napolitano*

Three projects were honored in the Litigation Matter of the Year category:

- *State of Illinois v. Larry Lee* — the Lee team devoted more than 1100 hours to the successful defense of an innocent man accused of a serious felony. Marc Kadish accepted the award on behalf of the team.
- *Riggs v. Fairman* — the Riggs case concerned application of California's three-strikes law, which resulted in a man being sentenced to 25-years-to-life for shoplifting a bottle of vitamins. The Riggs team began their representation in 1999 and devoted almost 2000 hours to securing freedom for the client who had served 10 years of his sentence. The award was accepted by Don Falk.
- *Guantanamo Bay* — given in recognition of the efforts of all of the firm's lawyers who have been involved in the Guantanamo detainee litigation. Accepting the award was Gary Isaac.



*Donald M. Falk*

"As an attorney, I would not be able to call myself a citizen if we at Mayer Brown had succumbed to outside pressure and refused to work on this issue," Isaac commented.



*Gary A. Isaac*

“I would like to thank Mayer Brown’s leadership for facilitating a system that not only allows ample pro bono hours but rewards them with events like this.”

There were two winners in the Transactional Matter of the Year category:

- Nadar Por Vida — an outreach program through which impoverished children from Washington’s Latino community learn the importance of education and overcome prejudice, racism, language barriers and more, while also learning to swim. Accepting the award was Linda Rhodes.
- SKS Microfinance — an India-based organization that provides small loans to poor women for a range of income-generating activities. To date, the firm has devoted more than 400 hours to SKS. Accepting the award was Paul Breloff.



*From left to right: James D. Holzhauer, David A. Carpenter, Kristy Cole, Keonna D. Carter, Paul Breloff, Marc Kadish*

“Working with this client has been one of the most fulfilling experiences of my career. My pro bono work energizes me for my work with all of my clients and infuses it with meaning,” Breloff remarked.

The final award went to the Chicago Stockton School Reading Program, which was recognized as the Community Service Project of the Year. For the past 13 years, the Chicago office has participated in an educational program with Stockton School, where 90 percent of the students live below the poverty line, and 20 percent come from homeless shelters. Kristy Cole accepted the award.

In addition to the South Texas Pro Bono Asylum Representation Project, other recipients of donated prize money include: the Legal Counsel for the Elderly, the Legal Aid Society of the District of Columbia, the Alliance for Children’s Rights, Families Against Mandatory Minimums, the Center for Constitutional Rights’ Guantanamo Detainee Project, St. Jude’s Children’s Hospital, Nadar Por Vida, Operation ASHA and the Stockton School Reading Program.

*“My pro bono work energizes me for my work with all of my clients and infuses it with meaning.”*

*Paul Breloff*

While congratulating the winners, Chairman Holzhauer also praised the many lawyers listed in the event program who had donated 60 hours or more to pro bono matters in 2006, saying that “while the number of lawyers is high, I hope that next year the number will be more than doubled.”

“We have a strong pro bono program,” he continued, “but the firm’s leadership is determined to further strengthen our program and increase participation firmwide.” ♦



## Pro Bono on the Rise in Eastern Europe — Lessons from the First Pan-European Pro Bono Conference in Budapest in October 2007



*Dr. Malte Richter*

The pro bono legal practice is picking up momentum in Eastern Europe by attracting the attention and interest of a growing number of legal professionals. This is probably the most important lesson to emerge from the first pan-European pro bono conference that took place in Budapest in October 2007. The event was hosted by the Public Interest Law Institute, an international non-profit organization founded in 1997 with the aim of advancing human rights around the world by stimulating public interest advocacy and developing the institutions necessary to sustain it.

The conference was attended by more than 140 representatives from law firms and non-profit organizations (NGOs), and was sponsored by several firms including Mayer Brown. The primary object of the conference was not only to provide the attendees with the opportunity to meet and discuss options for future collaboration but also to strengthen the awareness of the need for, and the ongoing development of, pro bono platforms in Eastern European countries. For instance, a Hungarian Pro Bono Clearing House was established in 2007 to match needs in one country to resources in another with more than 25 law firms participating in these efforts. Similar initiatives are currently being pursued in Poland, Romania and the Czech Republic. Even a worldwide Global Clearing House is being discussed, and we learned that pro bono talks have just started in China.

The ongoing cuts in social welfare throughout Europe as well as the introduction of capitalism to Eastern European countries have brought out the increasing need for free legal advice for NGOs and indigent people, as well as for the strengthening of human rights.

Besides these milestones, the conference revealed that the need for pro bono is greater than ever. The ongoing cuts in social welfare throughout Europe as well as the introduction of capitalism to Eastern European countries have brought out the increasing need for free legal advice for NGOs and indigent people, as well as for the strengthening of human rights. In this regard, the role of public institutions in

Eastern European countries was highlighted as being insufficient and it was emphasized that legal stability and security are beneficial for both people and business.

