

MAYER • BROWN

# Pro Bono Update

Summer 2009

across **ISSUES**

across **BORDERS**



# About

This issue of *Pro Bono Update* illustrates the breadth of our program and demonstrates its guiding purpose: Attacking systemic problems while offering the benefits of our leading global law firm to individuals, NGOs and governments alike. From the smallest, most personal case to the largest, most important issue, our pro bono program answers the call.

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# The List Project: Saving Iraqi Lives

*Pro Bono Update* readers who are interested in learning more about The List Project or making a financial contribution can do so by visiting [www.thelistproject.org](http://www.thelistproject.org).





Since the start of the US intervention in Iraq, more than 1.6 million Iraqis have left the country, and

nearly as many have moved within Iraq in an attempt to escape the violence. Among these are thousands who risked their safety and their lives serving as what the State Department refers to as “locally engaged staff” — people marked for death by Iraqi insurgents who consider them to be collaborators.

One such man, an Iraqi national who had worked for the United States Agency for International Development (USAID), received a death threat in October 2006 after an Iraqi militia identified him as a collaborator. After he was unable to obtain support or protection from the US government, he fled to the United Arab Emirates and wrote to Kirk Johnson, a former USAID colleague who had recently returned home to the United States from Iraq.

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“I felt compelled to work with Mayer Brown because of the firm’s Guantanamo Bay work and other cases that they had handled.”

**Kirk Johnson**

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With no meaningful ties to any authorities who could help his Iraqi friend, Johnson instead employed the power of the press. On December 15, 2006, the *Los Angeles Times* published an opinion piece by Johnson that laid out his friend’s experience, the broader humanitarian crisis and the many challenges that Iraqi refugees face in trying to gain legal entry into the United States.

Soon after, Johnson started to hear from other Iraqis he had worked with, all sharing their own tales of persecution and exile and asking for his help. He began to create a list of these people in need.

## From List to Project

Johnson traveled to Washington, DC, in February 2007 to present his list to the State Department, which had announced it would admit 7,000 Iraqi refugees in fiscal year 2007 and create a task force to study the crisis.

On June 20, recognized as “World Refugee Day,” Johnson launched his nonprofit organization, The

List Project to Resettle Iraqi Allies. At that time, the United States had accepted just over 100 Iraqi refugees. By comparison, Sweden, a country that was not among the Coalition of the Willing, had already admitted more than 18,000.

The List Project scored a major success in August 2007 when the Iraqi man who had first contacted Johnson from the UAE was resettled, along with his wife, to live with Johnson’s family in the Chicago suburbs. That same month, The List Project partnered with Upwardly Global, an organization that helps refugees find employment suitable to their education and professional backgrounds.

By the end of 2007, Johnson’s list grew to more than 700 names. “All of this started with an attempt to help one person,” Johnson said. “It’s kind of staggering to think back about the torrent that followed.”

## Moved to Act

Late in 2007, Mayer Brown litigation partner Anthony Diana of the New York office attended a Human Rights First fundraising dinner with then-associate Asieh Nariman. One of the speakers was an Iraqi refugee who had survived an attack that took her husband’s life after militants discovered that she had worked as a translator for Western journalists.

“I was sitting next to Asieh, and she told me that this was the type of thing that she would love to get involved with,” Diana said. “I said, ‘Look, if you want to do something like this, you just have to take the initiative.’ So she took that advice.”

“Anthony had me talk to the head of our pro bono program in New York, and I said, ‘I think that we need to get involved. We need to lobby the government on a policy level and we need to get involved in helping refugees come here,’” Nariman said. “We then spoke with



Anthony Diana



Marcia Maack



Basma Zaiber

Marcia Maack about what we wanted to do, and she said she would find some opportunities for us.”

As Mayer Brown’s assistant director of pro bono activities, Maack was aware of The List Project — two other major law firms, Holland & Knight and Proskauer Rose, were already working with The List Project. She met with Johnson to initiate discussions, which were furthered when several other Mayer Brown lawyers met Johnson at a benefit for The List Project.

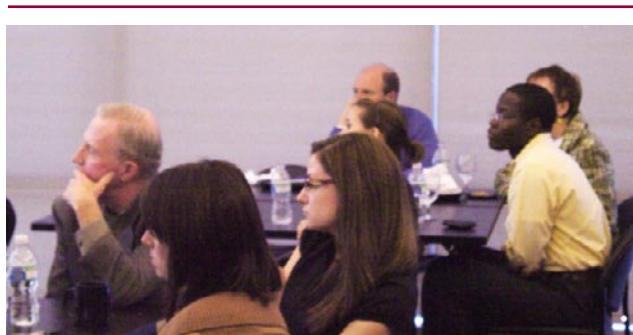
“We talked with Johnson and other project participants to express our interest and our confidence that Mayer Brown had something to offer,” Diana recalled. “We didn’t have any particular expertise in immigration law and certainly didn’t have the experience that Proskauer Rose and Holland & Knight had, because they had both been working on this issue for quite some time prior to working with The List Project. Our view was that Mayer Brown is willing to tackle all kinds of pro bono cases. I was confident that we could learn the relevant law and get up to speed on its practice in short order.”

“I felt compelled to work with Mayer Brown because of the firm’s Guantanamo Bay work and other cases that they had handled,” Johnson said. “They clearly have a pretty strong ethical bearing.”

Following a successful pilot, Mayer Brown was officially named as a partner to The List Project in April 2008.



Kirk Johnson, Marc Kadish and Daniel Whitmore



“Mayer Brown is now responsible for saving a lot of lives through this project.”

**Kirk Johnson**

## A Partner to the Project

More than 80 Mayer Brown lawyers across the United States eagerly volunteered when Maack first put out notice about the opportunity to work with The List Project.

“The response was tremendous,” Maack said. “In addition to the associates, a number of

partners and counsel wanted to be involved — not just as supervisors, but actually taking cases. The plight of these translators and other Iraqis, who have sacrificed so much for the United States, clearly resonated within the firm.”

According to Maack, the majority of the Mayer Brown volunteers are finance, corporate or real estate associates, not litigators. For this reason, the skills associated with witness preparation are emphasized in the firm’s List Project training program.

“After we did the pilot program we decided to develop new training materials to improve and streamline the process,” Diana commented. “We came up with a very detailed questionnaire that the attorneys give to their clients. It basically tracks the questions that the clients will be asked throughout the screening process. We also collected all of the different statutes and drafted up a witness prep outline. The material made it easy for each new lawyer to get up to speed quickly and apply a consistent approach.”

To help manage the program, the firm employs a paralegal dedicated to List Project work. This paralegal, Basma Zaiber, works closely with Maack to coordinate the firm’s work on the cases.

A former USAID employee, Zaiber has a degree in computer science and has studied business in Jordan. She fled Iraq in August 2005 after receiving menacing messages about her employment with USAID. With the help of The List Project, she and her family were admitted to the United States in February 2008.

“I match cases to attorneys, schedule calls with our Iraqi clients and participate on calls when they need

help with translating,” Zaiber said about her role. “I also prepare the forms or help attorneys fill out paperwork, and maintain a database in which I input client information and details about their cases.” Merrill Corporation donated the Lextranet® web-based database.

“Basma is invaluable to our work for The List Project,” Maack commented. “In addition to helping us coordinate this massive undertaking, she serves as a cultural bridge to our clients. She understands firsthand the refugee process and what our clients are going through.”

### A Long-Distance Relationship

To gain entry into the United States, Iraqi refugees typically go through a series of one-on-one screening interviews conducted on behalf of the US State Department. The applicants must provide proof of their identity as former employees of American forces or contractors working in Iraq, and details on the persecution they have suffered as a result. The final interview is with the Department of Homeland Security; those who are approved for entry by DHS must then undergo medical and security clearances before they and their immediate families are allowed to enter the United States.

Applicants typically find out about their interviews only one day in advance, and they are not allowed representation. As a result, extensive preparation is essential for success. Lawyers try to prepare the applicants by conducting mock interviews and giving feedback. Due to time zone and language issues, the preparation process can be complicated, with most of the work conducted via telephone and email.

Cases can take a year or more to resolve. But in especially urgent cases, or where a case has stalled, lawyers have directly contacted the State Department or DHS in an attempt to expedite the process.

“Part of the problem is a lack of federal government resources,” Nariman said, explaining why the refugee application process usually takes so long to reach its conclusion. “It is truly a matter of life and death for these Iraqis; they’re living in dangerous areas. There are people who are very much set on killing our clients



Laura Reilly (L) and Basma Zaiber (R) with client

who have detailed information about them as well as their families and friends.”

“The List Project work is particularly helpful in teaching newer lawyers how to deal with client issues,” Diana said. “One of the things that we impart to them is that they’re responsible for this person’s life, and these representations have to be their top priority. I think that’s an important lesson, because when you’re more senior, client responsiveness is essential. It really gives a junior lawyer that sense of ownership that we’re always preaching.”

“Mayer Brown was the first firm that joined the project without firsthand Iraq experience,” Johnson commented. “They came in cold, but within a few months had devoured every bit of information and mastered the process. That was really exciting, and it demonstrated what a good firm can do if it really commits to the program. Mayer Brown is now responsible for saving a lot of lives through this project.”

### An Ongoing Crisis

Despite the best efforts of The List Project and other humanitarian organizations around the world, the Iraqi refugee crisis continues — even as the issue falls out of the public’s attention.

“I think a lot of Americans now believe that Iraq is all tied up, that it’s peaceful and everybody can go home. But what has been lost in all of this is the recognition that the stigma faced by the Iraqis who worked for us hasn’t abated at all,” Johnson commented.

While those Iraqi refugees who are granted access to the United States enjoy an increased level of safety, issues remain around their standard of living.





Kirk Johnson (R) with an Iraqi ally and a co-worker

“Some of those who have arrived in the US via The List Project have been disappointed with their economic opportunities,” Nariman explained. “The benefits they have received are insufficient, especially because so many of them have been living off of their savings and selling whatever they owned because they had to wait so long to get here.

“They’ve been asked to take whatever job is available. It’s a huge shock, because they’re highly educated people who once held very sophisticated jobs. Now they’re being asked to do something like work at a fast-food restaurant, and they just cannot comprehend how this can be because they can do so much more. They are doctors, engineers, people who speak multiple languages.”

While agencies and non-governmental organizations such as Upwardly Global have helped, the current economic crisis is adding to the challenge. Pamela Nehring, Senior General Attorney to Mayer Brown client BNSF Railway, was so moved by the urgency of the situation that she began working with The List Project on a semiformal basis in the latter half of 2008 to try to find placements for list members, especially those with engineering backgrounds.

“We in the business community may not be in a position to save Iraqi lives, but we can and should try to save their livelihoods here in the US,” Nehring remarked. “The response from the people I’ve talked to about getting jobs for these Iraqis has been wonderful. I’m interested in expanding these efforts, and I encourage anyone who wants to help by shepherding a resume through their company’s application process, or by sharing a job opportunity for these Iraqi engineers, IT professionals, translators and teachers to get in

touch with me.” (Nehring can be reached via email at [pamela.nehring@bnsf.com](mailto:pamela.nehring@bnsf.com).)

Nehring also reported that during her networking activities she has found two other professionals who are conducting similar grassroots efforts. “People think the Iraq war is over and the situation is solved,” she said. “But it isn’t, and if we don’t take care of our friends and allies now, we won’t have any down the road.”

