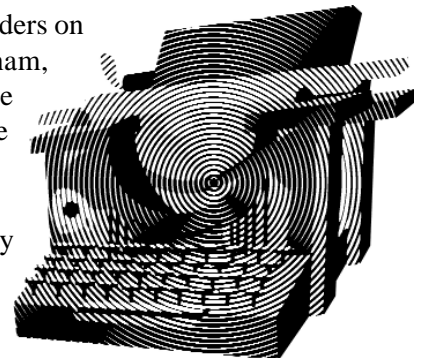


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The Kissinger Transcripts

Through the pro bono efforts of two Mayer, Brown & Platt attorneys, the public might soon get an unvarnished glimpse into the U.S. foreign policy decision-making process conducted by Henry Kissinger while Secretary of State in the 1970s. In August, The State Department announced that Mr. Kissinger had returned 10,000 pages of telephone transcripts dating from 1973 through January 1977. The transcripts are expected to include detailed discussions with Presidents Nixon and Ford and other world leaders on U.S. activities in the Middle East, Vietnam, Cambodia, Chile, and Argentina. Some of the transcripts might be declassified and available to the public before the end of this year.



The documents have been sealed in the Library of Congress under a purported deed of gift from Mr. Kissinger since December 1976, with access strictly controlled by Mr. Kissinger until five years after his death. The National Security Archive, a foreign policy documentation center based at George Washington University, has sought release of the documents with the help of MBP attorneys Lee Rubin and Craig Isenberg. "These telcons are a minute-by-minute, hour-by-hour verbatim record of the highest-level foreign policy deliberations of the U.S. government during Mr. Kissinger's tenure at State," said Thomas Blanton, director of the Center. The conversations were transcribed by a Kissinger secretary, who sat in on the calls.

Long Sought

Reporters and scholars have sought access to the records for years. A federal district court and U.S. court of appeals had both ruled in the late 1970s that the transcripts were government records improperly removed from the

See "Kissinger" on page 14

09/11/01

Like so many others, we have struggled to return to normality in the wake of the awful events of September 11. To read about the efforts of the people in our New York office, turn to "Terror and Response" on page 15.

Launching a Pro Bono Program in El Salvador

Mayer, Brown & Platt counsel Hector Gonzalez traveled to El Salvador in June as part of a groundbreaking effort to launch a pro bono program with 10 Salvadorian law firms. The effort grew out of a request by the Public Affairs Office of the U.S. embassy in El Salvador.

Mayer, Brown Pro Bono Director Marc Kadish was initially contacted by the American Bar Association Center for Pro Bono, which forwarded the embassy request to attend the first Pro Bono Conference in Central America. The embassy, the Human Rights Institute at the Central American University, and the National Office of Public Defenders and Family Lawyers jointly sponsored the conference.

Hector met with lawyers from several of the largest law firms in the capital city of San Salvador. He also met with representatives of the Human Rights Institute at the university and was a featured speaker at a breakfast sponsored by the U.S. embassy that also included the Procurador General (the public defender for the country).

During his meetings with the law firms, Hector discussed how U.S. firms handle pro bono matters and the benefits of establishing a pro bono program. The initial goal of the program is to sign up the ten largest law firms in the country (the largest of which has about 20 lawyers). Each firm is expected initially to take on two cases per year. The Human Rights Institute is the organization that will serve as the feeder group sending cases to the participating law firms.

“We believe this is the first time that such a concerted effort has been made to initiate a pro bono program anywhere in Central America,” said Hector. “All of the firms expressed their interest in participating. It was a great opportunity to be part of such a worthy program right from its inception and to share with these firms the benefits of doing pro bono work.”

The U.S. embassy is expected to encourage the effort by making information about participating San Salvador law firms available to U.S. companies seeking local legal counsel in El Salvador. The law firms are



Hector Gonzalez

expected to take on a variety of cases ranging from civil suits, land rights, inheritance to other matters.

In an unrelated case, Mayer Brown attorneys are also involved in human rights litigation stemming from the murder of missionaries in El Salvador. Philip Lacovara,

Peter Choharis and Julie McConnell are representing families of four missionary women in a suit against the commanders of the soldiers convicted of raping and murdering them in 1980. That case is before the U.S. Court of Appeals for the 11th Circuit. •



The Right Firm

I recently attended a firm party honoring some newly retired Mayer Brown partners. As one might expect at such a gathering, everyone had a lot to say and was not shy about saying it. The remarks that stayed with me, though, were those of Bill Gordon, Harvard Law grad, clerk to Abraham Lincoln Marovitz, and tireless litigator for Mayer, Brown & Platt his entire career thereafter. Maybe the events of September 11 had put us all in a stock-taking frame of mind, but Bill's words were a reminder that what we do here at Mayer Brown is more than a job and that each of us contributes to a rather remarkable institution. I yield the floor to Bill this issue.