At the same time, it was noted at the conference that the culture at law firms needed for providing pro bono work has changed significantly throughout the world over the past few decades, as law firms have increasingly become larger and the legal profession more commercialized. In earlier days, lawyers were, to a larger extent, active in their home towns, cities and local governments. Today's law firms, however, have turned into commercial



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*European Pro Bono Forum organized by the Public Interest Law Institute*

entities striving for profit maximization. As a result, many lawyers have lost touch with their communities and with the problems existing at the local level. Nevertheless, it was also noted that, as a response to this trend, larger law firms have started to set up full-time pro bono programs, and bar associations have founded pro bono units. It was generally agreed among the conference participants that this development should be further encouraged.

In order to facilitate this goal, the conference provided workshops and plenary sessions that allowed the attending NGOs and law firms to discuss how, and in which legal areas, law firms could help NGOs pursue their charitable goals. Additionally, several companies, such as General Electric, presented their in-house pro bono programs and the (regulatory) difficulties the company's in-house lawyers were facing in various countries. In return, law firms introduced their pro bono programs and recent successes in helping NGOs and indigent people by, e.g., overturning wrongful convictions or helping refugees in asylum cases.

Another workshop provided a forum where the participants could discuss areas in which the collaboration between law firms and NGOs could be improved. Among the issues raised most frequently were the lack of understanding by law firms about how NGOs operate and their differing expectations as compared to regular business clients. Moreover, concerns were raised that many law firms still regard pro bono as a necessary social commitment rather than as an opportunity to do something good and to allow young lawyers to obtain direct exposure to clients and take on cases themselves.

Overall, the pro bono conference must be regarded as a huge success as it not only managed to highlight the current trends in, and obstacles to, pro bono in Eastern European countries but also pointed to the measures taken to overcome these obstacles. The Public Interest Law Institute intends to make this pro bono conference an annual event. It will be interesting to watch how the pro bono idea will grow in the future. ♦

## Helping a Torture Victim in the Pursuit of Justice

As the trial of former Liberian President Charles Taylor for war crimes against Sierra Leone continues in The Hague, Mayer Brown is assisting with the effort to prosecute Taylor's son as the first US citizen to be indicted under the 1994 US anti-torture law, which forbids American citizens from committing torture abroad. The defendant, Charles McArthur Emmanuel (aka Charles "Chuckie" Taylor Jr., after his father or Roy Belfast Jr., after his stepfather), was also the first person indicted for war crimes committed during the 14-year Liberian conflict that ended in 2003.



Lori E. Lightfoot

*"It's extremely challenging to work with somebody who literally saw his country disintegrate all around him"*

Lori E. Lightfoot

Chicago partner Lori Lightfoot was already familiar with the sensitivities required in working with torture victims from her time prosecuting drug-related cases as an assistant US attorney. But when she agreed to the pro bono witness representation of a man who alleges that he was tortured by Emmanuel in Liberia, she was particularly aware of the need for caution and care.

"It's extremely challenging to work with

somebody who literally saw his country disintegrate all around him, who saw other people who were suffering the same kinds of torture and humiliation and deprivation of rights," Lightfoot noted in reflecting upon her initial interactions with the client, whose privacy rights and safety she is helping to guard while protecting his interests as he receives various requests from the government and the defendant's counsel.

Our client is the victim at the center of the US-born Emmanuel's December 2006 federal Grand Jury indictment, in which he was charged with one count each of torture, conspiracy to torture and use of a firearm during the commission of a violent crime. The defendant is alleged to have headed Liberia's Anti-Terrorist Unit (ATU) at the time of the incident. Per the indictment, our client was abducted from his home on or about July 24, 2002, and brought to the residence of then-Liberian President Taylor, where Emmanuel questioned him. Our client was then taken to the residence of a co-conspirator, a member of the Liberian Special Security Service, where Emmanuel and others tortured him through burning, electric shock and rubbing salt into his wounds.

“When you’re dealing with somebody who is a victim of physical and psychological torture, and it’s still very fresh in their mind, you have to be very careful about how you calibrate the advice that you give them,” Lightfoot commented. “You want to make sure that they are fully advised of the up- and downside risk of moving forward, and you have to constantly check in with them along the way. It’s one thing to talk about telling their story in the abstract, but it’s quite a different matter when an indictment is made and a trial date is set and the victim has to think about sitting in the witness stand in a courtroom and laying himself bare to the world, particularly in front of the very person who was responsible for the torture.”

