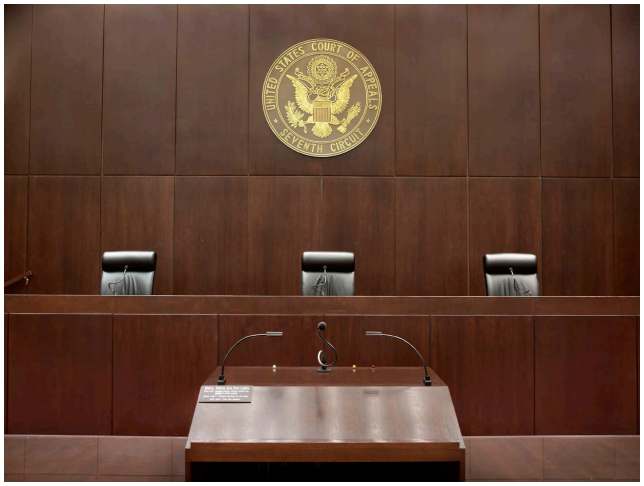
MAYER·BROWN

June 2009

Seventh Circuit Project Report



The Seventh Circuit Project is Mayer Brown's most significant firmwide pro bono litigation project. As of December 31, 2008, the cutoff date for this report, the firm had accepted 117 appeals in the United States Court of Appeals for the Seventh Circuit,[1] which covers Wisconsin, Illinois and Indiana.

This report offers a detailed study of the project. The report text was drafted by Marc Kadish, Director of Pro Bono Activities and Litigation Training. Helene Siegel, the paralegal in charge of the Seventh Circuit Project, compiled the statistics.

While the project did not formally begin until the spring of 1999, the firm had accepted earlier pro bono appointments from the Seventh Circuit (e.g., *Palaggi v. Chrans*, which began in 1997). The Court wanted to ensure that indigent appellants with potentially meritorious claims received competent legal representation. Although our Chicago office has handled approximately 70 percent of the cases, every US office has worked on at least one appeal. Lawyers, summer associates and paralegals have devoted almost 52,000 hours, averaging almost 440 hours per case. Of the cases completed as of December 31, 2008, we have won, in part or in whole, 40 cases. These cases are identified in Tables 4 and 5, which list all of the cases and the total number of hours expended on each. Cases with a large number of hours may include petitions for rehearing, petitions to the Supreme Court for *certiorari* or lower court representation, because we did not open a new matter number in these situations.

The process of handling a typical case is described in Figure 1.

Each appeal accepted through the project provides our lawyers with an opportunity to completely brief each case and to handle the oral argument. With only one exception, every case that has gone through the full briefing cycle has resulted in an oral argument. The chief reasons for concentrating our appellate pro bono work in the Seventh Circuit are: (1) the Court allows us to consider whether to accept cases offered for appointment, (2) the Court is amenable to considering our time constraints and schedules in setting the due date for an opening brief, and (3) the Court generally sets oral argument in cases where counsel is appointed.

"Appellate practice groups in firms such as [Mayer Brown] ... are great places to learn [the art of effective appellate brief writing]."

– Seventh Circuit Judge Frank H. Easterbrook

Figure 1

Flow of a Typical Case

Donald J. Wall, Counsel to the Circuit Executive, offers the case to us

↓

Marc Kadish does preliminary research to evaluate the issues presented in the case

↓

The case is offered to attorneys

↓

The attorney who takes the case follows firm policy for opening pro bono matters as set out in the memo, "Process for Approval of New Pro Bono Matters," and sends the client the Seventh Circuit Pro Bono Engagement Letter

↓

Helene Siegel assists project participants with:

- Pro Bono New Matter Memo
- Introduction to the Seventh Circuit Local Rules pertaining to briefs and appendices, resources on the Court's web site, and other project resources
- Statement of the role of appointed counsel
- Sample motions
- Library of all the project cases including briefs, motions, and opinions
- Arrangements for client phone conferences
- Contacts with the Clerk's office in both the Seventh Circuit and lower courts
- Lower court documents and transcripts
- Cite checking briefs and monitoring for adherence to court rules
- Listening to oral arguments
- Sample letter to the client setting out the attorney's responsibilities following an adverse decision