I came to the firm—then Mayer, Friedlich, Spiess, Tierney, Brown & Platt—in the mid-1960s. My first assignment, given by Miles Seeley, was to obtain an extension of time for filing a brief from Judge Julius Hoffman. For those of you who don't remember, Judge Hoffman compensated for his slight stature with a tyrannical demeanor. He was sarcastic, insulting to lawyers, and very jealous of his calendar. He simply did not believe in extending time deadlines.

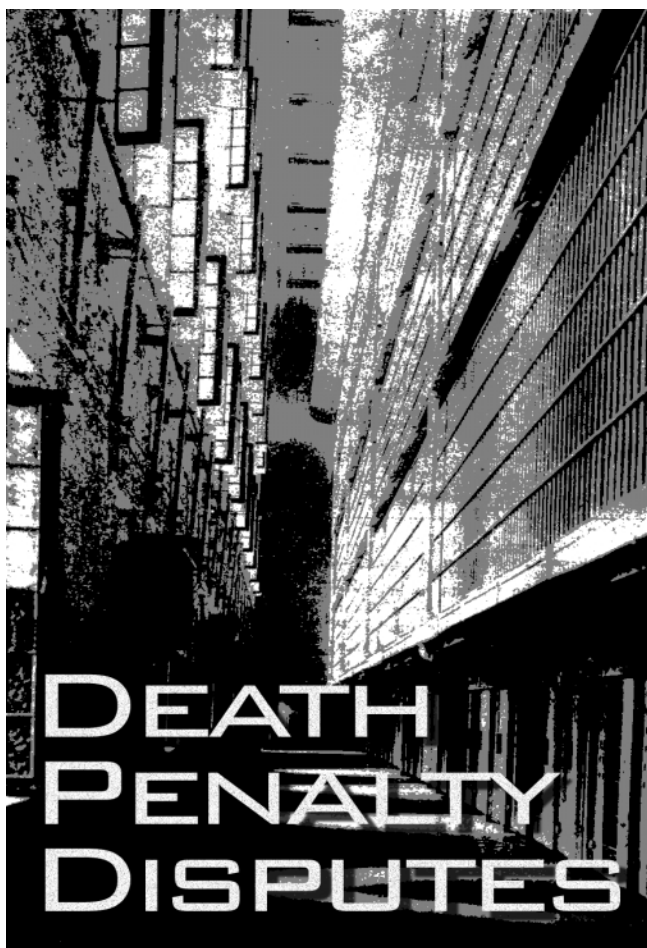
Well, I dutifully drafted and filed my papers, and trotted off to Court—and Judge Hoffman. As luck would have it, the case called just before mine also involved a request for extension of time. Judge Hoffman railed from the Bench, commented acidly on counsel's sloth, and—true to form—denied the extension.

When my case was called, I stood and took a deep breath. But, before I could make a sound, Judge Hoffman raised his hand to silence me and simply said, "Motion granted."

My opponent sputtered and argued that my request was no different from that in the prior case. But, again, Judge Hoffman interrupted. Peering over his glasses, in his high-pitched voice, he said, "Counsel, don't you understand. This motion is very different. It was filed by Mayer, Friedlich, Spiess, Tierney, Brown & Platt." And then he announced to the whole courtroom: "Mayer, Friedlich, Spiess, Tierney, Brown & Platt is a great law firm. And when Mayer, Friedlich, Spiess, Tierney, Brown & Platt tells me they need more time, they do, in fact, need more time. I believe them."

As I walked—floated—back to the office, I knew I had joined the right law firm. And now, 35 years later, I still know I joined the right law firm. Much has changed, but the integrity of this great institution remains. For the last 35 years, every time I introduced myself in Court, I would proudly include the firm name. Whenever I was asked where I worked, I would respond with similar pride. And today, happily retired with [my wife] Joyce, I am no less proud of how I spent my 35 years of practice at Mayer, Brown & Platt.

I have been privileged to be a partner at this great firm, to work with you, and to be your friend. Thank you. •



Both our Washington and Houston offices have been involved in separate death penalty cases in recent months. Both are colored by the constitutional fight over executing the mentally handicapped.

McCarver Case

The case of *McCarver v. North Carolina* was to be the test case challenging the imposition of the death penalty on defendants who are mentally retarded. Mayer, Brown & Platt participated in the case through an amicus brief written by David Gossett and Andrew Schapiro, on behalf of the American Bar Association.

The brief states that such defendants are far too likely to lack adequate representation, to be convicted and sentenced to death despite being innocent, and to be sentenced to death by fact-finders who do not or cannot give appropriate mitigating weight to the defendants' mental retardation. It urged that the Eighth Amendment be held to prohibit imposition of the death penalty upon individuals who are mentally retarded.

However, *McCarver* became moot last summer, when the State of North Carolina passed legislation making execution of mentally retarded persons illegal and mak-

ing the law retroactive to include the *McCarver* case. The debate hardly faltered: the Court granted review of a similar case, *Atkins v. Virginia*, in September, and the ABA has asked us to draft a brief for that case taking the same position and incorporating much of our original research.