Through the first half of 2009, 91 Mayer Brown lawyers have worked on 103 representations; these have resulted in 18 US admissions, with several more approved pending security clearance. The firm was a co-recipient of the 2008 *National Law Journal* Pro Bono Award for its work with The List Project.

“The list includes nearly 3,000 names now, and there is no sign of it slowing down. Almost 350 Iraqis have now made it off the list and into the US,” Johnson reported. “The US government still doesn’t have an official count of the number of Iraqis it has employed. My sense is that we’re looking at up to 50,000.



“[I]f we don’t take care of our friends and allies now, we won’t have any down the road.”

**Pamela Nehring**

“Now we’re planning to push for what we believe is the ideal solution to this crisis within the context of our upcoming withdrawal from Iraq. We recommend bringing all list members to the safety of a military base, where the folks from the Department of State and Homeland Security can conduct background checks and interviews while we keep the Iraqis safe. We did this in 1996, when the US airlifted 7,000 US-affiliated Iraqis to Guam during Operation Pacific Haven. And our allies have all flown their Iraqi staff directly to their country to process them there. We’re going to the White House with this, as well as State and DHS. That’s going to be our big push over the next year, while at the same time we continue providing the one-on-one legal assistance to try to help our Iraqi allies through the process that currently exists.” ♦



# On the Leading Edge of Pro Bono Criminal Defense Work

More than half of all US states spent less than \$10 per capita for indigent criminal defense services in 2005, according to a report by indigent defense advocacy organization, the Spangenberg Group. Despite the Sixth Amendment's guarantee of representation, defendants who cannot secure private counsel typically do not receive the same quality of representation as those defendants who can.

"In talking to people all across the US about the state of indigent defense, there is clearly a crisis. There is inadequate funding to ensure that people are getting quality representation," said Rick Jones, executive director of the Neighborhood Defender Service of Harlem and lecturer in law at Columbia University Law School.

"Caseloads are also out of control; in some places you have lawyers who have 400 or 500 clients at a time. There's just no way anybody, even the best lawyers, can provide quality representation with a caseload that large. Training is also an issue; people are just not being sufficiently trained to do the work — criminal defense work is complex and complicated."

One channel for relieving some of the pressure on the public defense system is pro bono representation by private law firms. "Mayer Brown is one of the few

firms that have become involved in representing indigent defendants. Most large firms have not," Jones commented. "When large law firms commit to these efforts, and do so in a meaningful way, they can bring tremendous resources to the undertaking. If more firms would commit to developing in-house capabilities and engage in some of the more complex and serious cases, like representing people in murder cases at the trial level, then certainly they would bring resources to bear that many public defender's offices simply can't."

A 2005 study published by the American Bar Association's Standing Committee on Pro Bono and Public Service entitled *Supporting Justice: A Report on the Pro Bono Work of America's Lawyers* found that of those lawyers who reported doing pro bono work, fewer than 20 percent did so in the criminal law field, despite the clear benefits of working on criminal cases.

"Any civil litigator who undertakes this kind of work will tell you that they come out of the experience a better trial lawyer and a better negotiator," Jones said. "It makes you a better lawyer in a lot of ways: from out-of-court skills such as client relations, negotiating and strategizing to such in-court technical skills as picking a jury, giving an opening and closing statement and cross-examining witnesses. It makes you a more confident civil litigator once you've had that experience."



Mayer Brown's programmatic approach to pro bono criminal defense work dates back a decade, when Marc Kadish, the firm's director of pro bono activities and litigation training, first approached Cook County Judge James Linn about gaining court experience for associates in Judge Linn's Chicago courtroom (see article in the spring 2007 *Pro Bono Update*). Mayer Brown's Chicago office has since taken approximately 30 pro bono criminal defense cases, including 15 murder cases. Many of the firm's other US offices have also made it a practice to handle criminal defense trials.

According to Jones, in an article he wrote for *The Champion*, the magazine of the National Association of Criminal Defense Lawyers, together with only a few peer firms, Mayer Brown represents "the gold standard" for firms with a complex indigent defense trial practice.

### Providing High-Quality, Impassioned Representation

"The level of quality that Mayer Brown brings to a pro bono defense, compared to solo practitioners, can make a tremendous difference in criminal proceedings," noted New York-based Mayer Brown litigation associate Shane Kelbley, who helped win former New York City police officer Richard DiGuglielmo Jr.'s 2008 release from prison.

DiGuglielmo was convicted in 1998 of depraved-indifference homicide in the shooting death of a man who was attacking DiGuglielmo's father with a baseball bat. "Our work is thoroughly reviewed, 'blue booked' and cross-checked. There's no missing anything in these matters. I think defendants who receive pro bono representation from big firms like Mayer Brown benefit tremendously."

"It's rare that you get an opportunity to work on a case like this one, which involves a cause that is genuinely in the service of justice for a person who never should have been in jail for ten years," added Brian Willen, a former Mayer Brown associate who also worked on the DiGuglielmo case. "Being part of a team that ultimately makes a difference between someone spending perhaps the rest of his life in a small cage and someone being out and having his life back is a pretty remarkable thing."



Mayer Brown represents "the gold standard" for firms with a complex indigent defense trial practice.

**Rick Jones**

Led by New York partner Andrew Schapiro, the team successfully argued that a key witness had been pressured by police between the time of his initial statement and his appearance at trial to change his version of the events leading up to the shooting.

"The state fought everything," remarked Schapiro, who first began working on the case in 1999, shortly after DiGuglielmo was convicted and given a prison sentence of 20 years to life. "We had to file hundreds of pages of briefings along the way just to get this hearing. Brian and Shane did that. They calmed down our witnesses. They sat with and held the hands of the family, and they're working side by side with me on the state's appeal."

DiGuglielmo was released from prison in September 2008 after a Westchester (New York) County judge threw out his conviction, ruling that prosecutors had withheld evidence about their treatment of eyewitnesses. The county district attorney has appealed this decision.

A thorough, team-based approach also proved key to Mayer Brown's pro bono representation of Abraham Lesnik, a former Boeing scientist who was charged with unlawful retention of national defense information after federal agents found in 2006 that he had wrongly taken several hundred documents to his home. After pleading guilty to a single count of



Allison Benne



Lisa Cornehl



Heather Lewis  
Donnell

## Support the NDS

A nonprofit public law office, the Neighborhood Defender Service of Harlem strives to make justice a reality for those farthest from its reach through an innovative approach that involves civil and criminal lawyers, social workers, investigators, paralegals, and college and law school interns in the aggressive defense of its clients. NDS is located in the community it serves, and its neighborhood-based office fosters the development of strong relationships with clients and their families to facilitate the investigation and preparation of cases.

Interested parties can contribute funds to the NDS via JustGive at [www.justgive.org](http://www.justgive.org).

retaining national security information in 2008, the 68-year-old Lesnik faced a government recommendation for a four-year prison term and a six-figure fine. Partner Marc Harris and associate Lisa Cornehl from Mayer Brown's Los Angeles office performed extensive research into similar cases in order to support their argument that the penalty sought by the federal prosecutors was excessive.

"We went through every 'mishandling' case that had been brought by the federal government in the last 40 years and described for the judge the facts of each case," Harris recalled. "We also scoured the public record to find data proving that hundreds, if not thousands, of cases similar to Dr. Lesnik's had been resolved without charges ever being filed. Even in those cases where charges were filed, there were just a handful in which a jail sentence was imposed.

"Our job at sentencing was to convince the judge that these outlier cases should not be used as precedent in Dr. Lesnik's case, and that a felony conviction, accompanied by the loss of his career and a sentence of probation, was punishment enough."

"There's no way that a public defender, or even a small private firm, is going to be able to do this level of work," noted Kadish. "They just don't have the time or the resources."

Based on the defense presentation, the court sentenced Dr. Lesnik on December 8, 2008, to three years of probation and a \$25,000 fine.

"I always encourage younger attorneys to think about issues and causes and institutions that are important to them in their life and that may need the assistance of a firm like Mayer Brown, and to think about ways to bring pro bono work into the firm," said Chicago litigation associate Steve Sanders. "It's good for those organizations or individuals, and it's good for the firm. Just as importantly, I think it helps attorneys feel a more personal connection to the work that they do, and helps them feel like they have more control over their professional lives."

## Utilizing a Global Firm's Resources

Firms such as Mayer Brown enjoy resources that are not always available to public defenders — resources that can make a tremendous difference in a criminal matter.

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"I always encourage younger attorneys to think about issues and causes and institutions that are important to them in their life ... and to think about ways to bring pro bono work into the firm."

**Steve Sanders**

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"Pro bono programs help a lot of people who would really just get lost and not receive adequate representation," commented Chicago litigation associate Nicole Highland, who served a one-year internship in the Cook County public defender's office prior to joining Mayer Brown. "Not to downplay the resources of our government, but they're just not sufficient to handle the caseload that's out there."



Robert Entwisle



Marc Harris



Nicole Highland



Highland worked with Chicago associates Heather Lewis Donnell and Sarah Reynolds on the defense of Aurelia Gonzalez, who was charged with multiple counts of kidnapping. Gonzalez, a mother of four who had a history of mental illness and an IQ below 60, was no longer able to have children but pretended to be pregnant in 2005. This fake pregnancy culminated in her visiting John H. Stroger Jr. Hospital in March 2006, where she spotted a couple from her neighborhood with their infant daughter. When the mother received a phone call at the same moment that the father was called up to fill out some paperwork, Gonzalez offered to hold the baby. The father assented, and Gonzalez walked away with the infant, who was in her possession for approximately 10 minutes before the police took the baby back after being alerted to her whereabouts at nearby Rush Hospital.

The Mayer Brown team undertook extensive research on mental health and worked with a psychiatrist and psychologist to prepare for the January 2008 trial. Although Gonzalez was found guilty of aggravated kidnapping and unlawful restraint and sentenced to six years, she was also found to be mentally ill, and so eligible for mental health treatment while serving her time. On June 8, 2009, however, the First District Appellate Court overturned the aggravated kidnapping conviction, shortening the defendant's sentence to three years.

"It was rewarding to be an advocate for someone who otherwise would not have had the kind of resources that Mayer Brown was able to marshal on her behalf," commented Donnell. "I believe that our team provided our client the best defense that she could get and we will continue to do so through the appellate process."



Shane Kelbley



Justin McCarty



Alison Ross



"If every law firm took on the representation of one or two individuals in complex murder cases in their jurisdiction each year, it would take a tremendous strain off of the public defender offices."

**Rick Jones**

## Developing Better Lawyers

While some aspects of criminal law typically prove challenging to civil-focused lawyers, most who have undertaken pro bono criminal representations concur that the experience made them better lawyers.

"I think that indigent defense provides balance for us by keeping us engaged in the community while exposing us to a different aspect of the justice system," remarked associate Alison Ross from the New York office, who has been working with fellow New York associate Allison Benne and a team from the Neighborhood Defender Service of Harlem (NDS) on the defense of Natavia Lowery, accused in the October 2007 murder of celebrity real estate agent Linda Stein. "It reinforces our practice at Mayer Brown because we have the opportunity to think critically about different issues and how to come to a problem from a different perspective. I think the more time you get to practice those skills, the more you reinforce the analytical work that you're doing at the office."

"We drafted our very first motion for this case, and were able to act as the stand-in for the prosecution during mock oral arguments," Benne noted, commenting on the experience that she and Ross have obtained on the Lowery matter. "We were able to do our first direct and cross-examinations. So we've gained new legal training and tools and skills. It has also been a great opportunity for us to probe the deeper questions about what justice means, especially in the criminal justice system, where it is a little tricky to navigate."