↓

Experienced brief writers assist with strategy and editing

↓

Gary Isaac is available for questions about case strategy and how to handle specific issues in a brief. He also arranges for mentors for Chicago office associates and locates participants for moot court sessions. **Robert Dow** handled these responsibilities until his recent appointment to the United States District Court for the Northern District of Illinois

↓

Moot court sessions are held to prepare for the oral argument

↓

Marc Kadish accompanies the attorney to the oral argument and sits with the attorney at the counsel table

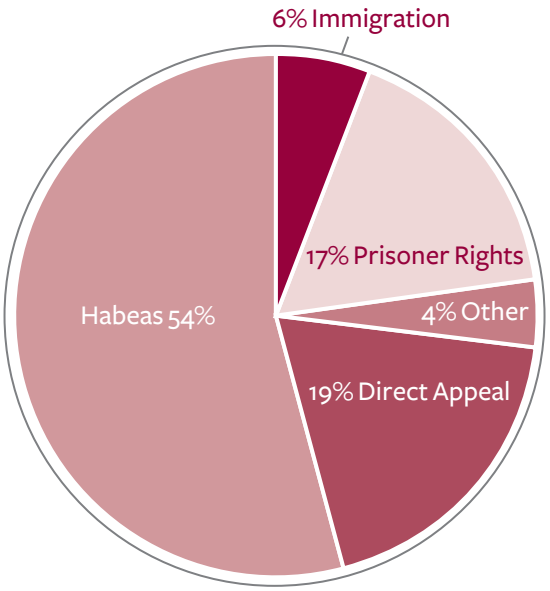
As shown in Figure 2, 54 percent of our appeals have been *habeas corpus* cases and only 19 percent have been direct appeals in criminal cases. This skew toward *habeas* cases is due to the fact that, to proceed to briefing, such cases require the Court to enter a Certificate of Appealability, which sets out the issues the lawyer is to brief — an efficient way to begin the work. A direct appeal, on the other hand, can require the lawyer to review a lengthy transcript, and may result only in the filing of an *Anders* brief.[2]

While 17 percent of the project's cases have involved prisoner rights, the vast majority of which were *pro se* filings, two of our recent projects may lead to an increase in these cases.

Six percent of our appeals have been immigration cases. Although the Court has issued an increasing number of opinions in this area, most of the appeals have been brought by the immigration bar on a private basis. However, as co-counsel with the National Immigrant Justice Center, we expect to take on more appellate immigration work as these cases continue to increase in number and complexity.

Figure 2

Types of Cases Opened Since Inception



Mayer Brown is committed to the idea that pro bono work is good for the community and good for the firm — helping people who otherwise could never afford our help while also teaching our associates vital courtroom and case management skills. The Seventh Circuit Project allows us to handle causes and cases that might otherwise go without adequate legal representation while providing valuable training to our associates. It's a win-win proposition for all involved.

Endnotes

1 While almost all have been court appointments, a very small number have come through private immigration referrals.

2 An *Anders* brief is filed pursuant to *Anders v. California*, 386 U.S. 738 (1967), in a case where counsel believes no nonfrivolous appealable issues exist. It accompanies a motion to withdraw as counsel. If a no merits brief is filed, there is no oral argument.

Table 1

Number of Cases Opened Each Year by Type

	Habeas	Direct Appeal	Immigration	Prisoner Rights	Other	Total	Percentage of Total Cases
1999	6	7	0	1	0	14	12%
2000	1	7	0	0	1	9	8%
2001	6	2	0	3	0	11	9%
2002	11	0	0	2	1	14	12%
2003	7	3	1	4	3	18	15%
2004	7	1	1	2	0	11	9%
2005	7	0	1	2	0	10	9%
2006	7	0	1	2	0	10	9%
2007	6	1	2	4	0	13	11%
2008	5	1	1	0	0	7	6%
Total	63	22	7	20	5	117	100%
% of Total Cases	54%	19%	6%	17%	4%	100%	

Figure 3

Summary of Hours Distribution

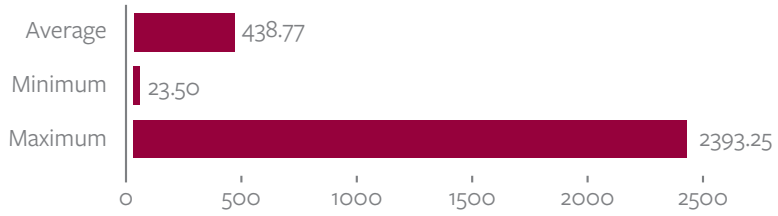


Table 2

Number of Cases Opened by Each Office (Seven Cases Worked on by Two or More Offices)[3]

