

# PROBONO UPDATE

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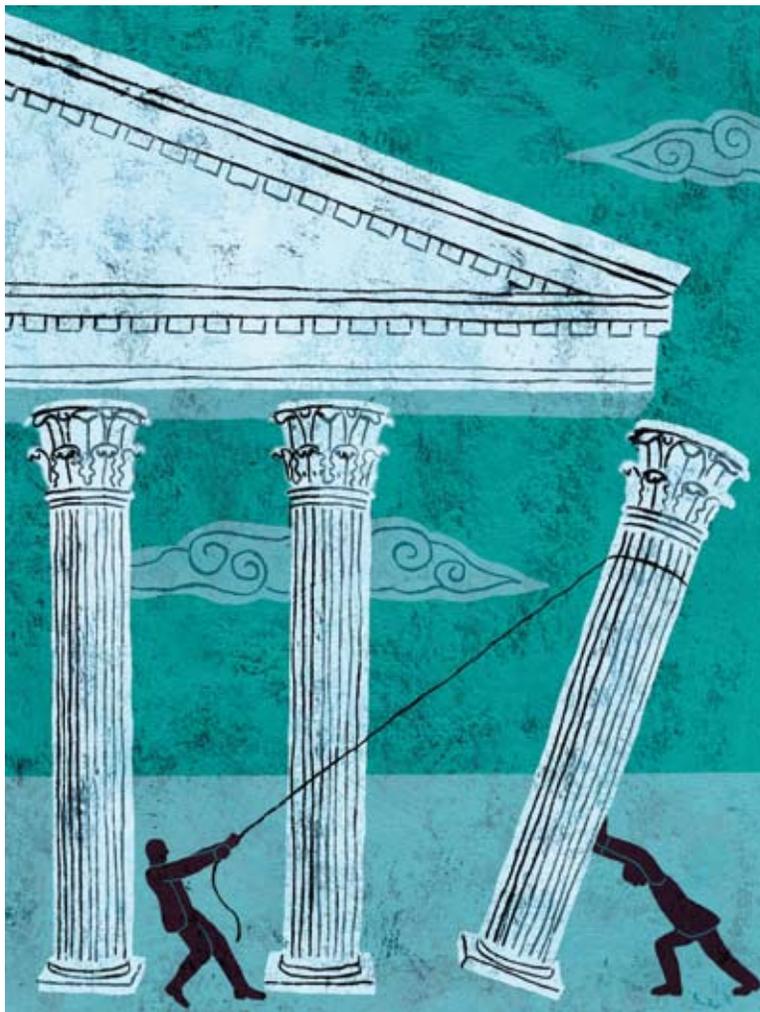
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## REBUILDING AND RESTORING



# ABOUT

At Mayer Brown, we not only help individuals to rebuild and restore their lives, we help to foster the industries and organizations that attack the underlying issues and challenges.

We are working with organizations that seek to restore wetlands, to build affordable housing and to rebuild homes and communities decimated by the earthquake in Haiti; we have helped foster a growing microfinance industry that provides hope for the world's poor; and we have worked with the Court of Appeals to build a program to provide quality representation to indigent appellants. Attacking systemic problems—that's what a global law firm can do.



# A Partnership to Solve Environmental Challenges

By aligning its organizational goals with the world's biggest challenges, Mayer Brown seeks to energize its lawyers and make a lasting impact on issues facing the planet.

One way the firm has sought to accomplish this is by forming a close collaboration with The Nature Conservancy (the Conservancy or TNC), one of the world's leading conservation organizations. Since its founding in 1951, TNC has expanded to implement conservation projects and initiatives in more than 30 countries. It has protected more than 119 million acres and 5,000 miles of rivers, and it operates more than 100 marine conservation projects.

"We first became involved with TNC through its work in buying land and creating preserves," said Marcia Tavares Maack, Mayer Brown's Assistant Director of Pro Bono Activities. "We were introduced to TNC in 2000 by environmental lawyers John Hahn and Roger Patrick shortly after they joined Mayer Brown."

## A 30-Year Relationship

Hahn, a partner, and Patrick, a counsel, have a relationship with TNC that began nearly 30 years ago. "In the 1980s, there was a lack of interest in doing pro bono work through the Environmental

practice because it generally involved adversarial proceedings against members of the client community," Hahn explained. "We began working with The Nature Conservancy because we were familiar with its solid reputation as a real estate-driven entity, doing conservation deals, taking donations and buying land.

"In 1980, Congress adopted CERCLA, the federal Superfund statute that imposed liabilities for those acquiring contaminated real estate," Hahn continued. "We immediately began helping the Conservancy to develop their processes for evaluating properties."

Hahn and Patrick's first big collaboration concluded in 1990, after they performed due diligence on the 500-square-mile Gray Ranch, located in the "boot heel" of New Mexico. "That really got our relationship rolling," said Hahn. In 1991, TNC selected Hahn for its Oak Leaf Award for contributing in a significant way to the Conservancy. "Roger deserves most of the credit for his work with TNC," Hahn deferred.



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“Without Roger’s help, the deal would never have been completed.” — E.J. Remson

### The Ormond Beach Project

“The project that I’m most proud of was in 2005, when the Conservancy acquired 277 acres of coastal wetlands near Oxnard, California, called the Ormond Beach Project,” Patrick said. This unique wetland is part of a much larger ecosystem that conservation groups hope to restore. The parcel of land that the Conservancy wanted to acquire was next to a former magnesium-smelting plant with a long history of environmental problems, including smelting waste from the plant sloughing toward the wetlands.

Los Angeles Regional Water Quality Control Board that allowed the transaction to go forward.”

According to E.J. Remson, The Nature Conservancy’s project manager, “Without Roger’s help, the deal would never have been completed.” Community activists, environmentalists and government officials celebrated a significant victory for conservation shortly after close of escrow.

### Palmyra Atoll Acquisition Brings Challenges

Another important project was the Palmyra Atoll, located 1,000 miles south of Hawaii. Palmyra had been a naval facility during World War II. It is now part of the Pacific National Marine Monument, but earlier had been considered for development as a casino or nuclear-waste disposal site.

“Defense facilities, in general, have a reputation for giving rise to various contamination issues,” Patrick said. “So, at Palmyra, we negotiated a prospective purchaser agreement with EPA Region IX that provided the comfort the Conservancy needed to move forward.” Both Palmyra and Ormond Beach had strong support from the local community and strong political support that made the task much easier.

“John and Roger have been great in getting Mayer Brown partners involved, and it’s been an amazingly productive relationship lasting more than a quarter century,” said Laurel Mayer, TNC Deputy General Counsel. “Roger has helped us acquire lands where toxic issues were a potential concern.



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“It was fairly easy to identify the issues, but the challenge was structuring the deal so the Conservancy could acquire the property without taking on liabilities,” Patrick continued. Under CERCLA, a property owner is liable merely by virtue of being the owner. “Knowing we had contamination issues on the site next door presented problems for the property TNC intended to acquire. To solve the problem, we negotiated what, in essence, was a settlement agreement with the



Jonathan Rotter

We would have had to walk away from many transactions if he hadn't come up with can-do solutions. John and Roger have also helped us to walk away from projects when the risk was just too great."

In addition to land acquisition projects, Mayer Brown lawyers around the world work on projects as varied as carbon offsets in Latin America; records retention in the United Kingdom, United States, Germany and China; and organizational issues and tax credits in Chile. Washington DC counsel Timothy Choppin and Chicago associate Julie Dougherty also recently assisted TNC's Real Estate Legal Practice Team with an insurance review of the standard coverage available to TNC under the 2006 ALTA Owner's Policy, as well as other endorsements. The project addressed Creditor's Rights Bankruptcy Endorsement, Conservation Easements and Mineral Rights and Surface Disturbance.

### Carbon Credit Projects

Mayer Brown is helping TNC to manage Carbon Credit projects in Argentina, Colombia, Brazil and Mexico, with plans to expand to other countries. Our lawyers are looking at legal provisions applicable to Voluntary Carbon Offsets (VCOs) generated by forest conservation and afforestation/ reforestation projects. We are also reviewing the relevant local legal issues, working in conjunction with local law firms that were referred to TNC by The Cyrus R. Vance Center for International Justice, a valued partner on global conservation issues.

In January 2010, Paul Forrester, a Finance partner in Chicago, began the VCO program for Mayer Brown; Alexandra E. Shea, an associate in Chicago, shares project responsibilities.

"We try to determine which countries have the necessary mechanisms to mitigate greenhouse gasses and minimize fraud," Forrester said. "The work has gone slowly, as it is complex and exacting. The jurisdictions have been modestly protective. We help improve their protection and better identify problems. In the second phase, we hope to extend the geography."

Shea added, "It's fascinating and groundbreaking work in support of TNC, which is spearheading the global climate change initiative, focused on carbon offsets around the world."

TNC Senior Attorney Jonathan Rotter has spent 15 years working on carbon-related transactions and considers it a cutting-edge area of the law. "Paul Forrester and his team are steeped in knowledge of critical issues," he said. "They provide review and editing services, make substantive comments and articulate the issues. And, like any true partner, Paul regularly corresponds with us beyond the work at hand."

### London Team Coordinates Records Management and Retention

TNC also requested records retention advice in different geographic areas. In response, Mayer Brown assembled teams in the United Kingdom, Germany, China and the United States. The London team consisted of Edmund Sautter, a partner; Victoria Matthews, an associate; and Mandy Warnford-Davis, head of Professional Standards. Matthews coordinated the advice for the United Kingdom.

"The work was reasonably straightforward and our goal was to give TNC guidelines that are specific enough for the types of records they hold to be useful to them," Matthews said.



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"It's fascinating and groundbreaking work in support of TNC..."

— Alexandra E. Shea



Philip Tabas

“In order to achieve this, we needed to interpret and apply the relevant English legislation so we could provide TNC with a specific proposal for how long they should keep various types of records. This helps them ensure compliance without having to refer to the underlying law. They were very pleased with the result.”

In the Hong Kong office, Mayer Brown JSM associate Susanne Reynolds and partner Menachem Hasofer were on the team working with TNC on records management in China. “We advised on whether Hong Kong law required TNC to retain records for any longer periods, or required destruction sooner, than US law,” Reynolds said. “As a result of our assistance,

addressed the issues,” said partner Terence Tung. “TNC was thankful and impressed with our work, calling it a possible model for analysis of this same issue in other countries.” Also working on the project in the Beijing office was associate Vincent Wu.

### The Valdivian Coastline

TNC also asked for Mayer Brown’s help with a project in one of the world’s most critical rainforests, the Valdivian Coastal Range. Located along southern Chile’s Pacific coastline, it harbors Chile’s highest concentrations of species found nowhere else on Earth. Approximately 275,000 acres of the one-million-acre Valdivian Coastal Range are now protected in several sites, including the Valdivian Coastal Reserve.

Reb Wheeler, a Corporate & Securities partner in New York, along with associate Jonathan Bernstein and Tax Transactions associate Michael Marion, formed a team to help TNC with an ongoing series of conservation projects within the coastal range. The work involved restating the LLC agreement for the entity through which TNC owns these lands and assisting with related organizational issues and tax considerations. “TNC lawyer Ruth Castro and our team worked very closely on this project,” said Wheeler. “We were very gratified to have the opportunity to help TNC in its efforts to help protect this dynamic and unique ecosystem.”



© E.J. REMSON/TNC

“We were very gratified to have the opportunity to help TNC in its efforts to help protect this dynamic and unique ecosystem.”

— Reb Wheeler

TNC could easily identify any variations required under Hong Kong law to TNC’s records retention policies adopted in the US and elsewhere.”

Similarly, lawyers in the Beijing office of Mayer Brown JSM advised on the laws in the People’s Republic of China (PRC). “Because the PRC doesn’t have a comprehensive code of legislation for record retention, it was a real challenge to search numerous pieces of legislation to identify the relevant sections that

### A Long, Strong Relationship

The 11-year relationship has gone extremely well in the eyes of TNC. “Mayer Brown has been incredibly helpful to The Nature Conservancy,” said Laurel Mayer. “It’s really exciting to us that Mayer Brown attorneys share our excitement and enthusiasm for the work.”

“You are not only doing fantastic pro bono work, but expanding the pro bono network for us around the globe.”