"I very much enjoy the increased responsibility and leeway in what you get to do on a pro bono criminal representation," commented Chicago litigation associate Justin McCarty.

Working under Kadish, McCarty, with then-summer associate Robert Entwisle, took on post-trial representation of convicted murderer Daniel Lucas. Lucas and five others were charged together but tried separately for a double murder. Although not accused of the actual shooting, Lucas was found guilty of aiding and abetting the murders. The Illinois statute seemed to call for a natural life sentence. At sentencing McCarty was able to convince the trial judge, Judge Linn, that Lucas could be given less than a life sentence because of his minimal involvement.

"The work tends to be qualitatively different than what you do working for big clients," said McCarty. "I've been doing a lot of accounting malpractice work, which is very different from working in the criminal justice system. So it's a nice change as well."

"We were able to do our first direct and cross-examinations. So we've gained new legal training and tools and skills."

**Allison Benne**

Steve Sanders argued before the Illinois Supreme Court in support of Judge Linn's sentence in Lucas' case. "When you're working on something that's of great interest to you, you're going to be happier in your work," he said. "I've appreciated the opportunities that Mayer Brown gives to take on interesting pro bono matters."

"I'm used to doing civil litigation with big corporations, where there is no one person who you're helping," commented Cornehl in regard to her work on the Lesnik matter. "This was not a life-and-death matter *per se*, but we were fighting for a man's livelihood. It made the matter more challenging — I wanted to help him and found that I was much more nervous about it than any other case that I've worked on. Pro bono work has proven to be a great way to round out my experience and has added to my development as a lawyer."

"We received great trial experience, which can be hard to come by at a large firm early on in your career," Reynolds noted in recalling her experience with the Gonzalez case. "That was definitely the best part."

"I think that indigent defense provides balance for us by keeping us engaged in the community while exposing us to a different aspect of the justice system."

**Alison Ross**

## Working Toward Best Practices

According to Rick Jones, some firms shy away from criminal defense representations due to the time commitments that pre-trial preparation and the trial itself require. Corporate-focused firms tend to be wary of the potential for unfavorable publicity due to association with a criminal matter. Others may believe that they lack the in-house expertise to give meaningful criminal representation.

"I really think that every major law firm ought to have an indigent defense department," Jones asserts. "In the same way that they've got a corporate law department, a tax law department and a white-collar litigation practice, they ought to have a dedicated staff that does pro bono work and works on indigent defendant cases in state court."

In the interim, firms can benefit by developing a formal in-house program dedicated to pro bono work, including indigent defense. Doing so helps develop a culture receptive to pro bono efforts while offering the opportunity to broaden lawyers' experience base.

"If every law firm took on the representation of one or two individuals in complex murder cases in their jurisdiction each year, it would take a tremendous strain off of the public defender offices," Jones concluded. "These firms are uniquely positioned to ease the pressure on the public defense system and everybody would win. The judicial system wins, the court system wins, the clients win, the bar wins and the law firms and their individual partners and associates win via the experience gained in trying these cases." ♦



Sarah Reynolds



Steve Sanders



Andrew Schapiro

In 2006, Mayer Brown began working with the Girl Scouts of the USA in Illinois and Northwest Indiana on a project to merge seven separate councils into a single, new council that would be the largest in the nation. The project took more than two years to complete and involved associates and partners from several different practices.

Since its founding in 1912 as a troop of 18 girls in Savannah, Georgia, the Girl Scouts organization has undergone rapid growth. Domestically, the Girl Scouts of the USA now encompasses 3.7 million youth and adult members who work together to develop their full individual potential and improve society.

The leadership of Girl Scouts of the USA undertook a new initiative in mid-2004 to develop a strategy for its future growth and success. An assessment of the Girl Scout experience and the organization's strengths, challenges and imperatives for success led to the establishment of five strategic priorities, including a focus on organizational structure and governance that included the realignment of 312 national councils into 109 in order to make better use of resources.

"We are regularly presented the opportunity to perform litigation-type work in the pro bono area," commented Trent Anderson, a former Mayer Brown partner who helped steer the project to the firm through the Chicago Community Trust. "But it's

difficult to get large-scale transactional projects that are similar to what many of our lawyers do for a living. The Girl Scout merger project presented a tremendous opportunity for us that we eagerly agreed to undertake."

While most of the team members had merger experience, none had ever worked on a deal that combined seven separate corporations into a single body — an aspect

that added significantly to the challenge.

"When we work on a merger we generally have two entities. But here we had people coming from seven different entities who each had different expectations," noted corporate and securities associate Rachel Ponton. "Giving fair consideration to everyone's ideas while trying to get the project completed was challenging; our role was

to facilitate the merger process and help them work through different legal issues as they surfaced."

"With seven different parties involved, there were a lot of moving pieces and individuals and information to sift through," added real estate associate Kara Harchuck. "For instance, there were real estate issues in each of the former councils that had to be worked through, some of which had mortgages and bonds that needed lender consent to be transferred into the new entity. Gathering and completing all of the paperwork and files, and getting everybody from the Girl Scouts and external parties on the same page, was somewhat challenging."

## Helping Seven Girl Scout Councils Become a SINGLE, Stronger Body



Trent Anderson



Tom Bottomlee



Stacey Braybrook



Lacey Cordero



Rebecca Davenport



The associates who worked on the project rose to the challenge. “While I typically interact with clients and help them in certain areas, I usually do not directly provide legal advice like I did while working with the Girl Scouts. I was able to take on some duties that are typically performed by a more senior attorney,” commented corporate and securities associate Lacey Cordero. “Rachel Ponton and I were on call with the Scouts as legal advisers. It was a really great experience to serve as a point person.”

“It was very satisfying to see our junior corporate lawyers take on leadership roles,” said corporate and securities partner Angela Lang. “Pro bono work allows them to deepen their experience through increased hands-on client contact and more responsibility. They really ran with it and helped drive the merger through to completion.”

**“I was able to take on some duties that are typically performed by a more senior attorney.”**

**Lacey Cordero**

Over the course of two years and more than 600 pro bono hours, the Mayer Brown team worked through a variety of corporate, ERISA, real estate and tax issues with and on behalf of the Girl Scouts. The team also included tax partner Tom Bottomlee, real estate associate Stacey Braybrook, compensation and benefits associate Rebecca Davenport, ERISA associate Christine Matott and tax associate Julia Skubis.

“Mayer Brown was a true partner,” remarked then-interim CEO of the Girl Scouts of Greater Chicago and Northwest Indiana Mary Beth Malm at the firm’s November 2008 pro bono awards ceremony. “The team helped us work through many moving parts,

**“Your pro bono support is an extraordinary investment in our girls.”**



Mary Beth Malm with Fritz Thomas

from the bylaws to our HR policies and practices to the real estate bond transfers, state filings, merger documents and many other items.”

The completion of the merger on June 30, 2008, launched the nation’s single-largest council — with 94,000 girls and 24,000 adult volunteers from 245 communities in Illinois and Indiana operating more efficiently with reduced overhead and consolidated office space. A new corporate office for the council in downtown Chicago provides ready access to crucial resources and strategic contacts within the city, along with a variety of public and private transportation options.

“We believe that this new council is greater than its individual parts, and will strengthen Girl Scouts in our area,” Malm said. “The merger makes smart business sense, and will ensure a solid, fiscally responsible business operation. It brings together an incredibly vast array of resources to better serve girls.

“Mayer Brown has left a legacy that will be long remembered by the girls we serve,” she concluded. “Your pro bono support is an extraordinary investment in our girls.” ♦



Kara Harchuck



Angela Lang



Christine Matott



Rachel Ponton



Julia Skubis



Tuol Sleng (Museum of Genocide)

## Teaching Trial Advocacy in Cambodia

by Marc Kadish

On April 17, 1975, the Khmer Rouge captured Phnom Penh and emptied the city of all its inhabitants. Emptying the city turned out to be the prelude to their four-year genocidal rampage, which included most of the Cambodian legal profession.

On April 15, 2009, I arrived in Phnom Penh to work with Steve Austermiller from the ABA's Rule of Law Initiative to teach trial advocacy to a new generation of Cambodian lawyers.

I spent my first day in the city visiting Choeung Ek Memorial (The Killing Fields) and Tuol Sleng (the Museum of Genocide). It was a solemn precursor to teaching about the adversarial system of justice and the rule of law. The Killing Fields were about 10 miles south of the city, at the end of a small street with houses. The area was about two acres in size and only

took 30 minutes to cover. I wondered if the street and the houses were there during the genocide. If so, did the inhabitants know what was taking place?

The Museum, which was first a high school and then the prison where up to 17,000 people were tortured and killed, or killed later at the Killing Fields, was in the middle of Phnom Penh. I spent almost three hours there.

The torture rooms were bare except for some metal beds that still had the instruments of torture attached. As you left the building to go into another building, there was a metal structure which looked like it was the remnants of a very tall swing set. I was told that prisoners were held upside down by their feet and dunked head first into a huge urn filled with rancid water.

The next building contained several thousand photos of men, women and even children, that were taken as they entered the prison. There were also a number of photos taken of deceased tortured people. The curators tried to match the entry photo with the photo of the tortured victim but it was difficult to see the resemblance because of the graphic, horrible abuse depicted in the pictures.

In another part of the Museum there was a room filled with photos of former guards from the prison taken sometime between 1975 and 1979. With those were more recent photos taken within the past four or five years. Each display contained a statement from the guard about what they did at the prison, whether they felt responsible for their actions and their thoughts about the Khmer Rouge leaders today.

No further description is necessary. Books have been written; movies have been made. These portray the events far more eloquently than I can. The trial of the head of the prison is underway now. It is covered in







To be involved in the creation of a new generation of lawyers where previous generations had been murdered ... was awe-inspiring.

the local press every day. People visit the Tribunal even though it is 20 minutes outside the city. April 17, 2009, the 34th anniversary of the taking of Phnom Penh passed without notice. The city is now filled with inhabitants trying to lead normal lives.

The trial advocacy class was a two-day program. I prepared a PowerPoint presentation, which was translated into the Khmer language, that covered the adversarial system, opening statements, direct examinations and closing arguments. I also composed a demonstration opening statement, direct examination and a closing argument for a simulated drunk-driving case.

I organized my PowerPoint presentation around my favorite legal film, *To Kill A Mockingbird*. In the film, a black man named Tom Robinson is charged with raping a white woman in Alabama in the early 1930s. Although not guilty of the crime, he was found guilty by a jury. I wanted the law students to understand that the adversarial system is not itself a guarantee that justice will be done. I also wanted the students to understand that things can change.

I showed clips from the film that showed the judge, the lawyers and the jury, all of whom were white males, and that showed the black members of the public sitting in balconies away from the actual trial. I told the class that judges, lawyers and juries are no longer all white males and that balconies are no longer constructed for a group of our citizens to be relegated to.

I also used the film to demonstrate a direct examination and a closing argument. I wanted them to understand

the power of visual evidence. They would remember the parts of the film far longer than they would remember my words.

Approximately 160 law students had been selected by the seven law schools in Phnom Penh to participate in the program. Legal education in Cambodia has its roots in the European system, so it's more akin to an undergraduate major than a separate graduate school, as it is in the United States. But no matter their age or level of sophistication, each took the course very seriously.

To be involved in the creation of a new generation of lawyers where previous generations had been murdered, and to do so in a city where no one lived from 1975 to 1979, was awe-inspiring. It's why I love being a teacher.