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*“Working on a matter like this stretches you to learn and grow as a lawyer — and also, in some ways, as a citizen, because it really brings home the notion that people do come to the United States for refuge.”*

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Emmanuel is believed to have led the ATU from 1997 through at least 2002, operating mainly from a base some 55 miles north of the capital city of Monrovia. Witnesses and victims allege that he committed a range of atrocities, including torture, rape and murder, during this time. He was taken into US custody on March 30, 2006, when he was arrested and charged with passport fraud for misrepresenting the identity of his father at Miami International Airport after arriving on a flight from Trinidad. While Emmanuel pleaded guilty to the passport violation in September 2006, the FBI and the Immigration and Customs Enforcement Service were investigating the torture allegations against him that form the basis of his indictment.

With the introduction of a superseding indictment that identified several additional victims, Emmanuel’s trial date has been postponed until September 2008. The trial of his father on multiple counts of war crimes and crimes against humanity committed in Sierra Leone during that nation’s 1991-2002 civil war began in January 2008 and was ongoing at press time.

“Working on a matter like this stretches you to learn and grow as a lawyer — and also, in some ways, as a citizen, because it really brings home the notion that people do come to the United States for refuge,” Lightfoot concluded. “You really become much more cognizant of the rights and responsibilities and privileges that come with American citizenship.” ♦

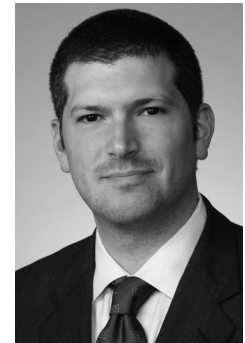


# Writing a Brief to Protect the Rights of the Accused

Under the philosophy of law employed in international courts, the right to a fair trial and the safety of the accused are paramount. But in the case of the Rwandan genocide-related war crimes trials, a question has been raised about the ability of the Rwandan legal system to safeguard these concerns in some instances. This consideration formed the basis of an argument that Mayer Brown was recently asked to articulate by Human Rights Watch in the form of an *amicus curiae* brief on whether the Rwandan national court system is capable of

fairly and competently trying an accused genocidaire whose file was originally placed under the jurisdiction of the International Criminal Tribunal for Rwanda (ICTR).

The review was necessitated by the completion strategy set forth by the ICTR, which calls for finishing all matters by 2010. To keep to this timetable, the ICTR has proposed the transfer of several cases to national jurisdictions. But Human Rights Watch questioned whether Rwanda's national courts were equipped to take on such cases. Two associates, Greg Berlowitz (Chicago) and Tiasha Palikovic (New York), wrote the *amicus* brief on this position under the supervision of New York partner Anthony Diana and Dinah PoKempner from Human Rights Watch.



Gregory L. Berlowitz

"I expressed my interest in working on international human rights matters to [Director of Pro Bono Activities and Litigation Training] Marc Kadish and [Assistant Director of Pro Bono Activities] Marcia Maack," recalled Palikovic, a litigation associate who was only in her second month with the firm when she began work on this project. "They had just been contacted about this situation by Human Rights Watch, so it seemed like a good fit." Berlowitz, an environmental law associate, joined the project, which the pair worked on throughout the fall of 2007.

"Human Rights Watch provided us with a lot of information on the Rwandan judicial system from its field researchers," Berlowitz commented. "The factual aspects of our brief came almost entirely from Human Rights Watch."

## Selected Conclusions Contained in the Brief of *Amicus Curiae* Human Rights Watch Submitted in Case No. ICTR-2001-67-I

"HRW respectfully submits that it has demonstrated that the Accused Fulgence Kayishema should not be transferred pursuant to Rule 11 *bis* for the reasons below:

...

- b. Transfer may violate Article 20 of the ICTR Statute because Rwanda cannot guarantee that the Accused will have the opportunity to examine witnesses and obtain witnesses in his defence, be presumed innocent until proven guilty, or be given a fair and public trial by an independent and impartial court;
- c. Transfer may expose the Accused to violations of his rights under Article 14 of the ICCPR, to which Rwanda is a State Party because Rwanda cannot guarantee that the Accused will be protected from double jeopardy;

...

- e. The Rwandan legal system may be limited in its ability to provide the Accused with assistance in securing adequate legal representation;

Selected Conclusions Contained  
in the Brief of *Amicus Curiae* Human  
Rights Watch Submitted in Case No.  
ICTR-2001-67-I continued

- f. The Rwandan legal system may be limited in its ability to provide appropriate financial support to the Accused;
- g. The Rwandan legal system may be limited in its ability to facilitate travel and investigations for the Defence team of the Accused;
- ...
- i. Inadequate procedures exist to ensure protection of any witnesses in the Accused's [case] before, during, and after testifying in Court;
- ...
- k. Inadequate procedures exist for the procurement and facilitation of safe and secure travel for witnesses for the Accused, particularly Rwandan witnesses who reside abroad and are unable to benefit from safe passage to and from Rwanda;
- l. Rwandan laws governing the arrest and detention of an accused are unlikely in practice to afford to the Accused the same protection as the protection applied by the Tribunal; and
- m. It has not yet been shown that the detention facilities for the Accused and others transferred to Rwanda and convicted of violations of international law will comply with internationally recognized standards."