— Laurel Mayer

In addition to performing legal work, Mayer Brown has introduced TNC to organizations such as Advocates for International Development (A4ID), a UK charity that brings together members of the legal and development professions to help achieve the UN Millennium Development Goals. “We needed help with records retention in Indonesia and Mayer Brown’s referral to A4ID was extremely helpful,” said Mayer. “You are not only doing fantastic pro bono work, but expanding the pro bono network for us around the globe.”

The firm also arranged for Brian Greene, then an associate in the Latin America practice, to transfer to TNC on a secondment. Fluent in Spanish, Greene reviewed contracts, helped negotiate agreements with the government of Costa Rica that allowed Costa Rica to become the first nation in the world to reach its Millennium

Challenge goals, and helped coordinate outside counsel on Conservancy carbon-offset projects in Latin America. “Brian did an amazing job for us,” Mayer said. “The program staff really valued his work.”

“Mayer Brown attorneys have been extraordinarily helpful on a broad range of legal questions involving environmental-hazard liability, records retention, climate change, water-quality permit trading and intellectual property,” commented TNC General Counsel Philip Tabas. “The Conservancy is extremely appreciative of the legal support we have received from the firm and from Roger and John, who have been stalwart providers of pro bono legal services to TNC for close to 30 years. Their record of pro bono service and responsiveness is truly a model for other lawyers.” ♦



Jonathan Bernstein



Timothy Choppin



Julie Dougherty



Paul Forrester



Brian Greene



John Hahn



Menachem Hasofer



Michael Marion



Victoria Matthews



Roger Patrick



Susanne Reynolds



Edmund Sautter



Alexandra Shea



Terence Tung



Mandy Warnford-Davis



Vincent Wu



Reb Wheeler

# Associates Leading the Way on Haitian Relief and Rebuilding Projects

**T**he magnitude 7.0 earthquake that struck the island nation of Haiti on January 12, 2010, brought devastating consequences. The Haitian government has estimated the number of dead at more than 316,000, with hundreds of thousands injured and 1.5 million homeless.



Aid in the form of personnel, heavy equipment, medicine, food and water arrived from as nearby as the Dominican Republic and as far away as China. In addition, several countries offered various forms of short-term refugee or immigrant relief. Longer term, a number of organizations have been assisting with rebuilding Haiti's infrastructure and buildings.

Mayer Brown has been heavily involved with efforts to help the Haitian people, with associates leading the way on several projects.

## Protecting the Right to Stay

In the immediate aftermath of the earthquake, the Obama administration granted special immigration status to undocumented Haitians living in the United States in order to protect their safety, which would be at risk if they were deported to a ravaged Haiti. In New York City—the largest Haitian community outside of Port-au-Prince—a number of legal clinics began to offer assistance to any Haitian national who wished to apply for an 18-month term of Temporary Protected Status (TPS). Such individuals typically entered the United States without inspection, overstayed their visas, entered with false documents or previously had been scheduled for deportation, exclusion or removal. Those granted TPS can remain in the United States legally, can work for the 18-month term and are eligible for Medicaid. TPS has been critical for Haitians and Haiti—at the time of the earthquake, there were 30,000 Haitians in the United States who were under deportation orders and risked homelessness if returned to Haiti.

On January 28, 2010, five Mayer Brown lawyers, along with a staff member who helped with translation, participated in a clinic conducted by the New York City Bar Justice Center in conjunction with the American Immigration Lawyers Association that helped Haitians

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“There was a very strong emotional component to this work that was often both exhausting and exhilarating.”

—Melissa Francis

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complete TPS applications and fee waiver requests. Soon after, the firm also began to work with the New York Legal Assistance Group (NYLAG) to screen those who thought they might be eligible for TPS and to assist with the application process. Litigation associate Melissa Francis led three training sessions in the firm’s New York office for those interested in assisting with various types of immigration relief, such as TPS applications. Two partners and 25 associates worked on the TPS effort.

As the need for assistance with TPS applications dwindled by mid-2010, NYLAG and Mayer Brown changed their focus to I-94 extensions, a form of relief offered to those who were in Haiti at the time of the earthquake and subsequently came to the United States as evacuees on six-month I-94 visas.



These Haitian-national evacuees were able to enter the United States because they were caring for American children or helping US citizens get out of Haiti. They had the right to stay, but few other rights—they could not work or receive any government benefits. Because conditions in Haiti improved little over the first six months following the earthquake, it was decided that I-94 extensions of six months could be renewed repeatedly. Ten Mayer Brown associates and two partners were engaged with the I-94 extension project.

As Francis continued to learn about different types of immigration relief, she opted to steer the firm’s efforts toward deferred action status work, another form of discretionary relief offered to Haitian nationals who arrived in the United States after the earthquake.

In November 2010, nine Mayer Brown associates and two partners teamed up with Cleary, Gottlieb, Steen & Hamilton LLP to work with potential applicants who were successfully screened at clinics run by NYLAG, Lutheran Social Services of New York and Brooklyn Defender Services. Those Haitians who established sufficient hardship—such as a family member receiving medical care in the United States—or who were accompanying a US minor were eligible to receive temporary relief through



PHOTOGRAPHY COURTESY OF BUILDING FOUNDATIONS

deferred action status, which would allow them to apply for employment authorization and Social Security cards.

“It was difficult to hear the stories of so many people who survived the disaster in Haiti. All of them experienced incredible tragedy, including loss of family members, physical injury and loss of property,” commented Francis, who was so impressed with NYLAG that she now serves on the organization’s associate board. “Because the evacuees were traumatized, we also had to take on somewhat of a therapeutic

role. There was a very strong emotional component to this work that was often both exhausting and exhilarating.”

Corporate & Securities associate Zoë Badger worked with three TPS applicants and one Haitian teenager who applied for deferred action status. “It was hard to tell my client that despite the benefits that a successful deferred action request would bestow, it is still ultimately just a one-year approval rather than a path toward permanent legal status in the United States,” she

remarked. “He hopes to finish high school here because he doesn’t have a school in Haiti anymore. Here, he lives with his aunt and uncle—there, he no longer has a house. Hopefully our government will determine a longer-term remedy for people in this situation, but at present we can only work within the confines of the remedies available.”

Forty-two Mayer Brown lawyers from the New York office participated in these Haitian relief efforts, totaling more than 1,100 hours. “I think the interest has

## Finding Other Ways to Help in Haiti



“Following my visit to Haiti, I started to explore what could be done to help with the homeless situation there.”

— Charles Triplett

Mayer Brown has been endeavoring to find other ways to assist Haiti’s rebuilding efforts. Soon after the earthquake, the firm donated \$50,000 each to Habitat for Humanity and Doctors Without Borders in support of Haitian relief.

Additionally, after making a visit to the island nation in mid-2010, Washington DC Tax partner Charles Triplett began work on an independent initiative geared toward developing housing for some of the 1.5 million Haitian homeless.

“Following my visit to Haiti, I started to explore what could be done to help with the homeless situation there,” Triplett recalled. “I met with an architect who had created a master plan to move nearly a million Haitians from Port au Prince to the less populated northwestern province of Haiti, where shipping containers would be adapted for use as permanent housing and for other purposes.”

Shipping containers have been used as homes, offices and workshops for more than 20 years. The containers are extremely durable, built to withstand the rigors of travel by sea and land, and readily stackable for multi-level dwelling.

Rural Alaskans, Dutch university students and soldiers in Iraq have benefited from the repurposing of these containers, which can be modified with windows, doors, plumbing, electricity, heating, air conditioning and even balconies.

Triplett secured an agreement from shipping company UPS, a Mayer Brown client, to donate containers for Haiti through the UPS Foundation. He also received a pledge from a US manufacturer of solar panels to donate panels and related electrical equipment along with installation services for a pilot project. This initial site may be built as early as fall 2011.

“Once we create our pilot site and prove the concept, we will be able to start a larger effort to raise funds to buy land, modify containers and build new communities in Haiti, which would include pro bono legal support from Mayer Brown,” Triplett said. Filmmakers and photographers associated with Washington DC-based non-profit arts group FotoDC may document the project to help promote it.

According to Triplett, the effort could also potentially link up with the work being done by Building Foundations. ♦





Pam (left) and Amy Stroud of Building Foundations

been so high because it's an opportunity for lawyers to do a lot of good with a minimal time commitment, and because the work is applicable to litigators and transactional lawyers alike—it demands a certain skill set that all lawyers have,” Francis said. “Because we had substantive in-house training and readily available mentors, our lawyers felt very confident about taking on these cases.”

Francis also organized a fundraising event in the New York office that raised \$3,300 to benefit Habitat for Humanity and Doctors Without Borders, which supplemented the \$100,000 that the firm contributed equally to these organizations for earthquake relief. For these efforts and her other pro bono work, she was recognized as a Mayer Brown Pro Bono Lawyer of the Year in 2010.

### Building a Better Haiti

Over time, the focus on Haiti has gradually transitioned from the types of immediate relief required following a natural disaster to recovery and rebuilding. In New York, landscape architect Amy Stroud was among a number of architects, landscape architects, engineers and designers who gathered over a weekend in May 2010 to conduct a design charrette, a collaborative design-oriented event. The attendees, who assembled under the auspices of

the American Institute of Architects, developed the initial concepts for a complex of buildings that would be built in Port-au-Prince by Haiti Outreach Ministries.

Even before the charrette, Stroud had begun to consider how those who had contributed to the design would be able to travel to Haiti in order to help teach the builders. The formation of a 501(c)(3) not-for-profit organization that could engage in fundraising for this travel and future projects made the most sense, and she ultimately discussed the possibilities with Mayer Brown Banking & Finance associate Allison Young. Soon after the charrette, Young received the firm's approval to begin staffing the project in support of the organization that came to be known as Building Foundations.

“I thought that helping those who wanted to help the earthquake victims by rebuilding would be a good way to contribute to the cause,” said Tax associate Maurice Worsley. “I focused on completing a Form 1023 to obtain 501(c)(3) tax-exempt status for the organization, which required us to develop a narrative that would help the IRS understand the organization's intent. Because it wanted to pool resources to help Haiti Outreach Ministries rebuild in Haiti, we had to be clear about just how much Building Foundations would be working onsite and where the organization's funds would be going.”

Prior to applying for IRS approval, the foundation was incorporated in Delaware. Zoë Badger joined the team in August to help determine how Building Foundations could obtain approval to conduct business in New York, where it expected to perform much of its fundraising activities. The team, which also included Corporate & Securities associate

Kimberly Arena, Banking & Finance partner Chris Gavin, Corporate & Securities partner Ed Davis and Tax partner Jason Bazar, drafted the foundation's bylaws and related documentation and created a number of forms and contracts, including engagement letter templates and volunteer waiver liability standards and forms.

"It was great experience for us to help a client develop an understanding of the aspects of corporate law that we worked on, such as bylaws and amendments and board responsibilities and tax laws," Young noted.

"One of the great things about pro bono work in general is the increased responsibility that we associates take on, and this project certainly held true to that concept," added Badger. "I was in constant contact with Amy Stroud and several of the board members throughout the formation of their organization."

Construction work has begun at the Repatriate Community Complex that was partially designed during the May 2010 charrette. The master plan that Building Foundations worked on includes a church sanctuary, elementary school, vocational school, medical clinic, agricultural gardens, playgrounds and a sports field. Multi-story buildings will be

built of reinforced concrete according to California earthquake codes and Miami/Dade hurricane design codes. Ground will soon be broken on a second Building Foundations-designed project, the Cite Soliel Medical Clinic.

"Mayer Brown guided us through the entire formation process, from organizational structure through the required paperwork to become a non-profit organization," said Building Foundations chair Pam Stroud, who has more than three decades of experience in the design and construction industry.

"The Mayer Brown team has given us tremendous legal support and continues to be by our side as we evolve from a young organization into a mature one," added Amy Stroud, the current president of Building Foundations. "We are very grateful for all of the firm's help."

"One of the best aspects of this project is that it was driven by associates throughout, from finding the client to executing all of the work. I also like that we have been able to see the results of our work," Young concluded. "Building Foundations recently had its first onsite trip, in which a number of its members went to the Repatriate site. They were able to do so because of the money that the group raised as a result of our work." ♦



Kimberly Arena



Zoë Badger



Jason Bazar



Ed Davis



Chris Gavin



Allison Young



Maurice Worsley

# WORKING WITH THE CORPORATION FOR SUPPORTIVE HOUSING TO END CHRONIC HOMELESSNESS

**T**he Corporation for Supportive Housing (CSH) works to prevent and end homelessness by providing expertise and financial resources to help develop and operate long-term supportive housing. The not-for-profit organization was founded 20 years ago with backing from the Pew Charitable Trusts, the Robert Wood Johnson Foundation and the Ford Foundation.