	Chicago	Washington	New York	Los Angeles	Houston	Charlotte	Palo Alto	Total
1999	14	0	0	0	0	0	0	14
2000	9	0	0	0	0	0	0	9
2001	10	1	0	0	0	0	0	11
2002	9	1	1	2	1	0	0	14
2003	13	2	1	1	1	0	0	18
2004	6.5	1	1	0	1	1	0.5	11
2005	4.833	3.333	1.5	0.333	0	0	0	10
2006	6	2.5	0	0.5	1	0	0	10
2007	6	3	0.5	1	2.5	0	0	13
2008	4	1	0	1	1	0	0	7
Total	82.333	14.833	5	5.833	7.5	1	0.5	117
% of Overall Total	70%	13%	4%	5%	6%	1%	0.43%	100%

[3] The seven cases worked on by two or more offices are: *Perruquet v. Briley* (03007944): 2 offices, *Pierson v. Hartley* (03228827): 2 offices, *Cosby v. Williams* (04368433): 2 offices, *Ali v. Achim* (05025749): 3 offices, *Grigsby v. Cotton* (05084249): 2 offices, *Ingram v. McCann* and *Rush v. Kingston* (06137649): 2 offices, and *Escobar-Barraza v. Gonzales* (07089718): 2 offices.

Table 3

Hours per Seventh Circuit Case by Office[4]

Office	Chicago	Washington	New York	Los Angeles	Houston	Charlotte	Palo Alto
Total Cases	82.333	14.833	5	5.833	7.5	1	0.5
Total Hours	33628.84	9031.00	2056.88	2085.50	3573.01	673.25	288.00
Average Hours per Case	408.45	608.85	411.38	357.53	476.40	673.25	288.00

[4] Hours for a shared case are divided among the offices involved.

Table 4

Cases in Ascending Order by Matter Number (Year Opened)[5]

Matter #	Case	Total Hrs
97421705	Palaggi v. Chrans	490.50
99540395	United States v. Crawford	500.75
99541179	United States v. Immel	47.75
99541187	United States v. Walker (Reversed and Remanded)	850.00
99543167	United States v. Durham	809.00
99546830	Serrano v. Hockaday	150.00
99548596	United States v. Wilson	656.95
99583981	United States v. Lewis	137.50
99585556	Yarbough v. United States (Remanded for Re-Sentencing)	123.75
99590168	United States v. Brantley	298.25
99591562	United States v. Harbin (Vacated and Remanded)	454.75
99595282	United States v. Kincaid	265.50
99601635	United States v. Reed	258.50
99608168	Johnson v. Stovall (Reversed and Remanded)	274.50
00610869	United States v. Richardson (Vacated and Remanded)	390.00
00614794	United States v. Fernandez	495.25
00615953	United States v. Tarkowski (As Appellee – District Court Affirmed)	835.50
00616060	Cossel v. Miller (Reversed and Remanded)	235.75
00619628	United States v. Buckowich	495.00
00622838	United States v. Oestreich (Vacated and Remanded)	599.25
00656908	United States v. Rodgers	516.00
00658096	United States v. Santa Cruz	237.50
00658871	United States v. Hoskins	184.50
01703614	Jackson v. United States	256.00
01704418	Winters v. Miller	277.00
01705060	White v. Anderson	189.50
01705088	Womack v. United States (Vacated and Remanded)	197.00
01708450	United States v. Lane	204.25
01709235	Jones v. United States (Vacated and Remanded)	333.00
01898913	Bunn v. Olson (Reversed and Remanded)	347.25
01910873	Taylor v. United States	352.50
01921200	Curtis and Sax v. United States	418.00
01924546	Moffat v. Broyles	283.75
01930619	Beyer v. Litscher (Vacated and Remanded)	221.50
02008138	Ryan v. United States	23.50
02009872	Walton v. McAdory (Reversed and Remanded)	1051.25
02010505	Gibbs v. VanNatta	229.00
02024522	Lale v. United States	75.25
02059803	Nolan v. United States	47.00
02059837	Page v. Frank (Reversed and Remanded)	938.50
02066305	Carroll v. Illinois Department of Corrections (Reversed and Remanded)	367.25
02067452	Jogi v. Voges (Reversed and Remanded)	889.00
02936078	Martin v. Deuth	180.75
02941188	Thomas v. Doyle	239.50
02960246	Lee v. Davis	388.25
02972215	Rodriguez v. Walls	314.50
02995612	Schultz v. Page (As Appellee – District Court Affirmed)	160.00
02999946	Cabrera v. Hinsley	308.75
03001055	Thomas v. Cox	292.25
03002759	Gil v. Reed (Reversed, Vacated and Remanded)	268.00
03007944	Perruquet v. Briley	488.75
03008611	Hall v. United States (Reversed and Remanded)	273.00