The full text of the brief can be accessed on the Human Rights Watch web site at <http://hrw.org/pub/2008/africa/rwanda0108amicus.pdf>.

"We were interested in shaping the factual narrative provided to us into a legal narrative that could then be presented in court," Palikovic summarized. (See sidebar for an excerpt of the brief's conclusions.)

The *amicus* brief, which was filed on January 3, 2008, argues against the June 19, 2007, motion to transfer the file of the accused, Fulgence Kayishema, from the ICTR to the Rwandan national court on the basis that the Rwandan judicial system cannot guarantee a fair trial. "There have been a number of new laws passed in Rwanda, which have conformed to international law relating to due process and other fairness concerns," Berlowitz said. "But Human Rights Watch — I can't speak for them, but I believe their position is that even though these laws have been updated, they've been updated largely in name only. Many of the procedures and safeguards don't yet exist to protect the rights of witnesses and parties if the ICTR cases are sent back to Rwanda."

In his capacity as inspector of the judicial police in the Kivumu commune, Kayishema, who is currently at large, allegedly supervised the genocide of approximately 1,500 Tutsis who were taking refuge in the parish of Nyange in April 1994. (The parish priest, Athanase Seromba, was convicted by the ICTR in 2006 for participating in the genocide.)

"It was sometimes a bit challenging in the course of a day to switch from a securities case or something similar to a case in which genocide was discussed," Palikovic commented, adding that the partners and other associates she worked with emphasized equality between pro bono matters and paying client work.

"I had a lot of support in my group, in part because it was such a weighty assignment," Berlowitz concluded. "The partners that I was working with seemed excited about it. They said 'Wow, what a great project.'"

At press time, it was not determined when the ICTR would come to a decision as to whether Kayishema's file will be transferred to the Rwandan legal system. ♦



Tiasha Palikovic



Anthony J. Diana



*"The time has come," the Walrus said,  
"To talk of many things:  
Of shoes — and ships — and sealing wax —  
Of cabbages — and kings —  
And why the sea is boiling hot —  
And whether pigs have wings."*

— Lewis Carroll

# To talk of many things

Marc Kadish

## Recharging Batteries Through Law School Teaching

I was a clinical professor for 20 years. In many ways I still consider myself to be a clinical professor, except now I do it at Mayer Brown. Teaching helps me to be a better lawyer; lawyering helps me to be a better teacher. Teaching about pro bono permits me to reflect on the issues I face daily.

This spring is the third time that I have co-taught a seminar at Northwestern Law School with Professor Cindy Wilson called, "Pro Bono: Theory and Practice." (A copy of this semester's course outline is published on our pro bono web site at [www.mayerbrown.com/probono/commitment](http://www.mayerbrown.com/probono/commitment)) This semester, Greg McConnell, Director of Public Interest Law at Winston & Strawn, has joined us as the third faculty member for the course.

One of the issues that I have been thinking about as a result of the seminar is how we measure the effectiveness of a pro bono program. Do we care about the quantity of hours or the quality of the projects? Do we measure success by the number of lawyers engaged in a minimum amount of hours, or the percentage of lawyers in the firm who accomplish these goals? Is it the financial contributions the firm makes to public interest legal organizations? Or how well the pro bono program is integrated with other goals of the firm, such as diversity, recruiting and training?

Aric Press, Editor-in-Chief of the *American Lawyer*, graciously agreed to be a guest speaker at the seminar. Aric and the magazine have been instrumental in pushing pro bono work at large firms. Their annual issue devoted to pro bono work and their pro bono rankings have made an important contribution. Yet I wonder if the rankings, which are based solely on the quantity of pro bono hours and the number of lawyers performing a minimum of 20 hours of pro bono work, emphasize quantity over quality, though, admittedly, the annual pro bono issue does feature some "quality" pro bono projects.

I think the numbers are important. In a competitive society, rankings help push us to do more. But we can't forget that doing "more" isn't the same as doing "better." In the push for higher and better numbers, let's not forget that *pro bono publico* means "for the public good." The quality of the work — both the quality of our effort and the quality of the work's impact on society — are the true measure of the effectiveness of a pro bono program.

## SPEAKING OF "PAY TO PLAY"

In this issue we address a controversy that has arisen in the pro bono community. At the recent annual conference of the Pro Bono Institute, Michael Rothenberg, Executive Director of the New York Lawyers for the Public Interest, and I debated the issue with moderation by Judge Laurie Zelon, California Court of Appeals. The workshop, titled, "Pros and Cons of

‘Pay to Play’ was described thusly:

While some law firms and in-house legal departments purposely link their charitable contributions, policies and practices to their pro bono volunteer efforts, others do not. Likewise, many public interest organizations have been concerned about linking pro bono opportunities to financial support. Nevertheless, a small number of public interest organizations are now offering “exclusive” membership opportunities that promise that more or better pro bono opportunities will be channeled to major financial supporters. This new session will explore the benefits and drawbacks of such “pay to play” arrangements, differentiate “pay to play” from integration of pro bono and charitable giving, and offer the perspectives of both pro bono lawyers and public interest organizations on the impact of this phenomenon on pro bono culture and practice.