“Many homeless people in the United States have health issues like mental illness or substance abuse. The idea was to get them into housing and link them to supportive services to stabilize them and then help to improve their opportunities,” said Deborah De Santis, CSH President and CEO. “It’s a more cost-effective and morally superior model than keeping someone in a shelter or allowing someone to stay on the street, where they often end up utilizing costly emergency services.”

## A SERENDIPITOUS MEETING

Back in 2003, CSH’s Illinois office applied for a grant from the Chicago Bar Foundation. As a member of the foundation’s review committee, Marc Kadish, Mayer Brown’s Director of Pro Bono Activities & Litigation Training, performed a site visit to CSH. While there, he met a former student of his from ITT-Chicago Kent College of Law, Sue Augustus, who then was the office’s Director. “During the site visit, Marc Kadish mentioned that Mayer Brown was looking for a pro bono project for its real estate associates,” said Augustus. “It was sort of serendipitous that we reconnected like that.”

According to John Gearen, a Real Estate partner from the firm’s Chicago office, “We were looking to develop



a relationship that would offer the potential for a substantial amount of pro bono real estate work that could be spread across the group as a whole. When Marc proposed that we work with CSH, I thought it seemed like a promising way to meet this goal.”

“I was excited to have dedicated counsel at CSH, especially a sophisticated firm like Mayer Brown that would bring significant expertise to our transactions,” noted CSH Chief Lending Officer Brigitt Jandreau-Smith.

As part of Mayer Brown’s initial work with CSH, Gearen created simplified loan documents, customized for each state in which the organization works. “I wanted our associates working in support of CSH to really come to understand what the basic elements of the loan documents were so that they could ultimately feel comfortable doing a commercial loan by themselves,” he commented.

## BUILDING STRONG FOUNDATIONS

Real estate loan closings, which have increased in size and complexity over the years, represent the majority of CSH project work for the firm. Real Estate associates in every Mayer Brown office across the United States have worked on these deals, which have an average value of \$650,000.

“I like working with CSH because I appreciate the motivation behind the organization’s lending activities. Knowing that the CSH loans are going toward properties that will one day provide housing for homeless vets or people with developmental disabilities makes it all the more gratifying,” said Charlotte-office Real Estate associate Lauren Rico, who has participated in more than half a dozen CSH deals as a first-year associate, including the lead on a \$1.2 million loan for a 40-unit supportive housing development in Eagle Rock, California.

**B**oise Ding, counsel in the Los Angeles office Real Estate practice, coordinates the firm’s work with CSH and leads or supervises each deal. Among Ding’s projects was the Los Angeles County Housing Innovation Fund, which leveraged \$3 million from CSH, along with funds from other not-for-profit organizations and financial

have so much client contact,” he said. “It was good experience to work on a deal from start to finish, to see all the pieces and how they interact.”

Real Estate associate Julia Dougherty from the Chicago office worked on a trio of closings for CSH for properties in California, Ohio and Connecticut that created more than 100 units of new supportive housing. “It’s wonderful to be able to use the assets that we have at Mayer Brown to help the chronically homeless,” she noted. “I feel like I’m making a difference by working for CSH.”

As important as the actual representations are, according to Jandreau-Smith there is also an intangible factor that Mayer Brown brings to CSH on real estate deals: “Mayer Brown brings instant credibility to our dealings with large banks, Fannie Mae and local government entities. Everybody knows Mayer



Sue Augustus



Briggitt Jandreau-Smith



Terry Schiff



Deborah De Santis

## BUILDING STRONG FOUNDATIONS

institutions, to create a \$60 million loan fund aimed at developing affordable and supportive housing throughout the county.

“Joint ventures are always challenging, as they are highly complex deals with sophisticated structures and tax ramifications that sometimes require us to engage tax partners from the firm—these deals are easily as challenging as any of the work we do for fee-paying clients,” said Ding, who estimates that he dedicates approximately one-third of his time to CSH-related business. “It’s intellectually stimulating work.”

Within one month of joining Mayer Brown, associate Michael Weiss from the New York office Real Estate practice was staffed on a deal for the Little Tokyo Service Center in Los Angeles. “As a first-year associate, I’m not typically drafting or turning loan documents, which I did in my pro bono work for CSH. It was also great to

Brown’s reputation, and that proves helpful when we walk into the room.”

### EXPANSION AND GROWTH

Over time, Mayer Brown’s involvement with CSH has increased. Kadish joined the organization’s national board of directors, and a former Finance partner, Terry Schiff, became CSH’s General Counsel.

“We’re a national community development financial institution, so it’s important that we can work with a law firm that also operates across the country. I knew from experience that Mayer Brown could support us from California to New York, and all points in between,” said Schiff.

In addition to the increased involvement with the organization, the projects that Mayer Brown handles for CSH have also extended to areas including

employment law, federal policy goals, trademark protection and litigation.

**K**im Leffert, counsel in the Chicago office, first worked with CSH in 2007 to help resolve an employment issue. Since then, she has assisted the organization by negotiating and drafting severance agreements for several departing employees and recently by reviewing its revised employee handbook. “Most of what I do for CSH falls under the heading of ‘advice and counsel,’” she explained. “CSH may have a question about a specific labor-and-employment issue, and I will answer it or work on the issue until it is resolved.”

Matthew Ingber, a Litigation partner who heads the pro bono committee in Mayer Brown’s New York office, worked with associates Mauricio España and Christopher Houpt, and former associates Norm Cerullo and David Crowley, on litigation matters against four organizations



“Mayer Brown brings instant credibility to our dealings with large banks, Fannie Mae and local government entities. Everybody knows Mayer Brown’s reputation, and that proves helpful when we walk into the room.”

— *Brigitt Jandreau-Smith*

# \$60,000,000

## LOAN FUND

that defaulted on loan repayments to CSH in the past several years. The firm recovered the full amount due in one case, approximately 75 percent in another and more than 50 percent in the third; the fourth matter remains open at press time.

“The real benefits that our Litigation associates got from this work was the experience of direct client contact, in-court experience and strategic thinking,” Ingber commented. “They had to think the way that partners ordinarily do on complex commercial matters.”

“These matters provided opportunities for we associates to really take the lead on matters that are typical of commercial dispute work,” España said. “For instance, on one representation, Norm Cerullo put together the mediation statement and submitted it to the court, and he sat at the table with CSH during the mediation sessions. We also handled some of the settlement negotiations on all of the other matters.”

According to España and Weiss, the litigators also relied on advice from their Real Estate colleagues to examine how one deal was structured in order to determine how to arrive at a settlement, and to look at how judgments would impact the security that CSH had in several properties.

Through the end of 2010, CSH had committed more than a quarter of a billion dollars in low-interest loans and grants to developers of supportive housing across the United States, with just shy of 50,000 new units of supportive housing developed or under development.

### THINKING ENTREPRENEURIALLY

Over the course of the partnership, Mayer Brown has represented CSH on more than 250 pro bono matters encompassing more than 12,000 pro bono hours.

# “CSH doesn’t just help put people in housing; it helps put people in a better place in life.” —Amanda Christie

“The chronically homeless can be discriminated against and often don’t have the capability to assist themselves. Working with CSH gives us an opportunity to help get them on their feet,” commented Amanda Christie, a Charlotte-office Real Estate associate who worked on two CSH closings. “CSH doesn’t just help put people in housing, it helps put people in a better place in life.”

“CSH is highly sophisticated,” Leffert said. “This makes it easy to work with the organization, as it operates on the same high level that Mayer Brown does. Working with CSH is no different than working with any other client.”

“It has always been my belief that Mayer Brown’s pro bono program should attack systemic problems. Our relationship with CSH allows us to partner with a quality organization with a like goal and the sophistication to achieve it,” said Kadish. “We must

continue to find new ways to provide meaningful pro bono opportunities for all types of lawyers; relationships like this one point to a way to do so.”

CSH continues to evolve while maintaining its core focus; the organization is constantly considering a range of new opportunities to help the chronically homeless.

“We think very entrepreneurially about ending homelessness and are focused on outcomes; the model that we use is really a business model,” De Santis concluded. “We have been fortunate to work with Mayer Brown, as the firm provides us with intellectual capacity that we couldn’t otherwise afford. The lawyers have also been passionate about the work that they do for us. Our deals are very difficult, and the people from Mayer Brown have made it so much easier for us through their flexibility, willingness and professionalism. It’s a fantastic partnership.” ♦



Norm Cerullo



Amanda Christie



Boise Ding



Julia Dougherty



Mauricio España



John Gearen



Christopher Hout



Matthew Ingber



Marc Kadish



Kim Leffert



Lauren Rico



Michael Weiss

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# Preserving the Poet Laureate's Island Sanctuary

On the northern coast of Maui, in the Valley of the Peahi Stream, near the village of Haiku, an area of grassy land stood barren.



©THOMAS SEWELL

Once a lush forest, the area had been deforested by the middle of the 19th Century. The land was put to use as pasture, but the wild grasses were not well-suited to cattle grazing. The stream that had once run through the land went dry when sugarcane planters diverted all of the water upstream. Attempts to grow pineapple on the land failed due to misguided agricultural practices that led to rapid soil erosion, and the land stood idle well into the 1970s. Following a century of agricultural abuse, state assessments proclaimed it wasteland.

The area was something else to current US poet laureate W. S. Merwin, who in 1976 had come to study in Maui with Zen teacher Robert Aitken. Though born in the New York metropolitan area in 1927, farmland and forests were Merwin's passion.

The area's majestic cliffs and uninterrupted ocean span appealed to him, so in 1977 he purchased a three-acre plot, intending to make his home there. But before the building came the first plantings; the very day that he signed the escrow papers he planted trees along the road—"ironwoods," a hearty non-

native species that resembled weeping pines. This species was carefully chosen, as no native trees were able to grow in the leached-out soil. But the ironwoods flourished and came to provide shade, slow the wind, enrich the soil and hold the rainwater. His initial planting allowed for the gradual introduction of a wide range of palms, some native and many more non-native, throughout the property.

Building began with the garage, up high near the road. A cement cistern was built beneath its roof to trap rainwater—no municipal water supply would come to the property. Cement was used sparingly, chiefly for the garage's foundation and to form the cisterns beneath the garage roof and the modest, solar-powered stilt house that lies some distance down the ridge. Over time, Merwin acquired two adjoining parcels of land, growing his forest to nearly 20 acres.

He writes each morning, and every rainy day he tries to plant at least one new palm. He estimates that there are more than 700 different species of palms on his land, some endangered, and that he has planted



“Our encounter with Mayer Brown, the help that Howard McCue has given to us and the spirit in which it has been given have been...invaluable to the existence of our Conservancy.”

—W. S. Merwin

more than 4,000 trees. It is the poet’s wish that after he and wife Paula pass on, this palm garden should remain intact in perpetuity for future study, environmental advocacy, community education and as a retreat for botanists and writers.

### Founding the Merwin Conservancy

During the course of his distinguished career, Merwin has received many prestigious literary honors, including the Pulitzer Prize for Poetry in both 1971 and 2009. In 2004 he received the Lannan Literary Lifetime Achievement Award from the private Lannan Foundation, a longtime client of Howard McCue, a partner in Mayer Brown’s Wealth Management: Trusts, Estates & Foundations practice. In connection with that award, McCue and Merwin had a fortuitous first meeting, during which McCue learned of the poet’s desire to find a way to preserve his land for future generations.

The two stayed in touch and continued to discuss various options over the next several years, as McCue explains: “I suggested that we set up a Type 1 supporting organization to support both an environmental group and a literary group. The advantage of forming this type of supporting organization is that an individual can create one and then transact business with it. But we needed IRS approval to do this.” Merwin’s frequent publisher, the not-for-profit Copper Canyon Press, and the Maui Coastal Land Trust (which was merged into the Hawaii Coastal Land Trust in January 2011), agreed to sign on as the beneficiaries of the planned supporting organization and eventual stewards of the land.