Steve Austermiller

The first day of the class was devoted to lectures and demonstrations. Steve Austermiller gave the opening lecture and the discussion on cross-examinations. He played the role of the defense attorney during the

simulated trial. I played the role of the prosecutor. We both gave an opening statement and closing argument and did a direct and cross-examination of the state's main witness. Four teams of students did simulated directs and crosses after lunch.

The second day was devoted entirely to simulated performances by the students. The trials were conducted in the Khmer language with simultaneous translation into English. Critiquing was done by Steve Austermiller and myself. My wife, Suzin, who has been a public defender for 20 years, participated in the morning trials.

At the end of the program, I thanked the students for participating in such a meaningful undertaking. I told them that in 15 years I wanted them to be showing *To Kill a Mockingbird* to a new generation of lawyers, and I hoped that their children would respect them for their efforts as much as the children of Atticus Finch, the hero-lawyer of the movie, loved and respected him for his. I also told them I expected to find that they were the new leaders of Cambodian Society who were devoted to the development of the rule of law and democracy. ♦



# Recent European Initiatives

by Julie Dickins

As will be seen from the article on page 28 regarding the second European Pro Bono Forum, pro bono work continues to increase across Europe. Here are some of the firm's recent EU initiatives.

## Belgium

After a period of relative inactivity, the Brussels Pro Bono Roundtable firms have taken the significant step of setting up an email distribution list among participant firms in order to share news about pro bono initiatives and refer pro bono matters where appropriate.

Charles Helleputte, an associate in the Brussels office, has successfully obtained refugee status for an Iraqi national as part of The List Project (subject to appeal). This is the first time that one of Mayer Brown's List Project clients has been granted asylum in Europe, so this is a significant success.

Charles De Jager and Paul Olivera of the Brussels and London offices have given seminars in Brussels on trade issues for ACP representatives, organized by Advocates for International Development partner Trade.com (see article on page 23).

## France

Céline Bondard is the new Paris representative on the firm's EU pro bono committee. Céline has been exploring possible pro bono opportunities, such as microfinance, for the Paris office and plans to give an office-wide presentation on pro bono work.

Maitre Bondard, Paris associate William Kirtley and partner Christophe Dugué are continuing to work on

the Hissène Habré case on behalf of Human Rights Watch (featured last issue), and in particular have helped to draft a new complaint against Senegal concerning violations of the rights of victims by not allowing them to be heard, which was filed in December of 2008.

Several lawyers from both the Paris and London offices have completed questionnaires for the World Bank's "Doing Business" project. The project reports on business laws and regulations in more than 181 countries to identify the types of regulations that are most favorable to economic growth.

## Germany

Mayer Brown's Frankfurt office has been working on a pro bono case for the Red Cross and another matter (together with the Los Angeles office) on a Holocaust project referred by Bet Tzedek.

The Frankfurt Pro Bono Round Table firms have continued to meet, and they have published an article on pro bono in an eminent German legal publication. Most recently they met at Mayer Brown to discuss establishing a web site to provide information about pro bono and the member law firms willing to undertake such work. Mayer Brown associate Malte Richter is engaged in drafting parts of the web site, and it is hoped to establish a clearing house for the distribution of pro bono work to the member firms.

Roundtable members, including Dr. Richter, attended a meeting held by the Frankfurt Bar Association (FBA), which had invited them to speak about pro bono work. Although generally very supportive of the firms' approach to pro bono legal advice, the FBA was of the view that the current legislative regime governing the provision of legal services in Germany did not expressly permit legal advice to be given on a pro bono basis. The FBA said concerns had been raised that if the legislation were amended to expressly allow pro bono



Céline  
Bondard



Sean  
Connolly



Charles  
De Jager



Christophe  
Dugué



Charles  
Helleputte



William  
Kirtley



Andrew Legg



Mayer Brown London to Paris cycling team

legal advice it could become compulsory to render certain legal services free of charge, and expressed the view that pro bono work should only be carried out on a voluntary and not a compulsory basis.

Law Societies in other German states appear to misunderstand the concept of pro bono legal advice and the FBA is willing to help clarify and promote pro bono work to their committees.

## United Kingdom

The London office continues to undertake a range of pro bono and community work, and is currently busy with activities to raise money for its Charity of the Year, Richard House Children's Hospice. The Hospice is based in Beckton, East London, and provides services to life-limited young people. Fundraising events have included a prize draw, an auction of paintings and photographs, and a cake bake sale organized by the firm's trainee solicitors. At the end of June, Mayer Brown lawyers and staff (including Senior Partner Sean Connolly) took part in a very successful sponsored cycle ride to Paris, and have raised more than £36,000 for the Hospice. A quiz night is planned for the autumn.

New pro bono schemes include a project whereby Mayer Brown and three other London law firms will undertake research and provide note-taking and administrative support to London law centres working in the area of immigration and human trafficking. The London office has begun a partnership with Reprieve, a UK charity that helps capital offenders and people denied a fair trial (for example, the Guantanamo Bay detainees). Work undertaken has included a case involving requests to the UK government under the Freedom of Information Act for details of those foreign matters where the government has been asked

to intervene. Clare Algar, executive director of Reprieve, commented: "We are extremely grateful for all that Stuart Pickford and Mayer Brown have done....he/they have been ever more resourceful in thinking of ways around the restrictions and getting us the information that could dramatically affect the cases of dozens of British nationals facing the death penalty."

Partner Andrew Legg and associate Sinead O'Callaghan represented Justice (one of the two leading UK civil liberties organizations) in their intervention in a case of national importance, *R (on the application of Corner House Research and others) v. Director of the Serious Fraud Office*. Judicial review proceedings had been commenced against the Serious Fraud Office (SFO) by two pressure groups, Corner House Research and Campaign Against Arms Trade, in connection with the decision made in December 2006 by the then-Director of the SFO to halt the SFO's investigations into alleged bribery by BAE Systems in connection with the Al-Yamamah Saudi Arabian arms deal.

The SFO's decision was considered by the first instance court to have been influenced by political pressure exerted by the UK Executive (specifically the Attorney General and the Prime Minister's office) and the court gave judgment in favor of the two claimants. The SFO appealed to the House of Lords. Although the appeal was successful, the intervention by Justice, and its arguments on the proper basis for the exercise of prosecutorial discretion, were important in the general public interest and in assisting the Law Lords to reach their decision.

## Mayer Brown EU Pro Bono Subcommittee

Since the last *Pro Bono Update*, the committee has agreed to a procedure for approving EU pro bono cases. The committee has also developed a fall-back

*Continued on page 36*



Sinead O'Callaghan



Paul Olivera



Malte Richter



# Talking Pro Bono: Marc Kadish Inter

On April 2, 2009, Marc Kadish sat down with Brian Trust, then the about pro bono and the responsibilities of a Partner-in-Charge.



Charge, money was flowing, the credit markets looked great and massive, major transactions were getting funded at the speed of light. I can't say bankruptcy ever went really, really quiet. But since 2008, things have obviously changed and the bankruptcy group has been extraordinarily busy. I've had the opportunity to represent financial institutions in connection with some of the biggest bankruptcy cases of all time.

*Marc: On a personal level, given all of your administrative responsibilities and the increase in your practice, are you able to balance your personal and professional life? How do you relax?*

Brian: Well, I have my wife and family, of course. And I play guitar.

*Marc: What kind of music do you like to play?*

Brian: Well, my wife absolutely loves classical music. On the other hand, I enjoy classic rock, jazz and blues, so that's what I like to listen to and play, so there may be a clash of the cultures in the house but somehow magically it works out okay.

*Marc: Who are your favorite guitarists?*

Brian: You know, in the jazz world there's a guitarist who passed away several years ago named Joe Pass, the most talented guitarist I've heard. But I listen to Eric Clapton, Stevie Ray Vaughn, George Benson, Wes Montgomery, and people like that.

*Marc: You became the Partner-in-Charge of the New York office in July of 2006. What exactly does that mean?*

Brian: I'm not sure there is a precise *Black's Law Dictionary* definition, but basically, I'm responsible for running the New York office. In addition, and importantly, I participate in the firm's management meetings. The Partner-in-Charge is very involved in all miscellaneous initiatives and strategies, and interacts extensively with the firm's leadership as well as the practice leaders in the office.

*Marc: Okay. And what is your own particular practice area?*

Brian: I'm a bankruptcy lawyer.

*Marc: Dare I ask? How's business?*

Brian: Actually, as busy as ever, or busier. When I became the Partner-in-



Brian Trust



Marc Kadish



# views Brian Trust

Partner-in-Charge of the firm's New York office, to talk

Playing and listening to music, along with other things, helps to keep life in balance, which I think is important.

*Marc: Going back to your role as Partner-in-Charge, one of the things I remember from an earlier conversation with you was your thoughts on leadership. I'm fascinated by the concept of effective leadership and I had a clear impression that you were, too.*

Brian: I am.

*Marc: I remember in that conversation that you told me that you thought the job of an effective leader was not only to lead, but to train — to help develop a new generation of leaders.*

Brian: Absolutely. If you take a look around at Mayer Brown, you have these energetic, incredibly smart people who can get things done. So my idea of leadership is to be inclusive — to give to these people the responsibilities and opportunities to develop themselves, to become stronger people and better lawyers. I believe in sharing work. I'm not a fan of solo acts.

*Marc: This idea of training is obviously an important one in my, and the firm's, philosophy on pro bono work. With all the things you have going on, do you have any time to think about pro bono?*

Brian: I think about it a lot, actually. Pro bono is something that people talk about a lot, but I think it's very important to give credit to the lawyers who don't just talk about it, but do it. If you take a look at people

in New York such as Hector Gonzalez, Joe De Simone, Matt Ingber, Andy Schapiro, and I can go on and on, those are examples of some incredibly talented, smart, energetic, highly visible lawyers who walk the walk. And if you talk to them about their priorities, they'll tell

you about how important it is to them.

*Marc: When I first joined the firm 10 years ago, Andy Schapiro was working on a murder case in which he finally got a victory only in the past year. I remember meeting Hector and having him become involved in pro bono work. I met Matt when he*

*was an associate. And now he and Hector are co-chairs of the local pro bono committee.*

Brian: I think it is imperative that we in the legal profession give back and that we engage in pro bono activities. And lawyers like these send a tremendously positive and important message to everybody. And when we talk about pro bono, I think of people like that and I think of the message they send to young lawyers and I think it's just really important.

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**"Pro bono is something that people talk about a lot, but I think it's very important to give credit to the lawyers who don't just talk about it, but do it."**

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*Marc: Last year, the firm was honored by the Innocence Project at a dinner in New York. It involved the work we had done with them over the past five or six years on innocence issues and for funding a fellowship devoted to changing the laws concerning*



*eyewitness identification procedures. You were accepting the award on the firm's behalf and I remember we were talking on the phone about your remarks, and you said, "I get it. I understand what you do. I understand how all the pieces come together." I wish you could have seen the smile on my face.*

Brian: When the firm was honored, I couldn't tell you how proud I was of the firm. It was an incredible moment. Being there that night, hearing the names of the attorneys read out loud, it was one of the best professional moments in my life.

Marc: How so?

Brian: The Innocence Project is about freedom, what's right and wrong. I don't think there's a more powerful statement we can make in the legal profession than to make sure people's constitutional right are not violated with wrongful convictions. To make sure that innocent people aren't wrongfully convicted.