In our “Inviting Controversy” section (starting on page 38), Greg McConnell and I discuss the issue. The debate flowed from our discussions during the Northwestern Seminar. This is not the first time this controversy has been discussed. It first reached print in a June 19, 2007, article in *The Wall Street Journal* written by Ashby Jones titled, “Law Firms Willing to Pay to Work for Nothing.” A blog article by Peter Lattman was posted later that day titled, “Some Law Firms Pay Well to Do Good. Discuss.” There was also an article written by Steven A. Nissen, a partner at Manatt, Phelps & Phillips, and Anthony H. Barash, Director of the ABA Center for Pro Bono, called, “The Influence of Donations on Pro Bono Placements” in a recent issue of the ABA journal, *Dialogue*.

People are split on this issue. The idea of being required to pay a legal services organization for the right to receive pro bono cases from them quickly polarizes opinions. I hope that Greg’s and my discussion will put the controversy in a perspective that moves the debate about this important issue forward.

#### IT’S NOT JUST THE LAWYERS

Understandably, law firms tend to focus on the lawyers. *Pro Bono Update* is no exception. Lawyers are the engines of a law firm. But Mayer Brown couldn’t operate without those who support the lawyers in their work: paralegals, document services, conference services, human resources, accounting, docketing, conflicts, attorney development, marketing. All these groups — and forgive me if I’ve left any out — help the engine get where it’s trying to go. But perhaps no group of support staff is more relied upon, but less recognized, than the secretaries. Just thinking of my own secretary, Patricia Holm, reminds me how dependent I am on her, and I would imagine most other lawyers are on their own assistants.

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Mayer Brown couldn’t operate without those who support the lawyers in their work

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I have often said that this magazine should concern itself not only with pro bono and community service but also with events in the life of this law firm. Last spring, a

number of secretaries retired from the firm. A luncheon was held in the Chicago office to honor eight of them. I was so touched by the emotions expressed by these women and their coworkers at that lunch that I decided we should include an article about the retirees (see “Retired Secretaries Reflect on Their Mayer Brown Careers” on page 42). The article serves as a reminder of how crucial our secretarial staff is to the life of this law firm. ♦



## Inviting Controversy “Pay To Play”



Greg McConnell

This magazine of course discusses our pro bono work. But occasionally, it also highlights controversial issues that arise in the pro bono arena. This is the second issue of *Pro Bono Update* in which we are “Inviting Controversy.” As set forth in my column on page 36, certain legal services organizations have begun a policy of requiring law firms to donate money to them for the privilege of receiving pro bono cases from them. Naturally, this has engendered significant debate among law firm pro bono directors. Greg McConnell, the Director of Public Interest Law at Winston & Strawn, and I have different points of view on this issue, and I thought it would be interesting to present them here. We invite comment.

*Marc: I'm aware of the distinctions between bribery and extortion and I have no problem with private bribery in this area, but I don't like to be extorted.*

Greg: I'm actually enthused by the fact that the pro bono marketplace has evolved in such a way that the pro bono agencies feel as if they have enough leverage to ask people for funding as a precondition of receiving opportunities — and also that they have the level of confidence in themselves and in their product to make that request.

*Marc: I don't like for someone to come to us and say that, as a condition of taking cases from them, we need to pay them a membership fee or pay to have the specific cases undertaken by the law firm.*

Greg: For decades we've asked the agencies to become more sophisticated, to apply business principles. And now they are. And part of that is they're becoming more business-like in how they seek donations from firms.

*Marc: I think it's great that public interest legal groups are becoming more sophisticated. And I have no problem with them becoming more sophisticated in the area of financial contributions. In a sense, this whole development is ironic because one of my jobs at the firm is to monitor our financial contributions to public interest legal groups. I've tried to develop a coherent policy to make this budget part of the operation of our pro bono program. Traditionally, financial contributions had little to do with the operation of a pro bono program. I believe we were one of the first firms to try to integrate the two programs.*

Greg: You are correct. You were one of the first firms, but what does that have to do with this controversy?

*Marc: “Pay to Play” gives the controversy a bad name. It's too narrow and misleading. I think the real question is: “How do you integrate a firm's pro bono policy with its financial contributions?”*

Greg: I understand your concerns about how some of this plays out, but I think it's also important to understand that we're really talking about a very limited number of agencies in a few markets, predominantly



Marc Kadish

New York and maybe DC, that provide business and transactional opportunities. Those organizations have more leverage than virtually any organization in the country because there is a high concentration of business attorneys in these markets and there are comparatively fewer appropriate opportunities for them — the competition is intense.