The organization, working under the name The Merwin Conservancy, filed a Form 1023 to establish a tax-exempt 501(c)(3) organization in July 2008. Early in 2009, the Internal Revenue Service responded with a request for additional information.

Following several rounds of discussion that McCue and former Mayer Brown associate Shannon Hartzler held with the IRS, the desired status was granted.

“The plan is to have The Merwin Conservancy buy the right to the land from William and Paula Merwin at a value determined by an impartial appraiser,” McCue said. “After they both have died (or perhaps sooner), the land will be opened to scholars and perhaps to the public on a limited basis. It will be used for ecological research and preserved in its current condition. Both of the supported organizations will benefit from the land.”

The Merwin Conservancy board of trustees includes two representatives from both Copper Canyon Press and the Hawaii Coastal Land Trust, as well as the Merwins and Paula Merwin’s son, Matthew. The group is raising funds in order to establish an endowment, and may ultimately partner with another organization if need be in order to secure the \$5-10 million in funds that will be required to ensure the preservation of the land. McCue continues to support the organization through his service on the advisory board.

“The opportunity that I had to visit this palm forest underscored the importance of preserving this unique and amazing place that the Merwins have sculpted out of land that had once been ruined,” Hartzler commented. “Someone who can take the physical landscape and shape it into something so beautiful possesses an amazing gift. William Merwin does not need words to create poetry.”

“Our encounter with Mayer Brown, the help that Howard McCue has given to us and the spirit in which it has been given have been a blessing to us, and invaluable to the existence of our Conservancy,” Merwin said. The Merwin Conservancy continues its educational, awareness-building and fundraising activities; more information is available at [www.merwinconservancy.org](http://www.merwinconservancy.org). ♦



Shannon Hartzler



Howard McCue III

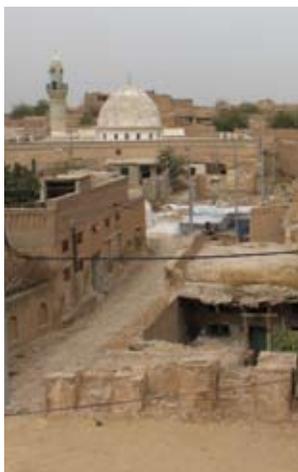
# Autumn in Iraq

by *Matt Rooney*

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Matt Rooney is a senior counsel with Mayer Brown. He is a former partner who for three years co-chaired the firm's pro bono committee and chaired the Chicago office's pro bono committee. Matt has been active in developing the firm's international rule of law initiative and has taught trial advocacy in Cambodia and Iraq.

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**I**n October of 2010, I was invited to spend 12 days in Iraq teaching trial advocacy skills to a group of Iraqi lawyers as a volunteer for Heartland Alliance, a Chicago-based human rights group. I had previously taught a similar course in Cambodia, through the ABA Rule of Law Initiative.

Let me start by stating that there are two heroes in this story, and I'm not one of them. The first is the group of 22 Iraqi lawyers that I had the privilege of teaching for five days. The second is the group of eight people from Heartland Alliance who live in Kurdistan and run this program. Most of them are women, which is amazing given how difficult life is for women in Iraq.

The area I visited was in the Kurdistan governance region of Iraq, in the province of Sulaymaniyah. Kurdistan comprises parts of eastern Turkey, northern Iraq, northwestern Iran and northern Syria. The Kurds are about 25 million people strong, with about one-quarter of them in Iraq.

Sulaymaniyah is a town of three-quarters of a million people. It's relatively modern and moderate. There are liquor stores, and you can get a drink at a restaurant, which you can't do in the rest of Iraq—or even in other parts of Kurdistan. It's beautiful

country, very mountainous. The mountains are smaller, more like the Appalachians than the Rockies. The people say that if you go there in the spring when all the flowers are in bloom, you'll want to live there for the rest of your life. I was there in late autumn and it still had a real beauty. I think this place has real potential as a center for eco-tourism.

I found the Kurds to be proud, hospitable people. They hate the corruption that's going on in their country. They think that their two political parties are both corrupt and so some of them are trying to start a new party called "Change." But in the last election it did not get very many votes. The Kurds seem to have come to terms with the idea that they aren't going to have their own country. They don't have their own money, but they have a parliament and their own army and basically run everything themselves in their three provinces. They also receive a fair amount of revenue out of the oil in their region.

Iraq is a civil law country, but their system is regressive. A few examples: Adultery is a crime, but a man can only commit adultery in his house while a woman can commit adultery anywhere in the world. If a man commits adultery, he can go to jail for three years. If a woman commits adultery, it's 15.



Matt Rooney (left) and Judge Rizgar

Battery—there is a specific carve-out in the battery statute for husbands to discipline their wives. Polygamy—men are allowed to have two wives. They just have to go to court to demonstrate that they have the economic resources to support two wives. It's also grounds to get a second wife if your first wife doesn't give you a son.

**J**udges rule the court system with an iron fist. If a court proceeding is being recorded and the judge says “don't take this down,” the recording stops. People are also very worried about appealing a decision. If you do, you are at jeopardy to lose everything. For example, if you are found guilty of manslaughter, the appellate court could say “no, let's make it murder.”



So this is where I came to teach trial advocacy and the rule of law.

The training was for the 22 lawyers that Heartland employs from all over Iraq. These lawyers represent people, mostly women, who are subjected to gender-based violence; they represent the victims of sexual trafficking; and they represent juveniles.

I was concerned because I had read that Arab women could not look men in the eye when they are talking to them; they had to look down. I wondered how I was going to teach these women to stand up in court and belt out their

arguments with conviction in front of the judges. I was happy to learn that when a female lawyer is in a courtroom she is allowed to act “like a man.” Many of the women in the class were extremely effective and forceful.

The first day I covered witness preparation and how to make your client feel more comfortable with the justice system. I knew that would be difficult for me because I have never represented a battered woman, or a child accused of murder, in a court system where they are rightly afraid they won't get a fair trial. To prepare myself before the visit, I reached out for assistance from the pro bono community in Chicago, speaking with a number of pro bono organizations and various people from Arab-American organizations. I received some excellent insight and advice that I tried to apply to my teaching in Kurdistan.

The training covered opening statements, direct examination, cross-examination and closing arguments. I also included a discussion on how to deal with a non-cooperative judge, which was particularly relevant for them.

There was a banquet on the last night, and I was told that a special guest would be joining us—Rizgar Mohammed Amin, a Kurdish judge who was a strong proponent of trying to improve the rule of law and the judicial system over there. Judge Rizgar also was the original judge in Saddam Hussein's trial. He resigned three months into the trial because the government was putting a lot of pressure on him, saying that he was being too lenient. The trial was actually about the gassing of about 5,000 Kurds in a town called Halaba. Clearly Judge Rizgar was not trying to let Saddam off when 5,000 of his fellow Kurds had been killed; he was trying to ensure a fair trial, and when the

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I emphasized that it took 70 years in the United States to go from that depiction of segregation to the swearing-in of a black president, so change can come, even if it takes a long time.

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government pressured him, he quit. He's still a judge, and also a member of Parliament. He attended the training session the next day.

As a training tool, I took a page from Marc Kadish, Mayer Brown's Director of Pro Bono Activities & Litigation Training, and used clips from the movie *To Kill a Mockingbird* to illustrate important points. The film is about an attorney, Atticus Finch, representing a black man in the deep south in the 1930s who was falsely accused of raping a white woman; the themes of racism and the difficulties of getting a fair trial resonated quite clearly with the Iraqi lawyers. I showed clips relevant to what I was discussing and then stopped to critique Atticus' performance.

I like to use the movie because of the impact of the guilty verdict when the trial is over. When they saw it, I could tell my class was crestfallen. They had assumed the defendant was going to be acquitted. Afterwards, I shared two thoughts with them about the movie.

First, I told them that each of them is an Atticus Finch, standing up in a hostile courtroom representing people with little or no hope. I told them Atticus is revered not because of the content of his closing argument, but because he stood up there and gave it, just like each of them did for their clients.

**S**econd, I spoke about the defendant, Tom Robinson. I spoke about race relations in the United States and showed them a photo from the 1930s showing a "white" water fountain and a "black" water fountain. The white one had electricity to cool the water, while the black one was more like a trough. I told them that if Tom hadn't been found guilty and had been able to live his life, he might have had grandchildren; and if one of them was a boy, that boy could have been Barack Obama.

I emphasized that it took 70 years in the United States to go from that depiction of segregation to the swearing-in of a black president, so change can come, even if it takes a long time. It may take more than a generation, but it can come.

After I returned home I received two emails.

The first was from a student who wrote: "The situation here in Baghdad is becoming worse. The assassinations are increasing. They are starting again to target judges, lawyers, doctors, and college lecturers. I hope that our new government can do something." I was appalled when I read this because I had not heard a thing on the news here about increased violence or problems in Baghdad and it actually sounds like it may be getting increasingly worse over there.

The second email had the opposite effect on me. Another student wrote to discuss an important life decision I'd helped with: "I've been doing this work for a long time, but I have become increasingly discouraged by how little change there has been in my society and was ready to quit. But then I heard you give this talk about how change came in your country and how long it took, and I realized that great change takes great effort and can take more than a generation. So I decided that I'm going to keep doing this."

Needless to say, that email made the whole trip worthwhile to me. ♦



Matt Rooney

# KEEPING UP WITH THE RAPID EVOLUTION OF MICROFINANCE

As recently as a few years ago, most people in the developed world were unfamiliar with the concept of microfinance. Although the general meaning of the term—broadly understood to refer to financial services, especially loans, to low-income individuals in the developing world—has remained constant over time, the size and scope of the deals, as well as practices driving microfinance, have evolved at a rapid pace.

## A New Practice Area Develops

Mayer Brown's microfinance project experience dates back to 2006, when the firm first took on pro bono project work for SKS Microfinance, which was founded in 1997 to serve poor women in India's rural villages by providing loans of typically less than \$100. That same year, SKS founder and current chairman Vikram Akula was named to *Time Magazine's* "100 People of the Year" list. Mayer Brown also helped SKS to raise capital by handling legal documentation with its early-stage investors and restructuring it to a for-profit entity to facilitate future capital market opportunities.

"Microfinance has grown immensely over the past several years and become very high profile. People are looking for market-based and individual solutions to poverty. Microfinance works because it flows from the bottom up, which makes it very distinct from government subsidies and handouts," commented Corporate partner James Carlson, who teaches a microfinance course at New York University's Stern School of Business and has helped lead the formation of Mayer Brown's burgeoning Microfinance and Access to Finance group. "Microfinance is a marvelous mixture of mission, economic creativity and growing confluence with regulations and markets."



Since its initial pro bono project work with SKS, Mayer Brown's portfolio has grown rapidly to read like a "Who's Who" of microfinance clients, including Unitus, FINCA International, BRAC, the Chicago Islamic Microfinance Project, Grameen Foundation, Accion International, Aavishkaar Goodwill, Kiva, MicroEnsure and MicroPlace. These organizations work throughout Africa, Asia and Latin America.

## A Range of Experiences

Mayer Brown lawyers at all stages of their careers are working on microfinance matters. Associates Sarah Lord of the New York office and Michael Minea of the Chicago office completed one-year legal fellowships at FINCA International in Washington DC prior to joining the firm in fall 2010. Both have remained active in pro bono microfinance activity.

"Although I'm in finance now, I'm also interested in intellectual property law, which I was able to practice during my time with FINCA," Minea said. "I worked on licensing issues and trademark registration for FINCA affiliates in 21 different countries. It's a fantastic organization that does phenomenal work all over the globe." Minea has recently requested to open a new pro bono matter in which the firm would help FINCA establish a new information services structure for its global affiliates.

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“Lending people money, even on a small level, can have a huge impact by helping them to buy livestock or something similar that will grant them some self-sufficiency.” —*Gaby Sakamoto*

Lord’s FINCA fellowship encompassed a broad range of work—including regulatory compliance, due diligence and corporate governance—as well as a micro-insurance product launch and travel to Guatemala and Ecuador. Since joining Mayer Brown, she has participated in a project to raise equity for an Indian microfinance organization and assisted Carlson with his NYU business school class. “Microfinance provides me with access to high-level work of an international character,” she said. “Everyone that I’ve met in this space has been incredibly motivated and talented.”