Marc: You sound like you might be becoming a convert.

Brian: You know, I love the legal work that I do. Bankruptcies, restructurings, reorganizations. It's fascinating to me. But to work to vindicate someone who's spent 10 years in a state prison for a crime they didn't commit — when you look at the power of the state to convict and imprison people wrongfully — it forces you to think very, very hard about our role as lawyers. It's a very powerful issue.



*Marc: And after that dinner, you and I did work on a matter together where we tried to assist a young man who was in jail and we tried to work with his family. It eventually worked out, not in a way that we had wanted, but we got the opportunity to work*

*together on that and to meet with the family and I think that was a good experience.*

Brian: It was a great experience for me. I know you have a lot of experience with criminal cases and I think your observation is right, the result worked out okay. Very tough situation in many respects, but there are still so many people who cannot pay for basic legal

services. So I think my take away is that people who do not have the economic means, nevertheless should have some basic and fundamental right to quality counsel.

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*"The ability at an early stage in a legal career to work closely with a client and get real live courtroom experience is unparalleled."*

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*Marc: We have started a relationship with the Harlem Neighborhood Defender Services, headed by Rick Jones. The leaders of the organization are coming here to the New York office to explain their misdemeanor representation program — where less experienced lawyers go to court under the supervision of one of their staff attorneys and handle several cases in one afternoon. We're combining pro bono with training because the program will get these lawyers up in front of a judge and give them direct contact with clients.*



Brian: That's a tremendous opportunity. And I think it speaks well of us as professionals. But a key word you used, Marc, was "training." I hope our lawyers realize how valuable these opportunities are. The ability at an early stage in a legal career to work closely with a client and get real live courtroom experience

is unparalleled. In addition to being the right thing to do, it's a phenomenal opportunity to develop valuable, transferable skills, even for nonlitigators.

*Marc: Given the current conditions, what do you think is the proper balance for a young associate coming in? Where they want to do the right thing, but they want to make sure they don't go too far. How do they learn that proper balance?*

Brian: You know, there is a balance to be struck, and it can be a moving target in firms like ours where lawyers need to meet certain hour requirements and make sure that the firm stays profitable so we can afford to do pro bono work. I'm not sure that the answer is a simple mathematical one — work this many fee hours and then you can do this many free hours.

*Continued on page 36*



# Defending the Constitutionality of Handgun Bans



Does the Second Amendment preclude state and local governments in the United States from regulating or restricting individual handgun ownership?

That question is being considered in several municipalities in Illinois, where the National Rifle Association (NRA) and others have brought suit claiming that it does. Mayer Brown has been helping the City of Chicago and the Village of Oak Park to successfully defend their current regulations.

Opponents of gun control sensed a significant opportunity when the US Supreme Court handed down a landmark ruling on June 26, 2008, in the case of *District of Columbia v. Heller*, which affirmed the earlier finding of the Court of Appeals for the DC Circuit that Washington's handgun ban violated the Second Amendment. This five-to-four decision struck down Washington's Firearms Control Regulations Act of 1975, which restricted residents from handgun ownership and required that all firearms be kept in an unloaded, disassembled or trigger-locked state. The District Court for the District of Columbia had dismissed a suit that challenged the act's constitutionality in February 2003, which led to the plaintiffs' appeal.

Within a week of the Supreme Court ruling, the NRA filed suit in federal court against four northern Illinois municipalities that banned handguns — Chicago, Evanston, Morton Grove and Oak Park — arguing that the Second Amendment was incorporated through the

Fourteenth Amendment to apply to state and local governments, and that the bans were therefore unconstitutional. A separate suit was also brought against Chicago by representatives of the Second Amendment Foundation and the Illinois State Rifle Association.

While Evanston, Morton Grove and several other suburbs rewrote or repealed their bans, Chicago and Oak Park opted to fight, with Mayer Brown assisting on a pro bono basis.

Mayer Brown's involvement in this matter dates back to late 2007, when the firm helped the City of Chicago and the Chicago Board of Education draft and submit an *amicus* brief in the *Heller* matter. Litigation partners Andrew Frey and David Gossett and Chicago litigation associate Ranjit Hakim worked on the brief, which argued that state and local handgun bans are constitutional and that the Second Amendment is a provision of federalism that should not be incorporated against the states.

Because the NRA was making identical arguments in its post-*Heller* actions against Chicago and Oak Park, in December 2008 the US District Court for the Northern District of Illinois, Eastern Division, consolidated the matters along with the second suit



Andrew Frey



Hans Germann



David Gossett



Ranjit Hakim



Alexandra Shea



against Chicago. In that case, Senior US District Judge Milton I. Shadur declined to rule that the Second Amendment is incorporated into the Fourteenth, making the *Heller* decision inapplicable to the Chicago and Oak Park ordinances.

The plaintiffs chose to appeal the ruling, putting the matter into the hands of the Seventh Circuit. Hakim, fellow Chicago associate Alexandra Shea and Chicago partner Hans Germann have been assisting Chicago and Oak Park.

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“The plaintiffs’ arguments essentially turn on this question of whether or not the Second Amendment is meant to apply to the states and local governments.”

**Ranjit Hakim**

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“The Seventh Circuit Court of Appeals had previously decided that local governments could ban handguns,” said Shea. “Judge Shadur thought that he had to follow that precedent, which is true in my opinion. So he ruled that Chicago’s and Oak Park’s bans on handguns were permissible under the current law, because *Heller* applied to Washington, DC, which is under federal jurisdiction.”

“The central issue is this question of incorporation,” Hakim noted. “The plaintiffs’ arguments essentially turn on this question of whether or not the Second Amendment is meant to apply to the states and local governments.”

According to Hakim, the writing of the majority in the *Heller* decision was very “cautious,” and likely does not carry the weight that the anti-gun control advocates seem to have bestowed upon it.

“The popular conception of the *Heller* decision is that it essentially reversed course on federal precedent and forced us to rethink the restrictions on the places that one could have guns. That sort of view was definitely supported by the flurry of lawsuits we saw immediately afterwards,” Hakim commented. “But *Heller* has had very little traction with the lower courts. The decision actually leaves a lot of space. At its core, the holding says that the one particular plaintiff is allowed to have a handgun in his home for the purpose of self-defense. But it doesn’t say whether or not that right would extend outside of the home.

“Justice Scalia actually drew heavily on federal precedents when he wrote the decision that found a collective right, which is really what leaves the space open for the incorporation argument. He didn’t find that the Second Amendment protected a ‘natural right to self-defense’ that put into question federal and local gun control regulations. The right that he discusses is far more confined than the impression one might get in just reading the holding.”

In early April 2009, counsel for Chicago and Oak Park submitted their brief to the Seventh Circuit. Citing more than 80 decisions spanning 175 years of legal history, the brief asserts that state and local governments are not restrained by the Second Amendment, that the Second Amendment does not guarantee an individual right to possess weapons and that the Fourteenth Amendment does not incorporate the entire Bill of Rights.

Oral arguments were heard by the Seventh Circuit in late May, and a decision affirming the lower court’s ruling was issued on June 2, 2009. In this decision, Chief Judge Frank H. Easterbrook concluded that the matter is settled pending any future decisions from the high court:

[Chicago and Oak Park] can, and do, stress another of the themes in the debate over incorporation of the Bill of Rights: That the Constitution establishes a federal republic where local differences are to be cherished as elements of liberty rather than extirpated in order to produce a single, nationally applicable rule .... Federalism is an older and more deeply rooted tradition than is a right to carry any particular kind of weapon. How arguments of this kind will affect proposals to “incorporate” the second amendment are for the Justices rather than a court of appeals.

The NRA has already appealed the decision. “A lot of people think the Supreme Court will grant *cert.*, especially considering the split in the Circuit Courts,” Shea said prior to the Seventh Circuit’s ruling. Hakim agrees that this is a possibility but notes that as of yet there is very little post-*Heller* Second Amendment jurisprudence to apply to the states and local governments. The Court may wait to address the incorporation question to allow that jurisprudence to develop in the lower courts.

*Continued on page 36*





IRIN (Edward Parsons)

# Advocates for International Development



Leah Brand

Advocates for International Development (A4ID) is a UK charity that facilitates free legal assistance to help achieve the UN Millennium Development Goals (MDG). The eight goals — which range from halving extreme poverty to halting the spread of HIV/AIDS and providing universal primary education, all by the target date of 2015 — form a blueprint agreed to by all the world's nations and leading development institutions.



Charles De Jager

A4ID sprang out of the Oxfam “Make Poverty History” campaign. London lawyers were urged to sign a declaration of support and commitment to the MDG, and when some 1,200 lawyers signed up, Oxfam recognized the potential for a separate charity to assist with the needs of third world countries,

particularly in areas such as fair trade and debt. A4ID was officially launched in 2006, and Mayer Brown was one of the founding members. The following year, the new charity won *The Lawyer*'s prestigious “Pro Bono Team of the Year” Award.

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A4ID was officially launched in 2006, and Mayer Brown was one of the founding members.

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Mayer Brown continues to be an active and committed member of A4ID and has accepted numerous cases for a variety of charities working in the developing world. In the first six months of 2009, Mayer Brown was one of the top two firms taking cases from A4ID. For example, FARM-Africa was



advised by solicitors Leah Brand, David Fyfield and Sangeeta Puran from the London office in relation to a contract with the National Farmers Union whereby the NFU appealed to its members to donate money to FARM-Africa at the point of sale of their products. (The charity later provided excellent feedback to A4ID concerning the advice received, which apparently strengthened its relationship with a key donor.)

The firm has also assisted A4ID itself with research (e.g., regarding international obligations on governments to provide clean water and access to health services in the aftermath of a natural disaster) and by writing Guides on such topics as the Equator Principles, the International Monetary Fund and Economic Partnership Agreements (which can be found on the charity's web site). In November 2008, Paul Olivera and Charles De Jager, from Mayer Brown's London and Brussels offices, spoke at a conference in Belgium on legal aspects of trade policy and negotiations between EU and ACP (African, Caribbean and Pacific) member states, which was organized by one of A4ID's partners, Trade.com. Charles is looking forward to speaking at a future seminar run by A4ID, to be hosted by the firm's London office later this year.

UK pro bono partner Julie Dickens said: "We have been very pleased to work together with A4ID over the years. They provide a wide variety of pro bono opportunities for firms and individual lawyers, and these are increasingly extending beyond the UK to Europe and the United States. A4ID provides excellent support in vetting the requests they receive and notifying firms of different opportunities every week."

For more information about A4ID and its work, please visit [www.a4id.org](http://www.a4id.org). ♦



David Fyfield



Paul Olivera



Sangeeta Puran

# Working to Death Penalty

In conjunction with the American Bar Association's Death Penalty Representation Project, Mayer Brown is working to improve the counsel systems that provide indigent capital defendants with lawyers in the state of Tennessee.

Although the US Constitution guarantees criminal defendants the right to counsel at trial, those sentenced to death have no such guarantee they will receive a lawyer to help them pursue judicial review of their convictions and death sentences following a mandatory direct appeal, nor are there any meaningful guidelines about the necessary experience or qualifications that an indigent defendant's appointed lawyer must possess. In fact, ineffective assistance of counsel is the most frequent claim raised during state and federal criminal appeals, and it is one of the major causes of wrongful conviction.

Economic and political factors can lead a jurisdiction to provide unqualified defense counsel in death penalty cases. Random chance can also lead to some defendants receiving better qualified or more effective representation than others, especially in the absence of rigorous qualification standards.