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*“For decades we’ve asked the agencies to become more sophisticated, to apply business principles. And now they are.”*

Greg McConnell

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Also, from what I have observed, there is no “pay to play” when it comes to serving the most basic, garden-variety legal needs of low income individuals. I have not observed any harm to this client segment because firms are backing away from representing their critical needs as a result of any objections they may have to how a provider agency has solicited them for funding.

*Marc: But part of the problem is that many times the firms are less interested in the cases that affect the day-to-day lives of poor people. If a more difficult or high-profile case or transactional project comes along, then the competition becomes intense. I think that organizations that do, for example, landlord-tenant cases are filling a real need. However, I would rather involve our real estate group in the creation of affordable housing through a group like the Corporation for Supportive Housing. The legal aid approach in this instance helps poor people but it does not change anything. It doesn’t help build better housing in our poor communities.*

*But this then becomes an area where financial contributions can become part of a firm’s overall pro bono policy. The firm may not take cases like this, but a financial contribution might enable the organization to hire another staff attorney who can handle these cases more efficiently than pro bono volunteer lawyers.*

Greg: Aren’t you being elitist?

*Marc: I hope not, but I don’t only want to help poor people — I want to change things.*

Greg: Some people are now talking about collaborative partnerships rather than pay to play. What is your notion of an effective partnership?

*Marc: What I regard as a model of how things should work is our firm’s relationship with the New York Lawyers for the Public Interest. I met Michael Rothenberg, their Executive Director. I was impressed with him and the work his organization is doing. We gave the organization a small donation. I brought him around to our New York office and introduced him to people. He eventually asked one of the younger partners to become a member of his board of directors. That partner is now secretary of their board, and our financial contribution to them is much greater, so we have established a collaborative partnership. There were no attempts at extortion. But it was understood that the closeness of the relationship would bespeak a financial contribution and that I have no problem with.*

Greg: Well, perhaps Michael just exerted a little lighter touch with you but ultimately, had you not come forward with a financial

contribution, you may not have been receiving those opportunities. We really are talking about a matter of how folks approach their “pay to play” system.

Let me ask you this, Marc, I have heard some firms get worked up about the idea of “pay to play” — and it always struck me that they were upset, in part, because they no longer have leverage over these small nonprofits. I think their protests are as much about bruised feelings as principled objections to “paying” for the privilege of representing a client on a pro bono basis. Do you get this sense?

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*“Where I draw the line is when an organization that we have never worked with approaches me and says they want to work with us but the “entrance fee” is money in exchange for the work.”*

Marc Kadish

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*Marc: I agree that it's a question of how people approach “pay to play.” Where I draw the line is when an organization that we have never worked with approaches me and says they want to work with us but the “entrance fee” is money in exchange for the work. We've built no working relationship — be it time or money — so I'm not going to be interested in establishing a relationship.*

*But regarding your question about bruised feelings — I don't think it's feelings, I think it's quid pro quo. If we've established a working relationship, then I don't want to see case or project opportunities disappear in 60 seconds — BUT, another solution is to develop expertise in an area and hope the group will work with you so you can make a*

*thoughtful decision before undertaking the opportunity, or expect that the other pro bono coordinators might defer to your skills and suggest that your firm might do a better job in this area. For example, if a firm has developed an “LWOP Project” (Life Without Parole for juvenile offenders) I am going to defer to their expertise, and suggest that they coordinate, handle or lead the work in this area.*

Greg: I think you are being generous ... But let's discuss the flip side of pay to play. The part of this that we're leaving unspoken is the fact that there are a number of agencies that are working very diligently to tee up wonderful opportunities for the law firm community that are well processed — by that I mean are easy to get into, easy to get out of — which I know you value highly and I value highly. There are many firms that take those opportunities and don't contribute much money at all to those agencies.

Those firms are advancing their pro bono programs. They're providing opportunities for young lawyers. But they're not really supporting the means by which they're obtaining those cases. I find that to be more objectionable than I do the agencies that are definitive about their expectations of financial support in exchange for receiving those opportunities.

*Marc: That's true. We depend on the public interest groups to help us establish a policy for acceptance of cases. I always say to people who contact me through the internet or through the telephone, “I'm sorry, we do not accept cold calls. We only accept cases that come from organizations with which we have a pre-existing relationship or an occasional voluntary court appointment.” We depend on*

*them to “vet” the case for both appropriateness of the matter, that it’s a good pro bono matter, and that the person or cause that’s getting the assistance is worthy of it and that’s fine. I think we do need to take that into account.*

*I suppose you and I could discuss this all day long and I’m not sure how much disagreement there would be any longer. I was wondering if you have any closing thoughts.*

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**“Agencies need to ... understand that firms are willing to pay for well-positioned, well-prepared opportunities.”**

Greg McConnell

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Greg: Two points. First, agencies need to continue embracing as an opportunity the increasingly high, increasingly competitive demand for pro bono work, and understand that firms are willing to pay for well-positioned, well-prepared opportunities. Agencies should use that as an incentive to either develop or better identify existing opportunities that firms can easily attach themselves to — not just the hot, high-profile cases, but opportunities that are replicable, that are manageable and that firms can absorb in large quantities. The payoff is likely to be increased contributions from firms. Second, as pro bono agencies are making their interests more explicit to the firms and their financial requests more specific, they need to approach that in a way that the firms also enter into a meaningful relationship with them, as opposed to some sort of price tag, which I think many firms

will find off-putting and may really increase the likelihood that many firms won’t engage in that relationship.