**B**anking & Finance partner Chris Gavin led a Mayer Brown team that, in 2008, completed a syndicated credit facility for BRAC that secured a capital commitment of nearly \$63 million, allowing BRAC to undertake microfinance lending operations in Tanzania, Uganda and Southern Sudan. Chicago-based associate Gaby Sakamoto participated in that project and has since been performing follow-up work on amendments to the fund. “A lot of development work is about providing services to people who would never be able to get them,” she noted. “Someone who lives in a rural village in Africa needs capital, but has no access to the markets or a banking system. Lending people money, even on a small level, can have a huge impact by helping them to buy livestock or something similar that will grant them some self-sufficiency.”

Mayer Brown and its associated Brazilian firm Tauil & Chequer Advogados have recently collaborated on a project to help Accion launch a new microfinance entity in Brazil’s Amazonas state. “There are some microfinance entities operating in Brazil, but it is not yet very common,” said Tauil & Chequer Advogados partner Felipe H. Kim, who has been leading a team that includes associates Ricardo Mahlmann de Almeida and Alessandra Fló Vilardi since December 2010. “Because Brazil is still a developing country, this type of initiative is very important. As a firm, we feel good helping out with this project.”

Mayer Brown Intellectual Property partner Rich Assmus has been working on another aspect of this project, dealing with intellectual property issues among Accion, the new entity that it is forming and a Uruguayan software company. Tauil & Chequer associates Evelyn Uliana Montellano and Roberta Perez Caneca are handling associated tax issues.

### An Evolving Field

What started as an endeavor largely consisting of not-for-profit organizations lending small amounts of money to the rural poor has been undergoing significant changes in recent years. While this core model for microfinance remains, some lending entities are now for-profit businesses. Loans to larger businesses have become part of the microfinance portfolio. New products, such as savings accounts and micro-insurance, as well as technologies such as telephone banking are being introduced.

“Some microfinance is moving into a new space centered on lending to small- to medium-sized enterprises,” said New York Corporate & Securities partner David Carpenter, leader of Mayer Brown’s Microfinance and Access to Finance group and co-chair of the firm’s India practice. “A number of organizations are looking to work with small entrepreneurial ventures in areas like manufacturing that need capital in order to serve their target markets.”

In Mayer Brown’s London office, Corporate & Securities partner Paul de Bernier and associate Pallavi Bedi have been establishing standard loan documents for a foundation established by a global oil company since late summer 2010 in support of its efforts to provide funds to an Indian microfinance organization that, in turn, is lending to energy industry start-ups. “The main benefit of this type of small to medium enterprise lending is that it funds those mid-sector businesses that would not otherwise be able to raise this type of capital through banks, private equity or public offerings,” Bedi said.



“There remain many huge opportunities out there to help improve the situation for the world’s poor by providing the microfinance services that they need while also making a business out of it.” —Paul Breloff

“Over the past year, I’ve spent a lot of time on microfinance endeavors involving mobile phone banking and branchless banking that use alternative physical locations, third-party retailers and the like to process banking transactions in order to minimize infrastructure costs,” commented Paul Breloff, a consultant with CGAP and former Mayer Brown associate who has also worked as SKS’s Vice President of Business Development & Strategy. “There are also new technologies that can facilitate transactions, such as mobile phones for sending money or housing account information and even new, low-cost dedicated banking devices.” Breloff has been instrumental in Mayer Brown’s efforts to establish its Microfinance and Access to Finance group, introducing the firm to a number of leading companies in the microfinance space.

“In many instances, microfinance has moved away from a not-for-profit to a for-profit model. Vikram

Akula from SKS is among the drivers of the movement to bring for-profit capital into this space, in large part because it has proven difficult to attract enough grant money and money from foundations to support organizational growth,” said Carpenter. “Introducing for-profit capital into this space multiplies the effects of microfinance a hundredfold—it really has changed the industry enormously. As this model evolves, the end result resembles what occurs in any private equity situation: the companies go public.”

“There remain many huge opportunities out there to help improve the situation for the world’s poor by providing the microfinance services that they need while also making a business out of it,” Breloff concluded. “This has been a unique success, combining social impact and financial success. And we’re excited to help our clients pursue an even broader range of opportunities across energy, education, healthcare and more.” ♦



Ricardo Almeida  
Tauil & Chequer  
Advogados



Richard Assmus



Pallavi Bedi



Roberta Caneca  
Tauil & Chequer  
Advogados



James Carlson



David Carpenter



Paul de Bernier



Chris Gavin



Felipe H. Kim  
Tauil & Chequer  
Advogados



Sarah Lord



Michael Minea



Evelyn  
Montellano  
Tauil & Chequer  
Advogados



Gaby  
Sakamoto



Alessandra  
Vilardi  
Tauil & Chequer  
Advogados

# PILnet EUROPEAN PRO BONO FORUM



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The fourth European Pro Bono Forum took place on November 18 and 19, 2010. Organized by PILnet (The Global Network for Public Interest Law), the Forum was held in Paris in a move intended to stimulate pro bono work in Western Europe. PILnet reported a record number of participants, with 289 people attending from 38 countries, including 128 lawyers from more than 50 law firms, 12 in-house legal departments of major corporations and more than 130 representatives of various non-governmental organizations (NGOs).

Once again, Mayer Brown was one of the Forum sponsors, and the firm's Paris, Brussels, Frankfurt and London offices were all represented. Julie Dickins, the UK pro bono partner, attended PILnet's Advisory Council meeting, while Malte Richter, an associate from the Frankfurt office, spoke at the workshop *What's New in Europe?*, which provided an overview of the latest pro bono developments in Germany.

There were more workshops than in previous years. Topics included *The Rule of Law in China*, *Combating Poverty and Social Exclusion in Europe*, *The Environment*, *Human Rights*, *Mobilizing French Lawyers to Engage in NGO Advocacy*, *Building the Infrastructure for Cross-Border Pro Bono*, *Pro Bono for In-House Lawyers*, *Microfinance*, and *The Role of European Law Schools in Promoting Pro Bono*.

**THE FORUM OPENED** with a speech by Jean Castelain, head of the Paris Bar, who described the concept of pro bono as evolving in France and identified some gaps in the otherwise extensively state-funded legal aid system. He acknowledged that lawyers have a definite part to play through pro bono

advice, especially in conjunction with civil society organizations. Mr. Castelain ended by announcing an initiative to create a new foundation to support pro bono activities in France.

**THE SECOND DAY OF THE FORUM** was held at the beautiful *Maison du Barreau*, a historic building on the *Ile de la Cité* and the headquarters of the Paris Bar. The Forum concluded there with two memorable speeches: the first, by Francis Teitgen of Weil, Gotshal & Manges' Paris office, to the effect that pro bono should be in the DNA of all lawyers and at the heart of what they do. The second, by PILnet's President, Lord Andrew Phillips of Sudbury, was another impassioned speech which called on lawyers to leave the "ghetto" of their practices and become more engaged in their communities and meet a growing demand for free legal services. (Andrew Phillips, an English peer and solicitor, helped to found several public interest organizations, including the Solicitors Pro Bono Group (now LawWorks), which is the primary pro bono charity in Britain.)

**THE FORUM CLOSED** with Lord Phillips being presented with the first PILnet award, for advancing the culture of pro bono in Europe. ♦



Julie Dickins



Malte Richter



Marc Kadish

Debora De Hoyos



## Talking Pro Bono: Marc Kadish

**Marc:** Thank you for agreeing to be interviewed for this issue. You follow an auspicious line: Jim Holzhauser, Brian Trust and Cabell Chinnis. Your current role with the firm is the Global Client Relationship Partner. But before we talk about that, I'd like to get a little of your background. When did you join the firm?

**Debora:** I joined the firm as a finance associate in September of '78. I became a partner on January 1, 1985, and became Managing Partner on October 1, 1991.

**Marc:** I believe you were the first female managing partner at a large US law firm. What was that like?

**Debora:** Less extraordinary than you might think. I never paid attention to whether I was the first. I'd spent my career at the firm and this was a new position. I didn't think that my gender was particularly noteworthy in the context of doing my job.

**Marc:** But it was a big deal at the time.

**Debora:** The external reaction was very positive and affirming. There was more press than I, or anyone, expected. But for me, the bigger issue was that I was 38 at the time.

**Marc:** That must have been somewhat daunting.

**Debora:** I'm 57 now and I still have a lot to learn, so I certainly had a lot to learn then. But a lot of people who have been in firm leadership were previous chairs or co-chairs of what is currently called COPA [the Committee on Professional Advancement], but was then called the Committee on Associates, and I was one of those people. The committee has really been a leadership incubator at the firm. People who have

chaired or co-chaired COPA include Fritz Thomas, Mike Niebruegge, Mark Ryan, Herb Zarov, Libby Raymond and Mark McLaughlin.

**Marc:** I've always thought that one of the roles of leadership is to let other people get involved so that you're not telling people what to do, but you are letting talent develop. Do you agree with that?

**Debora:** Oh, absolutely. That's part of why the gratification that you get from being a good manager or leader is different, for example, from what you get doing a deal. What you are supposed to do as a manager is to help others succeed. As Managing Partner I would get tremendous satisfaction recommending someone to chair a committee and then seeing them do a terrific job. That kind of talent spotting or putting people in the right position is very gratifying, but it's a vicarious gratification.

**Marc:** After your tenure as Managing Partner, did you enjoy returning to practicing law?

**Debora:** I love it. I really left the practice too soon. I didn't stop practicing law as Managing Partner because I wanted to stop practicing, I just chose to do something that, at the time, was a unique and wonderful opportunity. But I've always liked the craft of practicing law and the dynamics of deals. One of the things that I missed as Managing Partner was the opportunity to work with associates, to work with younger lawyers.

**Marc:** What changes have you seen in the practice of law during your career?



“...if I had a closing note, it would be to encourage our lawyers to figure out what they do have a passion for and to figure out a way to become involved...”

## Interviews Debora de Hoyos

**Debora:** That’s a huge question, so I’ll just cover a few highlights. In the old days, an associate would draft a document and then sit for hours with a partner going over each comment and explaining why certain edits were made. By the time I started, you would get a mark-up from the partner and you would talk about some of it, but not to the same level as before. Now we send track changes back to associates by email, even if the associate is down the hall. So clearly the process of mentoring has changed.

**Marc:** What do you think has driven that change?

**Debora:** There are a lot of reasons, but primarily it’s the fee sensitivity of clients and the nature of large law firm economics. The result is much less flexibility to take associates along to a meeting just so they can hear what is going on.

**Marc:** Is this a big loss?

**Debora:** One key way that people learned to practice law was by observing. How does a partner handle various issues? When are you combative, when do you caucus with a client, when do you try an oblique approach rather than a direct approach? In our London office, they still use the system of shared offices. That’s a foreign concept for American lawyers. I was speaking with an American who is pursuing a law career in London. I asked her what it was like to be sitting in an office with a partner or a senior associate. She said that what you give up in privacy you gain in observing someone practicing law. I think the whole trainee concept is a very positive aspect of the English system.

**Marc:** What advice do you give newer lawyers?

**Debora:** Build relationships. If you talk to experienced lawyers about their best client relationships, they’ll say that these are people they’ve been working with since they were in their 20s or 30s. It’s terribly important to form those relationships now. It’s much more fun to work with people you have a connection with. But also, it’s a way to start understanding the client’s business. Don’t just make it about the deal at hand. Know what’s important to the client in the grander scheme.

**Marc:** How else have things changed? What about the business of practicing law?

**Debora:** It is a cliché, but it is also true that the practice has become global. Maybe not for all firms. You can be a very successful New York-headquartered firm and be very high prestige and attract the best people without becoming a mega-firm. But if you look at firms that emanated out of Chicago, for example, the ones that didn’t make an effort to become national or international, or made that effort too late, have had a much harder time in terms of attracting the best people, attracting the best clients, and staying on top. So, for a general practice firm, it is very hard to stay on top of the legal market without becoming national or international.

**Marc:** Let’s talk about your new position as Global Client Relationship Partner.

**Debora:** Sure. I work on our global client teams and industry groups as well as some less-formally structured initiatives to build client relationships across office and regional lines and practice areas.

We have this wonderful global platform. But it doesn't mean much unless we use it. Integration within the firm is key. While serving on committees and going on retreats are helpful for teambuilding, the way you really integrate lawyers is by having them work on matters together.