While opinions vary widely as to whether the death penalty should ever be applied, there is a growing consensus that the inequity of its application, and the disproportionately high percentage of indigent individuals on death row, highlights the need for improved legal representation.

## A Growing Legacy of Successful Reform

Launched in 1986, the Death Penalty Representation Project was originally conceived as a way to recruit, train and support members of the private bar who were interested in representing those sentenced to death. Since that time, the Project has expanded into other areas relevant to those on death row.



# IMPROVE Representation in Tennessee

“We now place volunteer lawyers in a variety of death penalty matters — not just state court appeals, but some death penalty trials as well,” explained Robin M. Maher, director of the Death Penalty Representation Project. “Some volunteer lawyers are challenging death row conditions, others are handling things like *cert.* petitions, direct appeals and clemency petitions. The Project has a variety of work related to indigent capital defense for the benefit of anyone facing a possible death sentence.”

The Project also spearheaded the development of the *ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*, which were

drafted in conjunction with a number of criminal justice groups, bar associations and other organizations. The ABA Guidelines, which were released in 1989 and updated in 2003, have become widely recognized as the standard of care in the effective defense of death penalty cases, and they are frequently cited by state and federal courts, including the US Supreme Court. They have been adopted in whole or in part by a number of states, including North Carolina, Nevada, Oregon, Arizona, Texas, Georgia, Alabama and Kentucky.

“The group that approved the ABA Guidelines included prosecutors, judges and correctional personnel, as well as academics and defense lawyers — a broad array of people from all parts of the justice system who recognize that effective representation is an incredibly important part of fairness, due process and constitutional rights,” Maher noted.

“The ABA does not take a position one way or the other about the death penalty itself. But we do feel

very strongly that if we have a death penalty, we need to have good lawyers in the process to make sure that every prisoner gets the constitutional protection he or she is entitled to receive.”

“Little by little, more and more federal circuit courts of appeal and state supreme courts are speaking very favorably about the ABA Guidelines,” added David Grossman, staff attorney for the Death Penalty Representation Project. A former Mayer Brown

associate, Grossman works in the firm’s Chicago office in space the firm has donated to the Project. “So even when states are not adopting them *per se*, they’re recognizing that

the Guidelines set forth standards that are applicable in all death penalty cases.”

As momentum around the Guidelines has continued to build, the ABA Death Penalty Representation Project has begun to undertake state-level campaigns aimed at improving the systems that provide defense representation in capital cases. Tennessee is one such state where the Project believes systemic reform is needed.

## The Need to Improve in Tennessee

With only five executions carried out since 2000, Tennessee’s application of the death penalty appears moderate compared to states such as Texas, Virginia, Oklahoma, Florida and Missouri. But with more than 100 inmates awaiting execution, Tennessee is in the top quartile of states in terms of total death row inmate population.

“Almost all capital defendants in Tennessee are indigent. They can’t afford their own lawyers,” noted litigator Jeff Strauss, a counsel in Mayer Brown’s Chicago

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“The ABA does not take a position one way or the other about the death penalty itself. But we do feel very strongly that if we have a death penalty, we need to have good lawyers in the process.”

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**Robin M. Maher**

office. “History tells us from the cases that have been decided and reversed that many of the appointed capital defense lawyers don’t do an adequate job. They don’t do things at the trial stage that they ought to do. And then you end up fighting for many years afterwards about whether a defendant got a fair trial, whether the representation was adequate.”

Strauss also notes that there is another aspect to the Tennessee legal system that puts indigent suspects at a disadvantage. “The current practice in Tennessee is that you don’t get a full defense team until the state decides to charge you with a capital crime, and they’re not required to do that right away,” he said. “So you will find that in a particular case months can go by without the defendant having access to a good defense lawyer, or more importantly in some cases, a mitigation specialist or an investigator to check on the facts. And without that, there’s a national consensus that you’re not getting adequate representation.

“One of the challenges in doing the kind of reform work that we’re attempting,” Strauss continued, “is to be able to persuade those who need to agree with you that there is a problem and that it’s worth spending time and money to fix it.”

### Mayer Brown Gets Involved

In May 2008, Maher and Grossman made a presentation to Mayer Brown’s North American offices regarding the need for systemic reform in Tennessee.

“We were invited to become part of a coalition in Tennessee that is working to bring about some badly needed change to its indigent capital defense system,” Maher said. “There is a very dedicated group there that wants to make that change happen. So for us, this was really the perfect opportunity to kick off our systemic litigation project and to bring some resources and assistance to the effort.”

Chicago litigation partner Ted Livingston was immediately interested in joining the effort. “I was struck by the seriousness of the problems and understood immediately that this project would be ideally suited to Mayer Brown’s particular strengths in litigation: mastery of complex factual and legal issues, thoroughness of preparation, clarity of presentation, our ability to negotiate among different constituencies in multi-party litigation, and our well-known expertise not only in trial work, but also in appellate and constitutional litigation,” he recalled.

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“There is a legislative component, a judicial component and a public relations component. The ultimate goal of everyone in all these efforts is the same: to improve the quality of defense representation in capital cases.”

**David Grossman**

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Livingston agreed to lead the firm’s efforts and offer strategic advice, with Strauss and Grossman taking on much of the day-to-day work as they seek to develop a coalition to support the movement in Tennessee. Other Mayer Brown lawyers who have assisted with the effort include Palo Alto litigation partner Edward Johnson, Washington, DC, litigation partner Mickey Raup, and Charlotte real estate associates Amanda Christie and Nathan McMichael.

### Developing a Coalition

“We are part of a campaign in Tennessee. There is a legislative component, a judicial component and a public relations component. The ultimate goal of everyone in all these efforts is the same: to improve the quality of defense representation in capital cases,” Grossman commented. “Any effort to reform the system in Tennessee really needs to generate from within the state. We’re reaching out to various organizations



Amanda Christie



Edward Johnson



Ted Livingston



Nathan  
McMichael



Mickey Raup



Jeff Strauss

composed of well-respected attorneys in Tennessee seeking their views and advice, and ultimately hoping that they'll join our efforts."

"We understood immediately that while we would have the major role in developing legal theories, gathering evidence and drafting pleadings, we'd need first-rate Tennessee counsel to take the lead in whatever forum we'd be in," Livingston noted. "This is especially true to the extent that we are seeking to work toward a consensus that we can take to court. We've been fortunate to work with three of Tennessee's premier firms — Burch, Porter & Johnson, Neal & Harwell, and Chambliss, Bahner & Stophel."

"Our approach is going to focus on getting the courts involved," said Strauss. "In Tennessee, the current rule that governs appointment of counsel in capital cases is a Tennessee Supreme Court rule. Any Tennessee lawyer can petition their Supreme Court to change a rule. So as a matter of process, one way we can try to achieve change is by going directly to the Supreme Court with a group of prominent Tennessee lawyers who believe a change is required."

"We don't have an individual 'client' whose 'case' we'd be litigating. Instead, the whole system would be put on trial," Livingston said. "This is not unprecedented in constitutional litigation, but making a compelling 'case' that would prevail at a trial — the sort of thing we do all the time for our clients — would require extensive factual work not tied to a particular case. It's not a simple plaintiff-versus-defendant case, where you submit your proof and the court decides."

"One of the more challenging aspects of our work has been figuring out how to establish, with admissible evidence, what we have been told anecdotally: that defense counsel as a whole is not performing up to standard because of insufficient state resources, and rules that undermine the defense function. We must state the problem in a way that is compelling and that gains the relief we want without alienating many of the lawyers who do the work day-to-day, those whose assistance will be crucial in any reform effort."

While the ABA-Mayer Brown team continues to refine its strategy and solicit support, Tennessee State Senator Doug Jackson and Representative Kent Coleman are leading a special legislative committee that spent more than a year studying the prosecution

of capital crimes in the state. The committee has drafted bills calling for improvement in the qualifications of counsel in capital crimes, the recording of all homicide case-related interrogations and the establishment of an independent authority that would oversee the defense of those charged with capital crimes. According to Strauss, it is expected that such an authority would almost certainly adopt or adapt the ABA Guidelines.

"We need to make sure at every stage that whatever relief we might seek from the courts will not interfere with or undermine the legislative effort," Livingston said. "Our litigation will intersect with the political and policy side."

### A Steady, Ongoing March

While the final outcome of their work has yet to be determined, the ABA-Mayer Brown team members remain upbeat and confident.

*Continued on page 31*

### Supporting the ABA's Death Penalty Representation Project

The Death Penalty Representation Project is always looking for lawyers and law firms that agree with the Project's mission of working to ensure that all capital defendants have the assistance of competent counsel. The Project continues to receive more requests from death row prisoners for legal assistance than it can fulfill. Interested parties can call the organization at +1 202 662 1738 or email [deathpenaltyproject@staff.abanet.org](mailto:deathpenaltyproject@staff.abanet.org).

Those wishing to make financial contributions to the Project should make checks out to the Death Penalty Representation Project and mail them to:

ABA Death Penalty Representation Project  
740 Fifteenth Street, N.W.  
Washington, DC 20005

For more information on the Death Penalty Representation Project, please visit [www.abanet.org/deathpenalty/home.html](http://www.abanet.org/deathpenalty/home.html).



# Continued Expansion of Pro Bono in Eastern Europe

As reported in the spring 2008 issue of the *Pro Bono Update*, the first-ever pan-European pro bono conference took place in Budapest, Hungary, in October 2007. The second such conference took place in November 2008. It was once again organized by the Public Interest Law Institute (PILI), an international non-governmental organization (NGO) based in Eastern Europe, which advances human rights by stimulating public interest advocacy and developing the institutions necessary to sustain it. PILI has set up a global clearing house for pro bono work, as well as dedicated Hungarian and Russian clearing houses, and most recently has been developing relationships between Chinese firms and public interest organizations, laying the groundwork for a Chinese clearing house to be established this year.

Attendance at the conference was up from the previous year, with more than 170 participants representing 55 NGOs and 42 law firms from 22 countries, and it was sponsored by a number of international law firms including Mayer Brown. The firm was represented at the conference by Julie Dickins, the partner responsible for the firm's UK pro bono and community work and chair of the European pro bono committee, and by Malte Richter, an associate in the Frankfurt office who also sits on the European committee. Malte and Julie played an active part in the conference, with

Malte moderating one of the sessions and Julie joining and attending PILI's Advisory Council, which met at the end of the conference.

Among the NGOs that spoke about their work were the Ashoka Foundation (US), Advocates for International Development (UK), Avocats Sans Frontières (Belgium), La Fédération Internationale des Ligues des Droits de l'Homme (France), and Daheim Statt Heim (Germany). The audience also heard from various European Bar Associations and international and local law firms. The sessions covered topics such as the corporate legal needs of NGOs, human rights, the role of the bar, how to work with lawyers (for NGOs) and issues for lawyers (which only lawyers were permitted to attend in the interest of frankness!).

The conference demonstrated the growth of pro bono across Europe, as was evident from both the increased number of delegates and the greater sophistication of the topics discussed, compared to the last conference. This growth was particularly prevalent in Central and Eastern Europe, and it was interesting that PILI's Russian clearing house, which was established only 12 months before, was particularly active.

More than 50 cases had been placed with member firms, compared to 36 global and 15 Hungarian cases.