Matter #	Case	Total Hrs
03015332	Fisher v. Lovejoy	913.75
03015347	Witzke v. Femal (Reversed and Remanded)	247.25
03117978	Miranda v. Leibach	320.00
03129975	United States v. Fazzini	589.75
03130966	Madej v. Briley (As Appellee – District Court Affirmed)	844.75
03153325	Harris v. Cotton (Reversed and Remanded)	236.25
03185273	McCormick v. Waukegan School District (Reversed and Remanded)	476.25
03187625	Crowley v. McKinney (Reversed and Remanded)	350.00
03192880	Owens v. United States (Reversed and Remanded)	503.50
03203333	United States v. Lewis and Andrews	330.50
03222621	Ramos v. Ashcroft	306.00
03223366	United States v. Martinez	816.00
03227970	Green v. McAdory	333.50
03228827	Pierson v. Hartley (Reversed and Remanded)	599.75
04239469	United States v. Funds in the Amount of $30,670 (Calhoun)	251.25
04253039	de Orejuela v. Gonzalez (Immigration Petition Granted and Remanded)	501.25
04267680	Smith v. United States (Reversed and Remanded)	389.75
04297523	Pinkston v. Madry	147.00
04310484	King v. Bureau of Prisons (Reversed and Remanded)	629.75
04337037	Glascoe v. Olson	221.00
04346715	Harr v. Verhagen	247.50
04368433	Cosby v. Williams	576.00
04369348	Smothers v. McCaughtry	599.50
04371599	Davis v. VanNatta	548.75
04373308	Balsewicz v. Kingston	673.25
05007781	Grindemann v. Frank	77.00
05018128	Kizer v. Uchtman (Reversed and Remanded)	441.00
05025749	Ali v. Achim (Immigration Petition Granted and Remanded)	2393.25
05029085	Kaba v. Stepp (Reversed and Remanded)	2348.25
05030545	Whitman v. Bartow	773.50
05077331	Jones v. Uchtman	545.75
05078894	Charlton v. Davis	195.00

Matter #	Case	Total Hrs
05084215	Shell v. United States	380.50
05084249	Grigsby v. Cotton	277.25
05139931	Garth v. Davis	259.00
06014204	Varela v. United States	209.75
06030984	Williams v. Bartow	464.75
06076149	Scruggs v. Jordan	332.50
06083110	Gil v. Reed (Vacated and Remanded)	775.50
06093130	Morales v. Bezy	1958.75
06132949	Grieveson v. Cottey (Reversed and Remanded)	402.50
06133765	Suggs v. United States (Remanded for Re-Sentencing)	400.50
06137649	Ingram v. McCann and Rush v. Kingston	186.00
06139673	Joseph v. Gonzales (Immigration Petition Granted and Remanded)	349.50
06139673	Joseph v. Mukasey	574.25
06154820	Virsnieks v. Smith	351.50
07002555	Koger v. Bryan (Reversed and Remanded)	466.25
07004147	De Leon Castellanos v. Gonzales	270.75
07007397	Thompson v. Veach	201.25
07032305	Johnson v. Chambers	366.50
07040810	United States v. Rickey Clark	519.50
07042726	Wells v. Merchant*	68.25
07049210	Stallings v. United States (Vacated and Remanded)	638.25
07057485	Crockett v. Hulick	513.50
07057604	Pruitt v. Mote (Reversed and Remanded)	90.75
07079056	United States v. Haynes*	232.75
07089718	Escobar-Barraza v. Gonzales (Vacated and Remanded)	585.00
07135888	Arredondo v. Pollard	365.75
07148069	Rodriguez v. Plymouth Ambulance Service	587.75
07149623	Dale v. Poston	506.25
07154305	Gant v. United States	198.00
08034905	Gross v. Knight	625.50
08055882	Johnson v. Loftus	385.25
08066969	Brown v. Watters	351.25
08127079	Johnson v. United States*	95.00

[5] Favorable result noted in parentheses.