**Marc:** Do you think this helps to distinguish us from our peer firms?

**Debora:** I think clients get the sense that the relationship partners are bringing the firm to them—bringing them all that we have to offer—and ensuring that lawyers throughout the firm are doing their homework to understand the client's business and how it is impacted by the area of practice each lawyer handles. I believe that our best opportunity to distinguish ourselves is at the retail level in dealing with our clients and convincing them that they have a relationship with our firm, not just a few partners. Certainly, the key partners have a personal stake in the relationship, but it is as a part of the firm as a whole.

**Marc:** Let's talk about some of your pro bono and community service activities through the years.

**Debora:** I'm more of a pro bono rainmaker. I've been involved with a number of organizations where I'm not doing the legal work, but other lawyers at Mayer Brown are. I'm on the board of the Asian University for Women. I'm also on the board of an independent inner-city school in Chicago called Providence St. Mel.

**Marc:** How long have you worked with Providence St. Mel?

**Debora:** Since 1992.

**Marc:** How did you become involved?

**Debora:** I moved to Chicago in 1978, which was also the year the Archdiocese of Chicago wanted to close down Providence St. Mel. The principal, Paul Adams, who is still the president of the school, said "No, I'm going to keep this open as an independent school." Fortunately the Sisters of Providence owned the building and were willing to support Paul and give the school a favorable lease. My husband and I were impressed and starting making a modest annual contribution.

**Marc:** How did you end up on the board?

**Debora:** The school holds an annual benefit called PSM celebration. Karen Pritzker, one of their board members,

cold-called me and asked if I would be a dinner co-chair. She had no idea that I had actually been a modest contributor. Our contributions were probably so modest that we were not on any list. I agreed because education is a big priority in our household. After that, I was invited onto the board. I also became a sponsor of their new charter school in the Englewood neighborhood, Providence Englewood, and served on that board, too.

**Marc:** We've done a number of projects with both schools.

**Debora:** Yes, there's been a variety of legal work that each school has needed, and many Mayer Brown lawyers have been involved. Andy Rosenman, who's now on the PSM board, has done a lot of employment and litigation matters. David Narefsky negotiated Providence Englewood's charter with the Chicago public school system. Barbara Grayson is doing work now. Jack Edelbrock has done real estate work. And many others.

**Marc:** I've always described you as a "friend" to pro bono work.

**Debora:** I believe there is real value in representing different sorts of clients than we usually see—the large corporations and financial institutions. I think it's a good thing, in rounding out one's skills as a lawyer, to represent different kinds of clients and see a different side of legal practice. It's very easy, if you are working at Mayer Brown, to become isolated in a particular segment of the world. Pro bono work lets lawyers see what's going on in the other parts of the world.

**Marc:** Any final words?

**Debora:** I think I would stress that last point. I've been very fortunate that I've been able to get involved with some terrific organizations. Sometimes I realized I had a passion for the organization's mission before I got involved, sometimes I didn't realize I had a passion for it until after I got involved. I think that if I had a closing note, it would be to encourage our lawyers to figure out what they do have a passion for and to figure out a way to become involved. Or else one does run the risk of becoming isolated in a world that is firm, clients, family. Those are all very valuable, goodness knows. That's where the bulk of my time has been invested, but there is more than that, and I would encourage people to go find it. ♦

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# A Legacy of Service in the Seventh Circuit

Building a successful program for pro bono appellate representation.



**F**aced with trial lawyers who did not want to handle appeals, and appellate judges who were disappointed with the quality of appellate practice before them, the US Court of Appeals for the Seventh Circuit, which covers Illinois, Indiana and Wisconsin, turned to Mayer Brown and other large law firms in the area.

“A long-standing practice in the Seventh Circuit was that trial attorneys would handle their clients’ appeals unless a good reason not to do so could be established,” explained Donald J. Wall, Counsel to the Circuit Executive, United States Court of Appeals, Seventh Circuit. “But around 1997 it became clear that both the attorneys and the court were dissatisfied with this rule. So the court changed the rules to allow trial counsel to freely withdraw from appeals, effective in December 1998. We then needed a new source of lawyers to handle appeals.”

## AN APPEALING OPPORTUNITY

By June of 1999, when Marc Kadish became Mayer Brown’s Director of Pro Bono Activities & Litigation Training, the firm had already agreed to undertake five pro bono Seventh Circuit appellate matters. Recognizing the need for, and the benefits of, a more consistent approach, Kadish set out to

develop a program: “We decided that if we were going to use these representations to combine pro bono service and litigation training, then we would emphasize *habeas* cases because the court issues a Certificate of Appealability that points out the specific issues to be briefed. Non-*habeas* cases can entail significant time researching only to find no legitimate appealable issue.”

The Seventh Circuit Project, as it came to be known, has become Mayer Brown’s most significant firmwide pro bono litigation project. Since 1999, lawyers from each of the firm’s US offices have handled 136 appellate matters, including *habeas corpus* cases, direct appeals of criminal convictions, prisoner’s rights issues and immigration matters, encompassing well over 50,000 hours of lawyer, summer associate and paralegal time.

In most instances a single associate is assigned to the case, with a senior lawyer working as direct supervisor and Kadish assisting as well. Since 2003, paralegal Helene Siegel from the Chicago office has coordinated the program, working closely with the associates to provide guidance throughout the course of their work.

“A great many people are involved in this process,” said Siegel. “I try to read



“...the court changed the rules to allow trial counsel to freely withdraw from appeals, effective in December 1998. We then needed a new source of lawyers to handle appeals.” — Donald J. Wall

as many of the briefs as I can to ensure consistency, clarity and compliance with court rules. I also do cite checking, which is important to the court, and coordinate the efforts of lawyers and staff in most of our US offices.”

#### MATTERS THAT TRULY MATTER

“I first heard about the Seventh Circuit Project when I was a summer associate,” noted Litigation associate Thomas McGrath from the Chicago office. “One of the things that drew me to the firm was this opportunity to work on such an important matter so early in my career.” Just weeks after joining the firm in 2006, McGrath took on the appeal of a man who had been convicted of conspiracy to possess cocaine with intent to distribute.

**A**mong the issues raised in the appeal was that testimony during the trial that the appellant, a known felon, had carried “a weapon” while committing the crime, had triggered an automatic increase in his prison sentence. However, because there was no testimony or proof that he had, in fact, carried a *firearm* during the course of the conspiracy, the appeal was successful and the sentence was reduced by five years on remand.

“It was great to work on an appeal from beginning to end like this, and to help someone who was mistreated at sentencing. My client continues to serve a lengthy term, but a wrong has been corrected,” McGrath commented.

Senior Litigation associate Nissa Imbrock represents a Guatemalan with Permanent Resident status who faces removal after being convicted of one misdemeanor count and one felony count of domestic battery. At issue in the appeal was whether a conviction for felony domestic battery under Illinois law constitutes a “crime of violence” under federal law and thus renders a person convicted of that offense ineligible to petition for cancellation of his or her order of removal. Oral

argument took place in November 2010, followed by a request for supplemental briefs. At press time, the court’s ruling was pending.

“This case had proven to be a real uphill battle, and the stakes are very high,” Imbrock commented. “My client has three children who are US citizens, and his wife is very ill. If he is removed, he will be unable to return, raising the possibility that he will never see his family again.”

#### ENHANCING PROFESSIONAL DEVELOPMENT

Beyond the increased sense of responsibility that comes with taking the lead role on a representation, a number of specific skills are developed, including strategy development, client and file management, research, writing and oral advocacy.

Katherine Graf, a Litigation associate in our Houston office, has been working on a complicated matter since October 2008, winning the appeal in May 2010 and staying on to represent her client for the retrial. “My appeal argued that my client’s rights were violated through illegal search and seizure, and that he was convicted due to ineffective assistance of counsel,” she said. “Essentially, his representative failed to file a meritorious motion to suppress evidence obtained in violation of the Fourth Amendment.” Because the defendant had two prior felony drug convictions, the prosecutor was able to successfully argue for a life sentence during trial for possession of several ounces of crack cocaine with intent to distribute.

“Working on this matter has furthered my legal skills around researching, writing and oral advocacy—the more you get to use them, the better you get, and from that standpoint this has definitely been a great case,” Graf said. “I’ve had significant responsibility for strategizing on this matter. This experience has been extremely valuable.”



“The responsibility for this appeal rests on me, and that sense of ownership has helped me to do a better job,” commented Litigation associate Kenton Skarin of the Chicago office, who has been working on a federal *habeas* case since November 2010. “There’s something special when it becomes your case and your client, and that’s not something that I take lightly.”

#### LEVERAGING SUPPORT

**W**hile the individual associates take ownership of their Seventh Circuit matters, Mayer Brown supports them throughout the duration of their representations. Both internal and external experts are available, partners supervise the work, and Kadish and Siegel are available to the associates throughout the process.

Ames Grawert, a Litigation associate from the New York office who began work on an ineffective assistance of counsel claim in spring 2010, found himself relying on a wide range of colleagues as he prepared his briefs. “The support from everyone at the firm has been tremendous. Edits and comments to my opening brief by a senior associate and several partners were very useful, and I learned a great deal from their experienced perspectives. I’ve already noticed an uptick in my abilities between drafting the opening brief and drafting the reply brief,” he said. “The guidance from Marc Kadish and Helene Siegel has also been fantastically helpful throughout the process.”

“There are so many people at the firm with appellate experience, including former Seventh Circuit clerks who offer insight into how the judges may react to particular lines of argumentation,” commented Intellectual Property associate Kyle Friesen of the Houston office. “But one thing that I realized after having so many conversations with these invaluable resources is that the best they could do is respond to my own understanding of the case and help restructure or refine my argument to make it more

persuasive. Ultimately, it had to be my argument because nobody else could know the details of my case the way that I did.”

Friesen worked on a successful *habeas* appeal for ineffective assistance of counsel from July 2009 to June 2010 on behalf of an individual who was found guilty but mentally ill in a 2004 murder trial. With the success of Friesen’s appeal, the conviction was vacated and the case was remanded to state court.

“There are very stringent requirements for every one of these Seventh Circuit matters. We try to give the court exactly what it wants because that puts the associate on the best footing for the court to accept his or her argument,” Siegel said. “Many hands help with the filings. There are paralegals who help the associate assemble the appendix documents and perform cite checks, secretaries who generate tables of authorities, clerks who perform quality assurance page checks and members of our document services group who help prepare the electronic versions and make the electronic filings.”

#### A MUTUALLY BENEFICIAL PRACTICE

**B**eyond the crucial skill-building and public service components of Mayer Brown’s Seventh Circuit Project is a growing recognition of the impact this work has had on the court as well as the law.

“I work on appointments with most of the major law firms in Chicago, Milwaukee and Indianapolis. Many, including Mayer Brown, regularly contact me to seek out representations,” Wall said. “The bottom line with all of the firms that take on pro bono appointments in the Seventh Circuit is that it creates a win-win situation. The court gets high-quality briefs and arguments, and the associates who work on these appeals get the opportunity to perform substantial work and argue before the court.” In honor of the



“As a judge, I’ve found that many of the important Seventh Circuit decisions in the area of *habeas* law that I cite in writing opinions turn out to be from matters that were worked on by Mayer Brown lawyers.” —Judge Robert Dow

firm’s work, Mayer Brown received the inaugural Justice John Paul Stevens Law Firm Pro Bono Award from the Seventh Circuit Bar Association’s Pro Bono and Public Bar Service Awards Committee in 2009.

Several Seventh Circuit judges have publicly shared their appreciation for Mayer Brown. Asked during a 2004 Internet interview about the art of writing legal briefs, current Seventh Circuit Chief Judge Frank H. Easterbrook commented that “Appellate practice groups in firms such as Mayer Brown...are great places to learn.” Writing the decision for McGrath’s successful appeal, Seventh Circuit Judge Terence Evans remarked on the quality of the firm’s work in a footnote: “Thomas M. McGrath from Mayer Brown has done a splendid job representing [his client] on this appeal.”

Former Mayer Brown partner, and current US District Court Judge for the Northern District of Illinois, Robert M. Dow, Jr., used to help prepare associates for their Seventh Circuit appearances by reviewing drafts of their briefs, helping them determine their strategies and planning moot courts.