The conference was well received and informative, and the Mayer Brown participants returned with new ideas and useful contacts for the future. ♦



Conference attendees



Julie Dickins



Malte Richter

# Mayer Brown's Annual US-Wide Pro Bono Awards Program Honors Lawyers and Staff



Jim Holzhauer

Mayer Brown held its Annual US-Wide Pro Bono Awards Program on October 30, 2008. The program was hosted from the New York office by then-Chairman Jim Holzhauer, who took the opportunity to remind all incoming first- and second-year associates that the firm now required participation in the pro bono program in their first year with the firm. “We [made] this policy change for several reasons,” Holzhauer explained. “First, to increase the breadth of participation in our program. Second, to help us meet our challenge goal .... Third because we have always emphasized the connection between pro bono work and training, and fourth, because ... it’s the right thing to do.”

Awards were handed out in six categories. As with the prior year, each winner is entitled to designate a legal services organization, public interest organization or charity to receive a financial contribution from the firm.

Office of the Year was awarded to Washington, which exceeded the firm’s pro bono challenge goal of donating 3 percent of billable time to pro bono work, had a 65 percent overall participation rate and an 81 percent participation rate among associates. Lawyers in the office worked on a wide variety of matters including five Supreme Court merits cases and *amicus* briefs in a number of others. They helped win the release of a 69-year-old man who had been wrongfully imprisoned for 10 years, and the release of an American citizen and political activist who had been detained without charges in Pakistan for more than two years. There also were significant achievements in transactional areas as well as by the government practice. For example:

helping to pass legislation to prevent foreclosure rescue scams; providing assistance to microentrepreneurs; and doing legal work for organizations dedicated to improving the lives of women worldwide.

“We look forward to increasing our pro bono efforts in the future,” said Mark Ryan, who accepted the award on behalf of the Washington office.

The Practice of the Year award went to the Chicago litigation practice. In 2007, the group averaged 80 pro bono hours per lawyer, with an overall participation rate of 78 percent and a 100 percent participation rate among associates. They handled a number of matters through the firm’s limited appointment settlement project; two federal *habeas* cases; two federal civil rights cases; eight state criminal cases; six Seventh Circuit Project cases; Guantanamo detainee work; and a number of asylum and immigration matters.

Associate Shennan Harris was asked to accept the award on behalf of the group because of her significant contributions to the pro bono program. “Right after I started,” Shennan said, “my mentor Jim Barz said to me ‘let’s get you a pro bono case so you can hit the ground running.’ Four months later I was arguing a substantive motion in front of a judge in a murder case .... Besides the professional development, I learned a lot emotionally and about other people. That experience has been invaluable to me.”

The List Project to Resettle Iraqi Allies received the award for Project of the Year (see article in this issue).



Anthony Diana (L) with Brian Trust and Asieh Nariman (R)

The goal of The List Project is to safely resettle those Iraqis whose lives are at risk because of their work for the US government. The Award was accepted by Anthony Diana of the New York office and presented by Brian Trust.

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

***The Freecycle Network, Inc. v. Oey / FreecycleSunnyvale v. The Freecycle Network***

(see article in last issue)  
— Ian Feinberg, Don Falk and Eric Evans from our Palo Alto office scored a major victory for our client, Timothy Oey, and for First Amendment rights, when they convinced the Ninth Circuit to vacate an injunction which prohibited Oey from “tending to disparage” the validity of the trademark claimed by the Freecycle Network, and from encouraging others to use the word “freecycle” in a generic sense. The team has represented Oey since 2006 and devoted more than 2,000 hours to his case.

***People v. DiGuglielmo*** — Richard DiGuglielmo Jr. was convicted in 1998 of depraved-indifference homicide in the shooting death of a man who was attacking DiGuglielmo’s father with a baseball bat. Andy Schapiro and his team filed a motion to overturn the conviction based on newly discovered evidence that had been suppressed by the prosecutors. An evidentiary hearing led to the conviction being vacated, and the judge went so far as to preclude the prosecutors from re-trying him, citing prosecutorial and police misconduct.

***In the Matter of Mr. K.S.*** (see article in last issue) — Brian Massengill, Heather Lewis Donnell, Dana Douglass,



Ian Feinberg

James Hart, Anne De Geest and Alisa Harrison received the award for their work on the K.S. “boy soldier” asylum application. K.S. was kidnapped at gunpoint when he was nine years old and forced to fight as a soldier by the Revolutionary United Front in that group’s failed 10-year insurrection in Sierra Leone. The US government opposed K.S.’s request for asylum, claiming that he was ineligible because he was a former persecutor and had provided material support to a terrorist organization. After devoting more than two years and 1,700 hours to the case, the team finally prevailed, and in the summer of 2008 K.S. was granted asylum, though the government has appealed that decision. An emotional Massengill accepted the award and said of asylum cases, “These cases represent the neediest of the needy and I highly recommend seeking out these types of matters. I offer to supervise any associate who wants to handle an asylum case.”

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

***Wills for Heroes*** — Wills for Heroes provides free estate planning documents to emergency first responders, including policemen, firefighters and emergency medical technicians. Organized by Clark Walton, then an associate in our Charlotte office, the event brought together 45 volunteers, including 35 attorneys, who served more than 130 first responders and their spouses and drafted more than 350 documents during the course of the event.

***Reorganization of the Chicagoland Girl Scout Councils*** (see article in this issue) — this project involved merging seven councils located in the Chicagoland area into one large council, now known as “Girl Scouts of Greater Chicago and Northwest Indiana.” The project began in 2006 and involved corporate, ERISA, real estate and tax issues. The legal team included former partner Trent Anderson, partners Tom Bottomlee and Angela Lang, and associates Stacey Braybrook, Lacey Cordero, Rebecca Davenport,



Anne De Geest (L), Brian Massengill and Heather Lewis Donnell (R)



Kara Harchuck, Christine Matott, Rachel Ponton and Julia Skubis. Also in attendance was Mary Beth Malm, then the Interim CEO of Girl Scouts of Greater Chicago and Northwest Indiana, Inc. Ms. Malm thanked the attorneys for their efforts and presented the firm with an award from the Girl Scouts in appreciation of the firm's "incredible pro bono program." "You have left a legacy that will be long remembered by the girls we serve."

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"Besides the professional development, I learned a lot emotionally and about other people. That experience has been invaluable to me."

**Shennan Harris**

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The final award category was Community Service Project of the Year. It was awarded to two programs:

**The Everybody Wins! Power Lunch Program** — a lunchtime literacy and mentoring program where elementary school students are matched with Mayer Brown volunteers from the New York office. Once a week they share lunch, conversation and good books in an effort to promote reading for pleasure. The program was started five years ago by partner Peter Darrow and participation includes both lawyers and staff.

**The Northside College Preparatory High School Constitutional Law Program** — conducted each year, this Chicago-based program brings together Northside students with dozens



Tamela Woods

of Mayer Brown lawyers to take on the role of US Supreme Court advocates. With the lawyers' guidance, the students prepare individual and group briefs and present oral arguments on two cases actually pending before the court that term. The program is coordinated for the firm by associate Tamela Woods.

In addition to these awards, the event also recognized and honored those lawyers who, in 2007, met the firm's Pro Bono Challenge Goal of devoting 60 or more hours to pro bono work.

In his concluding remarks, Marc Kadish noted that when he started with the firm in 1999, pro bono work meant handling a landlord-tenant case, "It's amazing to me how sophisticated, differential and unusual our pro bono work has become." ♦

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*Working to Improve Death Penalty Representation in Tennessee (continued from page 27)*

"Reform work can be frustrating, because it is not a process that moves in a straight line," Maher noted. "But I feel very confident that we are laying a wonderful foundation for the change we are seeking and that I think will occur in the next few years."

Whenever he feels frustrated by the slow pace of the effort, Strauss remembers back to a transformative meeting he had with an indigent death row inmate. "The inmate asked me what I do. I told him the kind of law I practice, how long I've done it, that I'm from Chicago. I mentioned that I had worked on the Guantanamo Bay detainee project, and what we hope to do in Tennessee.

"And he looked at me and said, 'Well if you're doing that stuff, you guys must be smart.' And he proceeded to go on for some time giving me a pep talk. This is a man who's been convicted and condemned to death giving me a pep talk about the need to keep up the fight, to take it a step at a time. 'Do what you can. Make sure people know what goes on. Tell my story. I understand I did things wrong and I have to pay for them.' He was very candid about these things. I was speechless for hours afterwards."

"We often receive letters from the people on death row we've been able to assist," Maher concluded. "It's incredibly rewarding to see the difference that we and our volunteers have been able to make in their lives. We could not do what we do without law firms like Mayer Brown, could not look back with the pride that we have in our accomplishments without their assistance. Mayer Brown is one of those incredible firms that we can always turn to and know without a doubt that the firm will provide us with skilled, committed lawyers who find time in their busy schedules for us and the men and women on death row. It says a lot about this firm, its sense of community and responsibility, and especially about its commitment to justice." ♦



# To talk of many things

Marc Kadish

*"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*

## Looking Back, Looking Ahead

June 1, 2009, marked my tenth anniversary with Mayer Brown. Over these past ten years, I've witnessed the firm expand globally and watched the pro bono program grow alongside it. The program now has an assistant director, Marcia Maack, who works with me in the United States, and a UK-based pro bono partner, Julie Dickens, who coordinates our program in Europe. Ricky Rems, from the Marketing Department, works with us on our publications and web sites.

We have a firmwide pro bono committee, co-chaired by Matt Rooney and Adrian Steel, and a European pro bono committee. We have local pro bono committees or representatives throughout the firm. We hold weekly phone calls within the leadership of the pro bono program. The firmwide committee meets three to four times annually. The European and local committees also meet periodically.

We also now have large, multi-office projects. These include our work with The List Project (which is the subject of the lead article in this issue), the Corporation for Supportive Housing, the Seventh Circuit Project, the Yale Law School Supreme Court Clinic, our criminal defense work (also the subject of an article in this issue) and our ongoing immigration work.

In addition, during my recent trip to the Washington office to discuss our pro bono program and conduct a

litigation training program with the summer associates, Marcia Maack, Ashish Prasad and I met with Suhaan Mukerji from the Amarchand law firm, which is among the largest and most prestigious law firms in India, to discuss possible collaborative pro bono projects in that country. To my knowledge this was the first meeting between an Indian and a non-Indian law firm to discuss doing such work.

## Speaking at the Bangkok Office

I was recently in Cambodia teaching trial advocacy (see article on page 14). While in Asia, I also made a presentation on our pro bono program to the Bangkok office, which was made available to all of our Asian offices.

The Bangkok office has approximately 30 lawyers and is headed by Gary Biesty. Gary and most of the lawyers in the office attended the presentation. We are just beginning a dialogue with the Asian offices about involvement in the pro bono program. However, as Gary explained, Thailand is a Buddhist country with a commitment to "merit," the accumulation of good



Marc Kadish speaking at the Bangkok office

deeds, thoughts and acts, so the concept of community involvement already exists.

Menachem Hasofer and Billy Lam from the Hong Kong office are members of the firmwide pro bono committee. The Hong Kong office has already participated in roundtable discussions with other firms in Hong Kong about establishing pro bono projects in the city. We have begun a relationship with the newly established Public Interest Law Institute office in China. Matt Rooney recently visited the Hong Kong and Beijing offices and made presentations about our pro bono program.

### Serving on Boards of Directors of Not-for-Profits

One of the traditional community service roles of lawyers is to serve on the board of directors of not-for-profit organizations. Under the definition of pro bono that we follow, mere service on a board does not count as pro bono work. If a lawyer is asked to provide legal representation to the organization, that counts as pro bono. Helping with fundraising efforts and attending events does not count.