*Majority of hours accumulated after December 31, 2008, report cutoff.

Table 5

Cases in Descending Order by Total Hours[6]

Matter #	Case	Total Hrs.
05025749	Ali v. Achim (Immigration Petition Granted and Remanded)	2393.25
05029085	Kaba v. Stepp (Reversed and Remanded)	2348.25
06093130	Morales v. Bezy	1958.75
02009872	Walton v. McAdory (Reversed and Remanded)	1051.25
02059837	Page v. Frank (Reversed and Remanded)	938.50
03015332	Fisher v. Lovejoy	913.75
02067452	Jogi v. Voges (Reversed and Remanded)	889.00
99541187	United States v. Walker (Reversed and Remanded)	850.00
03130966	Madej v. Briley (As Appellee – District Court Affirmed)	844.75
00615953	United States v. Tarkowski (As Appellee – District Court Affirmed)	835.50
03223366	United States v. Martinez	816.00
99543167	United States v. Durham	809.00
06083110	Gil v. Reed (Vacated and Remanded)	775.50
05030545	Whitman v. Bartow	773.50
04373308	Balsewicz v. Kingston	673.25
99548596	United States v. Wilson	656.95
07049210	Stallings v. United States (Vacated and Remanded)	638.25
04310484	King v. Bureau of Prisons (Reversed and Remanded)	629.75
08034905	Gross v. Knight	625.50
03228827	Pierson v. Hartley (Reversed and Remanded)	599.75
04369348	Smothers v. McCaughtry	599.50
00622838	United States v. Oestreich (Vacated and Remanded)	599.25
03129975	United States v. Fazzini	589.75
07148069	Rodriguez v. Plymouth Ambulance Service	587.75
07089718	Escobar-Barraza v. Gonzales (Vacated and Remanded)	585.00
04368433	Cosby v. Williams	576.00
06139673	Joseph v. Mukasey	574.25
04371599	Davis v. VanNatta	548.75
05077331	Jones v. Uchtman	545.75
07040810	United States v. Rickey Clark	519.50
00656908	United States v. Rodgers	516.00
07057485	Crockett v. Hulick	513.50
07149623	Dale v. Poston	506.25
03192880	Owens v. United States (Reversed and Remanded)	503.50
04253039	de Orejuela v. Gonzalez (Immigration Petition Granted and Remanded)	501.25
99540395	United States v. Crawford	500.75
00614794	United States v. Fernandez	495.25
00619628	United States v. Buckowich	495.00
97421705	Palaggi v. Chrans	490.50
03007944	Perruquet v. Briley	488.75
03185273	McCormick v. Waukegan School District (Reversed and Remanded)	476.25
07002555	Koger v. Bryan (Reversed and Remanded)	466.25
06030984	Williams v. Bartow	464.75
99591562	United States v. Harbin (Vacated and Remanded)	454.75
05018128	Kizer v. Uchtman (Reversed and Remanded)	441.00
01921200	Curtis and Sax v. United States	418.00
06132949	Grieveson v. Cottey (Reversed and Remanded)	402.50
06133765	Suggs v. United States (Remanded for Re-Sentencing)	400.50
00610869	United States v. Richardson (Vacated and Remanded)	390.00
04267680	Smith v. United States (Reversed and Remanded)	389.75
02960246	Lee v. Davis	388.25
08055882	Johnson v. Loftus	385.25
05084215	Shell v. United States	380.50
02066305	Carroll v. Illinois Department of Corrections (Reversed and Remanded)	367.25
07032305	Johnson v. Chambers	366.50
07135888	Arredondo v. Pollard	365.75
01910873	Taylor v. United States	352.50
06154820	Virsnieks v. Smith	351.50
08066969	Brown v. Watters	351.25
03187625	Crowley v. McKinney (Reversed and Remanded)	350.00
06139673	Joseph v. Gonzales (Immigration Petition Granted and Remanded)	349.50
01898913	Bunn v. Olson (Reversed and Remanded)	347.25
03227970	Green v. McAdory	333.50