According to Judge Dow, what he did not realize during his Mayer Brown days was how some of these matters would come to influence the law. “As a judge, I’ve found that many of the important Seventh Circuit decisions in the area of *habeas* law that I cite in writing opinions turn out to be from matters that were worked on by Mayer Brown lawyers. Those Seventh Circuit cases have actually helped to establish *habeas* law.”

“Hearing about the Seventh Circuit Project back when I was a summer associate made it clear to me just how important pro bono work is at Mayer Brown, which dovetailed with my own views of a lawyer’s obligation to perform pro bono work,” said Friesen. Along with Graf, Friesen accepted the 2010 Project of the Year Award at Mayer Brown’s 2010 Pro Bono Awards Program on behalf of every one of the firm’s lawyers who had worked on the Seventh Circuit Project.

Over the course of the firm’s 136 representations in the Seventh Circuit, the firm has won, in part or in whole, 46 cases. The firm’s Seventh Circuit Project work is ongoing, with 10 open matters at press time. ♦



Kyle Friesen



Katherine Graf



Ames Grawert



Nissa Imbrock



Marc Kadish



Thomas McGrath



Helene Siegel



Kenton Skarin

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# ARGUING THE PUBLIC'S RIGHT OF ACCESS TO EVIDENCE IN CAPITAL TRIALS

## Reveals Execution Rested on Faulty Evidence

DOES THE PUBLIC HAVE A RIGHT TO KNOW WHETHER JUSTICE WAS CORRECTLY CARRIED OUT IN A CRIMINAL TRIAL? THAT WAS THE ISSUE RAISED BY MAYER BROWN ON BEHALF OF THE *TEXAS OBSERVER* AND THE INNOCENCE PROJECT, A LITIGATION AND PUBLIC POLICY ORGANIZATION DEDICATED TO EXONERATING THE WRONGFULLY CONVICTED THROUGH, AMONG OTHER THINGS, POST-CONVICTION DNA TESTING.

**AT STAKE:** access to a segment of human hair that was critical to the conviction and execution of Claude Jones.

**THE RESULT:** a significant victory in the Innocence Project's ongoing campaign to reform the rules governing the treatment of forensic evidence and the post-conviction review process in death penalty cases.

### THE CRIME

In November 1989, Allen Hilzendager was shot to death while working at a liquor store in San Jacinto County, Texas. Arrested were Claude Jones and two co-defendants. Two witnesses across the street were unable to identify the perpetrators and the only physical evidence purportedly linking Claude Jones was a one-inch-long segment of hair, with no root, that had been found at the scene.

At that time, the ability to isolate and test mitochondrial DNA in hair without its root was not yet available. So, the prosecution built its case against Jones

using co-conspirator testimony—later recanted with claims of coercion—and the testimony of a forensic expert concerning the hair segment.

“Put ‘expert’ in quotation marks,” said Bill Knull, the lead Mayer Brown partner who later represented the Innocence Project and other plaintiffs in the action to obtain the hair for testing.

The hair was visually compared under a microscope against hairs belonging to the victim, Jones, one of the alleged co-conspirators, police officers and all other known individuals at the site of the murder. At trial, the expert acknowledged that a definite conclusion that the hair belonged to Jones was not possible; however, he concluded that the hair *could* belong to Jones and *could not* belong to anyone else from the crime scene.

“And then, at several points during his testimony, he stated that the hair *matched* the hair of Claude Jones,” Knull continued. “That’s a very powerful statement.”

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“I believe that had Governor Bush known about the requested DNA testing, he would have stayed the execution.”

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— Barry Scheck



The prosecution highlighted this testimony in their closing argument, using it to corroborate the accomplice testimony against Jones, who was convicted and sentenced to death. The “matching” hair was also a key point for the majority in a divided 3-2 Court of Criminal Appeals decision upholding the conviction and sentence.

After he exhausted his appeals, but before execution, the capability to analyze mitochondrial DNA was developed. Jones moved the court for a stay of execution to permit the test to be conducted; the trial court denied the stay, characterizing the motion as an “abuse of the writ,” and the appellate court affirmed.

When the Board of Pardon and Parole denied Jones’ plea for clemency, Jones sought a stay of execution from then-Governor George W. Bush. The office of the Counsel to the Governor wrote a memo summarizing the facts of Jones’ case, including the testimony about the hair, but did not inform the Governor that Jones was seeking the 30-day reprieve to allow for DNA testing based on the availability of new, and much improved, scientific capabilities. The memorandum recommended against clemency on the grounds that the evidence of Jones’ guilt was overwhelming.

“I believe,” said Barry Scheck, co-founder and co-director of the Innocence Project, “that had Governor Bush known about the requested DNA testing, he would have stayed the execution, just as he had done a few months earlier when I made a similar request in another case. Instead, he denied clemency and Jones was executed the same day.”

#### THE INNOCENCE PROJECT GETS INVOLVED

**T**he Innocence Project came across the Jones case during an ongoing project to identify instances in which suspect forensic evidence played a role in the unjust conviction or execution of an individual. Together with the *Texas Observer*, the Innocence Project filed an Open Records Request. In response, they obtained the memo to the governor. Further investigation revealed that the hair segment had not been destroyed.

To help develop a claim to obtain the hair and allow it to be tested, Scheck contacted Mayer Brown, which has a long history of involvement with his organization.

“Top-flight attorneys at Mayer Brown researched, refined and ultimately filed this landmark case on our behalf, in which truly novel theories of relief and access to evidence were the basis for our claims,” recounted Scheck.

#### THE PUBLIC’S RIGHT TO KNOW

Mayer Brown sued the District Clerk and District Attorney of San Jacinto County and the county itself. The argument to the court was not about Claude Jones’ rights, but about the public’s right to know if justice was carried out properly in the case.

“Whenever you have a right of access claim, it’s always in the court’s

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“It was a forceful argument, even if there wasn’t a great deal of precedent out there to support it.”

— William Knull

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“The results...show that Jones was wrongfully executed based on a factually false premise...”

— Barry Scheck

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discretion,” said Victor Zhao, a former Mayer Brown associate now with the US Department of Justice.

**K**nnull and Zhao, together with former Mayer Brown associate Kwaku Akowuah, cited the First Amendment, the Texas Public Information Act and the common law right of public access to information regarding criminal trials.

“The thrust of our argument was that the public has a right to know what happened in this criminal trial so that it can tell whether the power given to its public officials to execute a citizen is being properly handled. It was a forceful argument, even if there wasn’t a great deal of precedent out there to support it,” said Knull. “At the same time, we developed a factual record to demonstrate the role that this particular piece of evidence played in his conviction, so that it was clear that this was not just an academic exercise. This was central to determining whether the State had executed a man without having the evidence necessary to determine that he was, in fact, guilty of a capital crime.”

Zhao led the deposition of the original trial prosecutor, William Burnett, who agreed that it was in the public’s best interest to know the facts. He also agreed that there was no countervailing interest that would be harmed by conducting the test.

In the end, the court ordered the hair to be turned over for testing. No appeal of that decision was filed.

“It’s hard to overstate just how much the Mayer Brown team accomplished in this case,” commented Scheck, following the court’s order.

The mitochondrial DNA test was performed by a facility that was mutually acceptable to all parties.

“The test established that the hair could only have come from the victim,” reported Knull. “It could not have come from Jones or any of the other people at the crime scene.”

“The results don’t prove guilt or innocence,” said Scheck, “but they certainly show that Jones was wrongfully executed based on a factually false premise that would have been disproven if the DNA test had been performed when it was requested.”

### IMPLICATIONS

“The Jones case is somewhat unique because it had to do with science and how it impacts death penalty procedures,” said Knull. “For all its bad reputation, Texas has probably done more to reform its death penalty procedures than most other states. A lot of that is a result of what the Innocence Project has done, not simply as an adversary, but working with the state legislature to improve the process.”

“The hope is that in future criminal trials, where someone’s life is at stake, every precaution will be taken to ensure that the right forensic evidence is used and the scientific methods employed will stand up to examination,” said Zhao. “Whether it’s the trial process or the clemency process, the more safeguards that are in place, the more accurate and just the process will be, which is always in the public interest.” ♦



William Knull III



Victor Zhao

# EU ROUND UP

by Julie Dickins

THERE WERE A NUMBER OF HIGHLIGHTS FOR OUR EUROPEAN OFFICES IN 2010.

There were also a number of successful cross-office projects. These included providing advice to the umbrella organization Bond (British Overseas NGOs for Development) on UK and German bribery legislation and to the international pro bono organization PILnet (The Global Network for Public Interest Law) with regard to a research project on committal to mental institutions in which our Washington DC, London and Berlin offices (among others) were involved.

## BELGIUM

Our Brussels and London offices have been jointly advising the Fairtrade Foundation. The Foundation's FAIRTRADE mark is one of the most recognized labels for indicating that a product has been certified to give a better deal to the producers involved. Fairtrade products are growing in profile, and the Foundation wished to support licensees committed to its mission. Mayer Brown advised on aspects of EU and UK competition law and the possible application to the Foundation's activities.

The Brussels office is also helping an Indian NGO, SKG Sangha, to open an office in Brussels to enable it to fund projects outside India. The Brussels office is also developing a relationship with Avocats Sans Frontières (ASF), and will be hosting human rights training for Vietnamese lawyers arranged by ASF. On the community side, the office has joined Legal Run, a group of Brussels firms that raise money for charity via sponsored events.

The head of the Brussels office, Kiran Desai, has recently joined associate Charles Helleputte as the Belgian representatives on the global and EU pro bono committees.



## FRANCE

Partners Patrick Teboul and Thomas Philippe, together with associate Wye-Peygn Morter, are the new Paris representatives on the pro bono committees. Thomas and Wye attended the 2010 PILnet European Pro Bono Forum, which was held in Paris (see the report on page 23). Recent pro bono cases undertaken by the Paris office include advising a French nonprofit cultural association, Théâtres Enchantiés, regarding their lease. The office is also seeking to develop its relationship with PlaNet Finance, a French microfinance NGO.

## GERMANY

The German offices trebled their pro bono hours in 2010. Alexa Metzger is the new Berlin representative and Marius Boewe is the first Cologne representative on the firm's global and EU pro bono committees.

As part of the Frankfurt Pro Bono Roundtable, our Frankfurt office has been instrumental in setting up the first German pro bono organization, Pro Bono Deutschland e.V., which is a landmark event for pro bono in Germany. The organization will refer pro bono cases between member firms, and may eventually become a full-blown clearinghouse. Associate Malte Richter, who, together with senior counsel John Faylor, has played a large part in the work of the Frankfurt Roundtable, has been elected to the board of Pro Bono Deutschland. Malte and John also have recently introduced the first in-house legal team, namely that of Caterpillar, to the Roundtable. The

office was awarded the Mayer Brown Pro Bono Initiative Award for its efforts to institutionalize pro bono in Germany via the Roundtable.

Recent cases undertaken by the Frankfurt office include a successful settlement for an Eritrean refugee of legal proceedings brought by her former landlord, and a trademark dispute for Goodweave, a not-for-profit organization that works to end child labor in the handmade carpet industry. The office also gave extensive data protection advice to ASSIST (American Secondary Schools for International Students Inc.), an organization that helps exchange students find host families in foreign countries.

The Berlin office has been advising a local educational institution/science museum for children (Exploratorium Potsdam e.V.) and a local society for fine arts (Goerlitz21). The office has also assisted a French human rights organization called RAIDH in its campaign against strategic lawsuits brought by companies with the aim of intimidating and silencing the NGOs that criticize them.

The Cologne office has been assisting with the winding-up of the Abbey of Saint Ursula in the Black Forest—the abbey sadly closed after several hundred years due to lack of younger members, and it is transferring its treasures and antique documents to a museum owned by the city of Villingen. The office is also undertaking comparative research on the regulation of male circumcision in Germany for the PLANeS Foundation to assist the work that the NGO is currently doing to eradicate female genital mutilation.

## UNITED KINGDOM

For the second time in four years, the London office won the national LawWorks Award for Best Contribution by a Law Firm. LawWorks—previously known as the Solicitors Pro Bono Group—is the best known legal pro bono organization in the United Kingdom, and its three main streams of work involve referring pro bono cases, setting up advice clinics and providing training to lawyers.