But the greatest benefit comes from seeing the work the organization accomplishes and the people it helps. I serve on the board of the Corporation for Supportive Housing. At a recent board meeting, which took place in Washington, DC, we toured a new supportive housing site that received financial and consulting help from the organization. Open Arms Housing was established in 1997 by a group of volunteer female social service providers and advocates. Their desire to provide permanent housing for some of the most vulnerable homeless women was fulfilled with the purchase of an old three-story apartment building that has been completely restored and renovated. Each woman has her own brand-new, air-conditioned efficiency apartment with a kitchen, bathroom and sleeping area. Meeting their staff and the members of their board and touring the facility was an exciting event.

To help encourage and facilitate newer lawyers to become board members, we started a program in the Chicago office that has assisted several members of the local pro bono committee with joining newly established associate boards for some local public



Ribbon cutting ceremony at JSM-supported preschool

interest agencies: Christine Matott at Cabrini-Green, Shennan Harris at the Chicago Volunteer Legal Services and Gaby Sakamoto at the Legal Assistance Foundation. Marcia Maack, Julie Dickins and I are available to help associates in any of our offices with becoming board members and strongly encourage the effort.

### Thinking Strategically About Pro Bono

Our magazine not only highlights the work of our pro bono program, we also try to write about issues that affect the entire pro bono community.

In this issue we offer an article by legal consultant Harlan Loeb regarding the need for law firms to think strategically about their pro bono programs (beginning on page 34). Harlan was Midwest Counsel for the Anti-Defamation League, and he has a long history of involvement with public interest law. I hope that Harlan's article will excite more discussion and consideration of how a pro bono program can be looked at as part of a law firm's business strategy and about the benefits of a well-integrated program.

### Breaking News

Shortly before we went to print we received word that the Illinois attorney general's office was dropping the charges against our pro bono client, Marvin Reeves, who had spent 20 years in prison for a murder he didn't commit. Mike Gill and David Pope have represented Mr. Reeves for post-conviction relief proceedings for the past four years. I wanted to publicly congratulate Mike and David and thought it fitting to include this reference in the same issue of *Pro Bono Update* that contains the story where we are called the gold standard for indigent criminal defense practice. ♦





# Rethinking Pro Bono Services from a Strategic Perspective

by Harlan A. Loeb

Law firms are actively grappling with the challenges presented by current economic conditions. Many, if not all, firms are reviewing all cost centers and opportunities to determine how best to position themselves for the uncertainty the future presents. Most, however, have not wed their pro bono efforts to a broader strategic framework either as part of that firm's social responsibility platform or in a way that links the efforts to the firm's business objectives.

The strategic use of pro bono services can make a significant difference, including:

- Increased exposure to new clients
- Creation of influential third-party relationships
- Critical training opportunities to keep young lawyers engaged
- Visibility at a time when it matters most

The law firm structure itself makes it difficult to embed a strategic framework into pro bono efforts and charitable giving. In most cases, pro bono commitments are guided by the individual interests of partners and associates with little focus on firmwide strategy. When joined with the geographic reach of large law firms, organizational change may be a daunting task. As a partner in a major Chicago law firm noted recently, "one lawyer's publicly expressed labor of love is another's partner's lost client."

The framework and basic value proposition for enhancing the strategic output of pro bono services and charitable giving include both the historic

elements of pro bono programs as well as new and innovative principles:

## Traditional Programs

- Recruitment
- Associate training and satisfaction
- Diversity
- Firm visibility
- Networking
- Interests and relationships of individual lawyers

## Innovation

- Competitive differentiation and advantage in particular practice areas
- Leveraging exposure in new/emerging markets
- Visibility with potential clients or market sectors
- Creating public imprimatur on particular expertise
- Developing a nexus between charitable giving, pro bono work and community involvement
- Creating a platform for integrated firm marketing
- Building the intangible asset value of the firm brand by aligning across global practice and geographic lines

## The Five Phases of Pro Bono Planning

These programmatic values vary, but the growing body of law firms that have integrated pro bono services and charitable giving into their business models generally follow a deliberate process that

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*Harlan A. Loeb co-founded the Chicago office of FD, part of FTI Consulting, in March 2005 and is a member of FD's US Board of Directors. As an expert in strategic communications, he focuses his practice on public strategies and enterprise risk. Before moving into strategic communications, Harlan was Midwest Counsel for the Anti-Defamation League, a position in which he led the ADL's regional efforts on litigation, legislation and social policy. Harlan is also an adjunct faculty member at Northwestern University Law School. He graduated from Vassar College and earned his law degree with honors from the University of Minnesota Law School.*

enables management to make educated decisions about the strategic potential of their pro bono programs.

**Phase I: Discovery.** The first phase of any integrated pro bono program is the Audit, which entails reviewing current activities and resource allocation, particularly in light of competitors who are fighting for the same perceptual space; assessing the firm’s objectives in light of the firm’s business strategy; and identifying specific legal needs and current recipients’ attitudes.

**Phase II: Analysis.** The second phase consists of an analysis of current activities against the dual perspective provided by a firm’s business goals and its philanthropic commitments and objectives. Conducting this analysis will generally yield a sense of the “gaps” between objectives and current practices, and will set the stage for identifying new activities that can close the gaps, as well as pinpoint certain practices that should be eliminated.

**Phase III: Positioning.** This phase, in which specific new focal points for the program are identified, requires a framework for evaluation of various options. There are four major areas to be considered, which can be summarized as the “four Cs”:

- Compelling Legal Need
- Competence
- Credibility
- Credit

**Phase IV: Programming.** Having made basic decisions about the direction of the firm’s pro bono program, managers and communicators need to assess what types of activities should be employed — both to execute the pro bono program and to ensure they confer appropriate benefit to the firm. Important considerations here include not just budget, but the evaluation of potential partnerships with other organizations, including service recipients; what types of marketing or promotion may need to be employed; and how engaged and visible the firm should be.

**Phase V: Measurement.** The success of a pro bono program can be gauged in many ways. Donating time, money or manpower to a cause is successful in meeting the needs related to that issue, and can help with attorney morale or even help move the firm’s marketing needle. Regardless of the specific measurement used, however, it is critical to establish clear objectives that can be monitored, tracked and benchmarked.

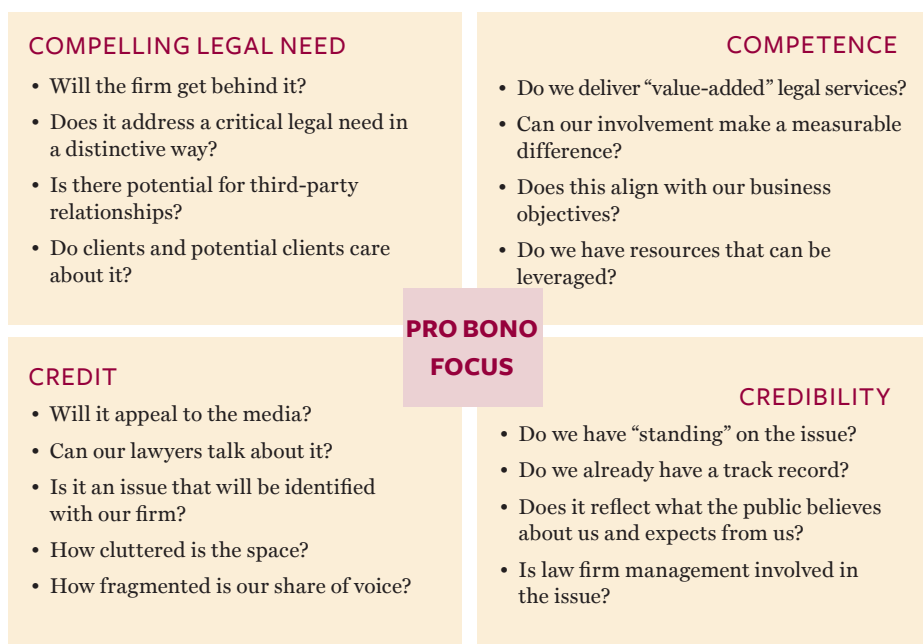
## Results

For many law firms, creating a strategic framework for the provision of pro bono legal services has opened up new markets and opportunities for the firm. Examples include:

**IP Asset Management Practice.** A firm with a growing IP practice created a platform pro bono program to provide legal assistance to underfunded entities in academic and emerging markets.

Partnering with a philanthropist engaged in microfinancing, this firm dedicated substantial hours to creating a framework both for protecting and for organizing the IP assets of these entities. As a consequence, this firm now has a far more profitable and “differentiated” IP Asset Management and Protection practice.

**Environmental Justice Claims Practice.** One firm found that its pro bono work on environmental issues created highly valuable relationships with government bodies both in the United States and abroad that could be profitably



leveraged on behalf of global clients. As this firm increased the strategic discipline of its pro bono program, it decided to increase its pro bono commitment on environmental and natural resource issues and has built a profitable practice in the process.

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Most [law firms] have not wedded their pro bono efforts to a broader strategic framework.

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**Law & Public Strategies Practice.** As a consequence of dedicating substantial pro bono resources to non-governmental organizations involved with global regulated industries, this firm formed a practice that combined lawyering with public advocacy. This emerging practice has proven to be a highly salient differentiator for the firm, a lightning rod for highly visible and meaningful pro bono work, and a profit center within the firm. In addition, the practice has

been a powerful recruiting tool for law students, established lawyers at other firms and high-profile attorneys leaving government positions.

## Conclusion

### CREATING A STRATEGIC PRO BONO PROGRAM IS AN INVESTMENT IN DOING WELL, DOING GOOD

Taking the time to analyze its organizational needs, a law firm can succeed in helping its local or global community, while also furthering its overall business objectives. When thoughtfully structured, a strategic framework for the provision of pro bono services can provide meaningful benefits to a wide range of law firm stakeholders and can help the firm build distinctive intangible asset value (“reputation capital”) and added tangible asset value, as well as greater service capability that can be the difference maker during these challenging times for law firms. ♦

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*Recent European Initiatives (continued from page 17)*

definition of pro bono where no local definition exists; essentially, it provides that pro bono work is the provision of free legal services to persons of limited means and/or to not-for-profit charitable or community organizations, with certain provisos, including one that the work should not qualify for state legal aid and another that it should be performed to the same standard as chargeable work. ♦

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*Talking Pro Bono: Marc Kadish Interviews Brian Trust (continued from page 20)*

*Marc: How do they learn that proper balance?*

Brian: My advice to lawyers who want to figure that out is to talk to successful lawyers here who have already done it. Talk to people who are familiar with the ways and habits of a successful career. Talk to lawyers like Andy and Hector, get their insight on how to balance your time, because they’ve done it and had incredibly successful careers. It’s kind of like the old saying, that if you want to get something done, ask a busy person. I think there is a lot to be learned from that saying.

*Marc: Thanks, Brian, this has been great.*

Brian: Thanks, Marc. My pleasure. ♦

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*Defending the Constitutionality of Handgun Bans (continued from page 22)*

“Incorporation of the Second Amendment is an interesting issue because you frequently find conservative and liberal legal thinkers ending up on sort of the same side,” Hakim said. “You have liberals who support gun control aligned with conservatives who are excited about the idea of state’s rights.”

“It has been exciting to work on this case and get so much firsthand experience,” Shea concluded. “Interacting with counsel on both sides and having my first appearance in court be in front of the Seventh Circuit has been tremendous.” ♦



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