Matter #	Case	Total Hrs.
01709235	Jones v. United States (Vacated and Remanded)	333.00
06076149	Scruggs v. Jordan	332.50
03203333	United States v. Lewis and Andrews	330.50
03117978	Miranda v. Leibach	320.00
02972215	Rodriguez v. Walls	314.50
02999946	Cabrera v. Hinsley	308.75
03222621	Ramos v. Ashcroft	306.00
99590168	United States v. Brantley	298.25
03001055	Thomas v. Cox	292.25
01924546	Moffat v. Broyles	283.75
05084249	Grigsby v. Cotton	277.25
01704418	Winters v. Miller	277.00
99608168	Johnson v. Stovall (Reversed and Remanded)	274.50
03008611	Hall v. United States (Reversed and Remanded)	273.00
07004147	De Leon Castellanos v. Gonzales	270.75
03002759	Gil v. Reed (Reversed, Vacated and Remanded)	268.00
99595282	United States v. Kincaid	265.50
05139931	Garth v. Davis	259.00
99601635	United States v. Reed	258.50
01703614	Jackson v. United States	256.00
04239469	United States v. Funds in the Amount of $30,670 (Calhoun)	251.25
04346715	Harr v. Verhagen	247.50
03015347	Witzke v. Femal (Reversed and Remanded)	247.25
02941188	Thomas v. Doyle	239.50
00658096	United States v. Santa Cruz	237.50
03153325	Harris v. Cotton (Reversed and Remanded)	236.25
00616060	Cossel v. Miller (Reversed and Remanded)	235.75
07079056	United States v. Haynes*	232.75
02010505	Gibbs v. VanNatta	229.00
01930619	Beyer v. Litscher (Vacated and Remanded)	221.50
04337037	Glascoe v. Olson	221.00
06014204	Varela v. United States	209.75
01708450	United States v. Lane	204.25
07007397	Thompson v. Veach	201.25
07154305	Gant v. United States	198.00
01705088	Womack v. United States (Vacated and Remanded)	197.00
05078894	Charlton v. Davis	195.00
01705060	White v. Anderson	189.50
06137649	Ingram v. McCann and Rush v. Kingston	186.00
00658871	United States v. Hoskins	184.50
02936078	Martin v. Deuth	180.75
02995612	Schultz v. Page (As Appellee – District Court Affirmed)	160.00
99546830	Serrano v. Hockaday	150.00
04297523	Pinkston v. Madry	147.00
99583981	United States v. Lewis	137.50
99585556	Yarbough v. United States (Remanded for Re-Sentencing)	123.75
08127079	Johnson v. United States*	95.00
07057604	Pruitt v. Mote (Reversed and Remanded)	90.75
05007781	Grindemann v. Frank	77.00
02024522	Lale v. United States	75.25
07042726	Wells v. Merchant*	68.25
99541179	United States v. Immel	47.75
02059803	Nolan v. United States	47.00
02008138	Ryan v. United States	23.50
	Subtotal	51336.45
04360343	Brief Supervisors and Moot Ct. Participants	560.50
	Total	51896.95
	Average Hours per Case	438.77

[6] Favorable result noted in parentheses.
*Majority of hours accumulated after December 31, 2008, report cutoff.

Figure 4

Number of Seventh Circuit Project Cases Opened Each Year

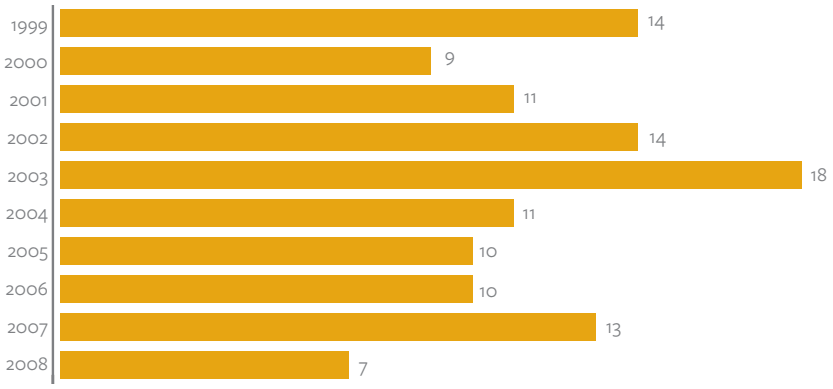
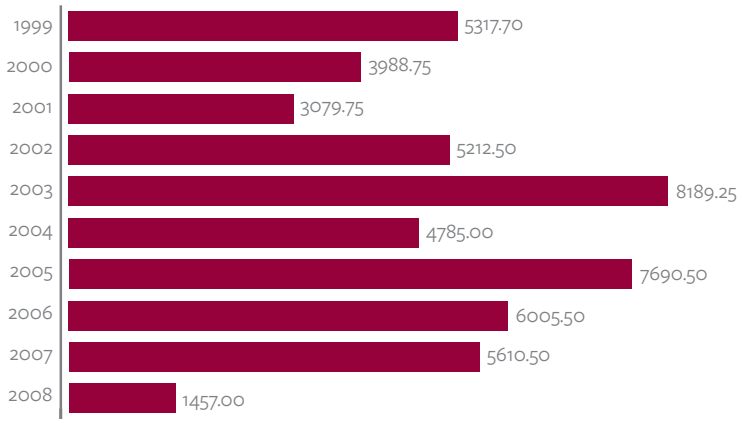