*Marc: My final thoughts would be, first, as with many other things, this whole area is getting much more complicated. When you and I first became directors of pro bono activities, it was simply, “Okay, we’ll take a landlord/tenant case or we’re going to take an uncontested divorce.” But the whole system, and the kinds of projects we all look for, are increasingly more sophisticated. Pro bono programs have become almost the same as law firm practice areas. We face the same complexities and difficulties as those practices, and that has really changed the face of law firm pro bono programs.*

*Second, I would say that where possible, the pro bono director or coordinator should have some say where the financial contributions of the firm are given. This way, you can support quality legal services organizations even when you aren’t able to assist them by taking many cases, and you can make the financial contributions part of your overall pro bono policy.*

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**“Pro bono programs have become almost the same as law firm practice areas.”**

Marc Kadish

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*Finally, these should be collaborative partnerships and relationships as opposed to simply extortion. ♦*



## Retired Secretaries Reflect on Their Mayer Brown Careers

Employee retirements result in the loss of more than just the skills and abilities of those who are leaving. When a number of secretaries, with a combined century of service time at Mayer Brown's Chicago office, retired in spring of 2007, a part of the firm's culture and institutional memory left with them.

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*"The firm has a tremendous support system, with the various departments that support all of the Mayer Brown employees."*

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Barbara Hughes

On May 18, 2007, a luncheon was held to honor eight of these women (Rhondalynn Halper, Barbara Hughes, Arlene Johnson, Joan Kern, Sophia Kozlowski, Sharon Nemanus, Andrea Pocica and Eleanor Wasielewski) who devoted so much of

themselves to the firm. With remarks from Stephen R. Wells, the firm's Executive Director, and John Holthaus, Director of Administration for the Chicago office, and many heartfelt words from the secretaries and their friends and coworkers, the event was a moving tribute to the retirees.



Rhondalynn Halper

Eleanor Wasielewski joined the firm as a part-time secretary in 1988. "We knew everything that our lawyers did," she said. "Their clients could call us when they were out of town and we could say 'Okay this is what's going on, this is what's happening when.' We were the attorneys' right hand."

"If you were hired by Mayer Brown, it meant you were 'hot stuff,'" added Andrea Pocica, who met a number of city and state political figures during her 18 years with the Government practice. "I especially enjoyed working with the government group because I would know that something was going to happen, and then I'd read it in the paper, and it was like, 'I knew this was about to happen! I helped with that deal.'"



Arlene Johnson  
1937-2007



Barbara Hughes

"Back then secretaries did paralegal work because they didn't yet have the paralegals who would go out and do discovery," said Rhondalynn Halper, who began working at Mayer, Brown & Platt in 1983, and who undertook some interesting matter-related travels early in her tenure, including a snow-plagued overnight run to secure client signatures.

While the widespread introduction of legal assistants or paralegals brought some changes to Mayer Brown, other factors also influenced the firm's evolution, including one that has impacted virtually the



Joan Kern



*Sophia Kozlowski*



*Sharon Nemanus*



*Andrea Pocica*



*Eleanor Wasielewski*

entire global workforce: the widespread implementation of information technology.

“I think technology brought a major change to my job,” noted Joan Kern, who came to the firm in 1997 at the urging of a former co-worker. “We were encouraged to take training classes to keep up with everything. The more you did so, the more you helped your attorneys.”

For Sophia Kozlowski, working at Mayer Brown meant sharing the workload with all of her co-workers, as she tried to do beginning with her first workday back in 1984. “I would always go around and ask ‘Do you need help with something, do you need help with something?’” recalled the trilingual (English, French and Polish) Kozlowski, a onetime Document Services worker who moved to a secretarial role in order to work more directly with lawyers.

“The firm has a tremendous support system, with the various departments that support all of the Mayer Brown employees,” said Barbara Hughes, who enjoyed 15 years with the firm — especially the latter half of her tenure, when she worked as a “floater” and got to work in virtually every practice area.

“I worked with Julian D’Esposito for 18 years. I watched his kids grow up and he watched my kids grow up,” noted Pocica, who fondly recalls the brief catch-up sessions the two would hold each morning. “Two of my attorneys, I went to their weddings.”