According to LawWorks, “Mayer Brown has helped the full range of LawWorks projects this year, providing pro bono assistance through the Community Groups, Individuals Casework and Mediation Projects, in addition to advising every week at Islington Law

Centre, supervising students at Kaplan Law School’s advice clinic, hosting training sessions and reviewing a fact sheet drafted by a LawWorks Choices volunteer. Pro bono clients commented on their first class, excellent and reliable service.”

While LawWorks is the main provider of domestic pro bono work for the London office, Mayer Brown lawyers also undertake pro bono work in conjunction with a variety of other organizations. These include Advocates for International Development (A4ID), which refers the majority of the office’s international pro bono work (Mayer Brown took more projects from A4ID than any other law firm in 2009); PILnet, which also refers international cases; the RCJ Advice Bureau, a clinic at the High Court where the firm’s lawyers have advised since 1998; Reprieve, a charity that provides representation to people denied a fair trial; Amicus, which assists US lawyers defending capital cases; and, most recently, TrustLaw, an international pro bono clearinghouse set up by the Thomson Reuters Foundation.

Recent UK cases of note include advising the Rainforest Foundation in relation to a contract entered into with the African Development Bank and advising Afghan Education Projects (AEP), which produces radio programs in Afghanistan such as “New Home, New Life.” This program has an audience of more than 14 million people and includes stories on refugees, unexploded mines and crop rotation. AEP is intended to be spun out of the BBC World Service, and the London IP group has been helping negotiate the spin-out agreements and the copyright arrangements for the programs.

In 2010, the London office was awarded the Mayer Brown Pro Bono Leadership Award, which recognizes excellence and consistency in the provision of pro bono assistance. ♦



Julie Dickens

# Working for a Children's Rights Organization in Tanzania

by Anne-Marie Chirema



President Kikwete and Anne-Marie Chirema

In May 2010, during my qualification leave, I travelled to Dar es Salaam in the East African country of Tanzania to take up a two-month placement with a children's rights organization called Children's Dignity Forum (CDF). I was sent by Advocates for International Development (A4ID), a UK-based charity that facilitates free legal assistance to help achieve the UN Millennium Development Goals. Mayer Brown is one of the founding members of A4ID, and the firm generously paid the expenses of the trip.

## Tanzania

With a population of approximately 2.8 million people, Dar es Salaam is Tanzania's largest city. It is enviably located on the Eastern Indian Ocean coast of Africa, resulting in a vibrant mix of African, Arab and European influences. The city is the economic and financial hub of the country, yet pockets of prosperity sit beside areas of acute poverty.

I arrived into the bright, humidity, noise and bustle of Dar es Salaam as the warm Swahili strains of *Karibu Tanzania!* (Welcome to Tanzania!) welcomed me to the city that was to be my home for the next two months.

Mornings usually began with a call to prayer from the mosque or the impassioned voices of the local gospel choir. My bumpy path to work took me past noisy cockerels, simple homes with corrugated iron roofs, women in colorful fabrics (called *kangas*) who were making chapattis, men with carts full of oranges and papayas, children in smart uniforms on their way to school, crowded buses (*daladalas*) and, if I was lucky, a family of monkeys.

## The Children's Agenda

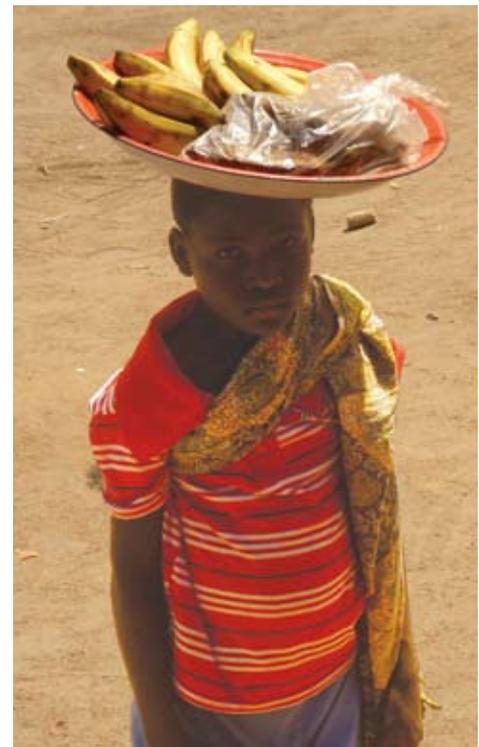
I set to work with CDF and quickly got involved with the Children's Agenda (*Ajenda ya Watoto*): a campaign to

encourage politicians to take children's issues seriously in the run-up to last year's election.

**T**anzania's more than 19 million children face a difficult set of challenges: they are born into one of the world's poorest countries; one in five children under the age of five is underweight, which leads to illness and child mortality; more than one million children have been orphaned by AIDS and are often left to fend for

backdrop, a coalition of local and international organizations, including CDF, UNICEF and Save the Children, joined forces to form the Children's Agenda in order to give the children of Tanzania a platform to speak out about their rights and ensure that the statute made a practical difference to their lives.

Children from around the country came together to agree to a ten-point agenda of "investments" in children's rights, for the attention of local and



themselves on the streets; and in some regions of the country, girls are subjected to child marriage and the painful and potentially fatal ritual of female genital mutilation (FGM).

When I was there, Tanzania had recently implemented the groundbreaking Law of the Child Act, which effectively domesticates the UN Convention on the Rights of the Child and provides a coherent legal framework through which the rights of Tanzanian children can be protected and realised. Against this

national leaders; these included investing in good nutrition, preventing HIV and AIDS in infants and adolescent girls, protecting children with disabilities and protecting children from violence, abuse and exploitation. The campaign culminated with the President of Tanzania, Jakaya Kikwete, inviting the children to the State House where they were able to speak directly to the President about the issues that were important to them and ask him for a commitment to invest in their rights.

Despite the many hardships that the children had faced, they were bright, fearless and empowered. Having worked so closely with the children, and watching them grow in confidence, I felt so proud. The President chatted with them, shook their hands and even welcomed me personally to the country. Some of the children were so excited the next day that they said they were never going to wash their hands again!



A few days later we travelled to the capital city of Dodoma (in a UN vehicle, no less). We took part in a colorful march with thousands of children to the Jamhuri stadium where cries of *Watoto kwanza!* (Children first!) accompanied the brass band to officially launch the Children's Agenda.

## Documentary about Child Marriage

As my work on the Children's Agenda came to an end, I was given the opportunity to work on a documentary film about the practice and hazards of child marriage. I traveled with CDF to a pretty town called Musoma on the shores of magnificent Lake Victoria, up near the Kenyan border.



Every time the bus stopped during the 20+ hour journey, people would approach to sell water, bananas, mangoes and corn on the cob, all from baskets balanced on their heads. We passed through lush green jungle, savannah and stunning mountain ranges. A highlight was passing along the eastern fringes of the Serengeti National Park and watching zebras, antelope and baboons on the vast yellow plains. It was breathtaking.

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After being in the city, it was wonderful to be in the villages and experience a more traditional way of life. It was also great to see the work that CDF is doing there, including a “sister-to-sister” program where girls give help and guidance to other girls at risk of child marriage and they are given the opportunity to learn skills, undergo training and carry out paid work.

In the villages in that part of the country, girls are often married at the age of 12 or 13 after having undergone FGM. They are forced to drop out of school and many give birth at a dangerously young age, which can lead to horrific complications. Before they have had the chance to grow up, their opportunities in life are all but gone.

**W**e interviewed several young girls, who dreamed of a future of equality and fulfillment, as well as village elders, who insisted on the benefits to the community of girls marrying young. We also interviewed a *Ngariba*—the woman in the village who carries out the initiation ceremony for girls when they reach puberty, which often includes FGM. It was very interesting to hear her justifications for this illegal, yet widespread practice (which included being dependent on the money that parents were prepared to pay to have their daughters circumcised and the historical belief that girls would not be able to control themselves when their husbands went away to war if they remained uncut).

We visited a hospital and talked to a doctor and midwife about the distressing physical and emotional consequences that result from young girls giving birth. Although it was at times difficult and emotional to make the film, it was also wonderful to see such inspiring

girls and enlightening for me to look at the issues from a different perspective and within their cultural setting.

## My Experiences

It wasn't always easy working in Tanzania with the frequent power cuts, different approaches to getting things done and my very limited Swahili. But somehow it all came together. The greatest pleasure was working with the bright, confident, fun-loving children who, despite great hardship, impressed me, taught me so much and made me smile everyday.

And it wasn't all work. I travelled to Zanzibar with its beautiful old Arabic buildings and its even more beautiful beaches and experienced a country in the grip of World Cup fever. I even managed to watch a match at the “Emirates Stadium,” which was cunningly disguised as a wooden shack. I had my hair braided by the impressive Masai warriors and sailed over Lake Victoria at sunset.

My enduring memory will be the people, who are rich in culture, warm and welcoming. I was never alone in Tanzania, with people constantly calling out “*Jambo, habari?*” (“Hello, how are you?”) wherever I went.

I left to warm smiles, embraces and calls of “*Karibu tena Tanzania*” (“Welcome again to Tanzania”) and with experiences, friendships and lessons that will enrich me for life. ♦

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The greatest pleasure was working with the bright, confident, fun-loving children who, despite great hardship, impressed me, taught me so much and made me smile everyday.

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Anne-Marie  
Chirema

# To Talk of Many Things

by **MARC KADISH**

IN 2011, BUZ CRAVEN REPLACED MATT ROONEY AS CO-CHAIR OF THE FIRMWIDE PRO BONO COMMITTEE. BUZ ALSO RECENTLY SERVED AS CO-CHAIR OF THE FIRM'S PARTICIPATION IN THE CHICAGO BAR FOUNDATION'S INVESTING IN JUSTICE CAMPAIGN AND I THOUGHT IT WOULD BE INTERESTING TO HAVE HIM WRITE A GUEST COLUMN THIS YEAR TO DISCUSS THE CAMPAIGN AND SOME OF THE LARGER QUESTIONS IT RAISED.

## ON GIVING *by Buz Craven*

**D**o lawyers have an ethical obligation to help fund legal services organizations? Are we really “trustees of the justice system,” as some claim? And what motivates lawyers to contribute? These were among the questions I faced this past March as co-chair of the Investing in Justice Campaign.

The Chicago Bar Foundation began the Investing in Justice Campaign four years ago by asking representatives of large law firms and corporate legal departments to conduct a fundraising effort among their lawyers to collect money for distribution by the CBF to 35 not-for-profit agencies serving the unmet legal needs of the poor in the Chicago area. CBF ensures that these programs meet high standards for cost-efficient delivery of legal services.

When Fritz Thomas, partner-in-charge of the Chicago office, asked me to join him as co-chair of this year's drive, our main goal was to increase participation: in 2010, 24.58 percent of the office's lawyers donated a total of \$35,723.

We accidentally appealed to a natural instinct of all lawyers: competitiveness. We organized the office's practices into five teams and offered use of the firm's skybox for a Chicago Bulls basketball playoff game to the team with the highest average of partner and associate contributions.

For the first week of the campaign, participation was on a pace similar to 2010. At the end of that week we reported the interim results; perhaps it was proof of the adage that you get what you measure, but the biggest jumps occurred immediately thereafter.

Some of the smaller practices pushed to be the first to achieve 100 percent participation (the Government and Global Trade Group was first). Some lawyers in the larger

practices pressed their colleagues so that their teams did not finish last. The winning team was the combination of Tax Transactions, Tax Controversy and Intellectual Property. And the end result was 50.84 percent participation and donations totaling \$72,345—a success!

But the event also raised important questions. Several partners had political or moral objections to some of the agencies funded by CBF. In one case, instead of contributing to the CBF campaign, the partner contributed directly to one of the legal services agencies that particularly appealed to him. This approach was rejected by several others, including one partner who objected to the firm asking anyone to make a contribution.

Though I disagree with it, his objection does raise a legitimate question about firm vs. individual giving. My own view is that individual giving is preferable, but I obviously could not articulate an argument that would persuade everyone. If anyone can think of a persuasive response to that objection, please let me know. I have a feeling I will be facing that objection again next year.

One partner told me that our campaign changed the culture of the firm. He said we had somehow found a way to make lawyers more generous. I think we got lucky. By appealing to the lawyers' natural competitiveness, we created a buzz about the campaign that raised more funds for justice. ♦



Marc Kadish



George (Buz) Craven

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