Figure 5

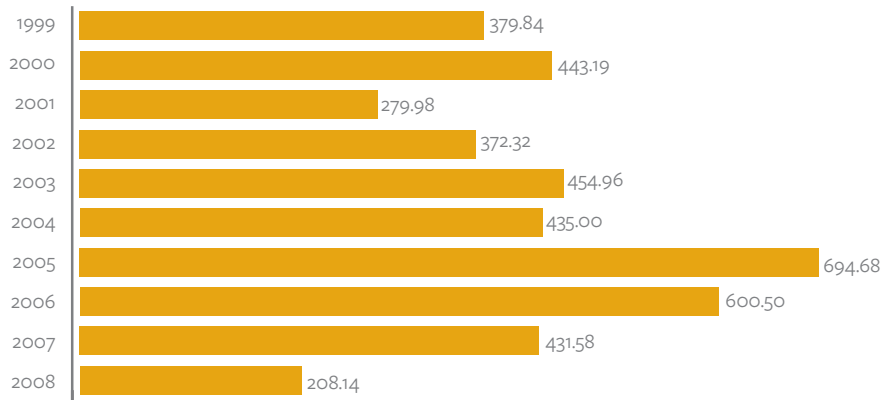
Hours Spent on Seventh Circuit Project Cases Each Year[7]



[7] All hours for each case are reflected in the year the case was opened.

Figure 6

Average Hours per Case Each Year[8]



[8] Hours include time spent on certain cases subsequent to initial Seventh Circuit decisions — e.g., petitions for rehearing, petitions to Supreme Court for *certiorari*, and remand work in the district court

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

[redacted] Brown
v
S[redacted]W[redacted]

Case No. [redacted]

**THE APPELLANT, PRO SE,
WANTS TO MAKE KNOWN HIS SATISFACTION
WITH COUNSEL APPOINTED BY THIS COURT**

First … the Appellant, [redacted] Brown, (Brown) wants to make clear that he has never [a]ctually composed any of the pro se pleadings, nor himself written anything else to any of the federal courts and/or to the law firm appointed by this court to represent Brown – with the inclusion of this pleading – although Brown has [p]ersonally signed all of the same. That is, Brown has solicited the help of another prisoner.

On July 1, 2008 Brown had opportunity to observe Attorney Andrew Pincus of Mayer Brown LLP on C-SPAN: *American Constitution Society* (ACS); **Supreme Court Term Review** which prompted Brown to again Shepardize said law firm which led Brown to the – Footnote #1 in Suggs v. U.S., 513 F.3d 675, 680 (7th Cir. 2008) "*New counsel, Thomas M. McGrath from Mayer Brown, **has done a splendid job** representing Mr. Suggs on this appeal. As always on pro bono appointments accepted by attorneys from Mayer Brown, Marc Kadish has assisted Mr. McGrath on this appeal.*"

On July 25, 2008 Brown received copy of the "Opening Brief" prepared by Mayer Brown for filing in this appeal.

Although said brief includes every point made by the [person] assisting Brown; however, said [person] would have never developed the "Estopped" theory proffered by said law firm whose brief is excellent and, in my view, unassailable.

Now, therefore, anything Brown wants to say to this court he will say it through Mayer Brown LLP heretofore.

RESPECTFULLY SUBMITTED
[redacted]
[redacted] BROWN

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