“Working at Mayer Brown was just an all-around great experience,” said Sharon Nemanus, who joined the firm in 1995 and retired to San Antonio, Texas. “It was a good company to work for; they were very fair.”

“My fondest memories are the relationships that I established,” Hughes concluded. “I didn’t realize until I left how much a part of my life they had become. I worked with a diversity of personalities that enhanced my perspective on life.”

Needless to say, the diverse personalities who shared their thoughts with us for this article also enhanced all who they worked with through their tireless behind-the-scenes efforts. ♦

I’ve written poems for others, but it’s time for my own

Here’s my life story while here at Mayer Brown  
The date was March 13th 1989

A day that upon me the job gods did shine  
I took all their tests. Can you type? Can you file?

I can do all those things, and some with a smile.  
Well they hired me anyway and told me I’d float

That’s just fine with me, I won’t rock the boat.  
But a day soon did come and they sent me to see  
Julian D’Esposito with a nickname of “T”

I visited with him without any thought

A job interview? What’s this all about?

A couple days later I picked up the phone

“You’re no longer a floater, you’ve a job all  
your own.”

And 18 years later, the job was still mine

So I guess Mr. T liked me just fine

...

If I’m reading this out loud, I’m probably in tears

Because I have fond memories of eighteen  
great years

As I retire and a new chapter will start

Please know you all hold a place in my heart.

Andrea Pocica

“I was mildly but pleasantly surprised that the argument went quite as easily as it did,” Falk added. The Ninth Circuit then lifted the injunction against Oey.

“The purpose of taking the representation originally was because freecycling is a grassroots movement to encourage the continued use of products that would otherwise be thrown away by giving them to new users. It saves resources, allows someone who might not be able to afford to buy the item to get it for free, and avoids adding to landfills,” Feinberg commented. “We thought it was important to establish the right of people to use ‘freecycle’ as a one-word description of the generic, socially responsible act. That is still yet to be decided in the Northern District of California action. But we did establish in the Ninth Circuit case that it isn’t illegal to commit, or attempt to commit, ‘genericide.’ In other words, to use a term that an entity claims as its own, as Bayer previously did for ‘aspirin’ and as The Freecycle Network now does for ‘freecycle,’ as the generic description for an entire class of products, with the result that any trademark rights are lost. That was a major undecided issue in US trademark law, a huge state-of-the-art issue.”

In the Northern District of California declaratory relief action, the court issued an order regarding our client’s supplemental motion for summary judgment in March 2008. The district court granted FreecycleSunnyvale summary judgment that it had not engaged in unfair competition or infringed any of The Freecycle Network’s trademark rights by using the word freecycle or the freecycling logo because “[The Freecycle Network] abandoned its control over the term [freecycling] and logo when it allowed [FreecycleSunnyvale] and others to use them without exercising adequate control over the services provided” and that The Freecycle Network had not recaptured any of its trademark rights as against FreecycleSunnyvale. The court also applied the Ninth Circuit ruling and held that encouraging others to use a word generically could not be trademark infringement. But FreecycleSunnyvale’s tortious interference claim and The Freecycle Network’s California unfair competition claim both remain in the case, and the Arizona action remains pending at press time. ♦

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*Recent European Initiatives continued from page 20*

training session on cognitive interviewing and a lunch where the delegates were able to meet Mayer Brown lawyers.

Other recent UK initiatives include the Liberians in Diaspora project (see “The Healing Power of the Law” on page 2) and a new mediation advice clinic at the RCJ Advice Bureau’s High Holborn offices in Central London. The MAC is one of only three such clinics, which have been conceived by LawWorks, the UK’s leading pro bono organisation, as a service to Citizens Advice Bureaux and their clients. More than 20 Mayer Brown lawyers have been trained and now attend the clinic on a two-week rotation, advising members of the public with disputes on how mediations work and, where appropriate, referring them to the free mediation service provided by LawWorks. ♦

## About Mayer Brown

Mayer Brown is a leading global law firm with offices in key business centers across the Americas, Asia and Europe. We have approximately 1,000 lawyers in the Americas, 300 in Asia and 500 in Europe. The firm's Asia presence was enhanced by its 2008 combination with JSM (formerly Johnson Stokes & Master), the largest and oldest Asia law firm. (In Asia, the firm is known as Mayer Brown JSM.) This unequalled on-the-ground presence in the world's leading markets for legal services enables Mayer Brown to offer clients access to local market knowledge on a global basis.

Mayer Brown is noted for its commitment to client service and its ability to assist clients with their most complex and demanding legal and business challenges worldwide. The firm serves many of the world's largest companies, including a significant proportion of the Fortune 100, FTSE 100 and DAX companies and more than half of the world's largest investment banks. Mayer Brown is particularly renowned for its Supreme Court and appellate, litigation, corporate and securities, finance, real estate and tax practices.

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