Madison Case

Another death penalty dispute was given new life through developments in the Supreme Court. After staying the execution of Texas inmate Deryl Wayne Madison following their appointment to the case only weeks before the scheduled execution—Houston office lawyers sought to establish that Mr. Madison's sentencing was based on insufficient consideration of mitigating circumstances, as required by the Supreme Court. By seeking to obtain habeas corpus review of his death penalty conviction in federal court 27 months after the expiration of the one-year limitation period imposed by the Anti-Terrorism and Effective Death Penalty Act ("AEDPA"), Mr. Madison faced automatic dismissal unless he could demonstrate an entitlement to equitable tolling through the existence of "unique and exceptional circumstances."

Only last June, the U.S. Supreme Court overturned another condemned prisoner's death sentence (coincidentally, that of a mentally handicapped man) on that issue, noting that the failure to present a jury interrogatory on mitigation was insufficient to allow the jury to "give effect to" such evidence. This element of the opinion opened up new possibilities for the *Madison* appeal. Although Mr. Madison might not have exactly the same mental deficiencies as in the test case, we argued that an awareness of profound disadvantages in his background might have persuaded a jury to give him a sentence other than the death penalty, had they been allowed to voice their evaluation of such factors during the sentencing phase.

On October 31, the court ruled that we had indeed proved an entitlement to equitable tolling through the existence of unique and exceptional circumstances of the case.

Charles Kelley has received the support of much of the Houston office during this case. "Whatever the outcome of the case, it is a heartening team effort here," Charles explained. "Bill Knull, Marvin Katz, Jim Tancula, Terry Kernell, Steven Duffield, Diana Davis, Tim Tyler, Wendy Bera, Jake Palumbo, Hutson Smelley, Jennifer Mott—they've all contributed their time and ingenuity to the effort. I'd particularly like to note the fine work of Steven Duffield, as he has taken the lead roll on coordinating much of the effort so far." •

Focus on Education

Mayer, Brown & Platt attorneys and staff are involved in a number of projects donating time and money to various education programs. The various education-related programs provide a range of opportunities to contribute to the community.

Constitutional Rights Foundation. This is an organization with offices in Los Angeles and Chicago. Its mission is to instill in our nation's youth a deeper understanding of citizenship through the values expressed in the Constitution and its Bill of Rights and to educate them to become active and responsible participants in our society. CRF pursues its mission through a variety of programs that inform young people on the way our system of government works. For example, there is an extensive annual mock trial competition involving middle school and high school students throughout the State of California. There is also a program involving the L.A. Police Department in which the students switch roles with police officers who play the roles of young people having to deal with the police in a variety of situations. In addition, there is a program called Sports and the Law in which the rules that control athletic competition are compared to the laws that govern our behavior as members of society. Moreover, there is also an internship program in which middle and high school students are given the opportunity to spend several weeks working in private companies, law firms, accounting firms and public agencies to learn how these entities function in our society. Partner Lou Eatman is on the Board of Directors of the Los Angeles chapter and a member of the CRF Executive Committee. We have donated \$15,000 per year to the Los Angeles chapter for the past four years. Through chairman Ty Fahner and partner Vince Connelly, we have donated \$1,500 annually to the Chicago chapter.

Cristo Rey. Cristo Rey Jesuit High School opened its doors in September 1996 to students from the Pilsen/Little Village neighborhoods of Chicago. Featuring a rigorous college preparatory and dual-English/Spanish language curriculum, an extended school day and a 10½-month school year, Cristo Rey provides quality education to aspiring young people who cannot otherwise afford it. With the help and support of sponsoring organizations, every student works one full day each



Three students participating in the Cristo Rey program are Miguel Jaime in Records, Joanna Jara in Supply, and Vanessa Acosta, clerical assistant.

Where a Schoolday is Also a Workday

Every day, these working students are bused to the Loop, 15 minutes away. They spend the day distributing mail, filing, or perhaps running messages. Leticia is a filing clerk at Mayer, Brown & Platt, one of the city's largest law firms. "I've made friends with [a lot of] older people there," she says. "They give me advice."

— Business Week
(April 3, 2000) (story describing
the Cristo Rey program)

See "Education" on the next page

Education

continued from the previous page

week to offset the cost of his/her education and to experience a real-world workplace environment.

Mayer, Brown & Platt is one of the sponsoring employers. Under the Cristo Rey program, one full-time, entry-level office job supports a team of four students. Mayer Brown has committed \$75,000 this year to 12 students. The Firm has been involved in this program since 1998 with Vanessa Garcia as our coordinator.

How to Succeed in Law School. As a summer associate at Mayer, Brown & Platt two years ago, William Malpica approached lawyers in our New York office suggesting we host a workshop for new Latino law students. The result was “How to Succeed in Law School,” a day-long workshop for incoming first-year Latino law students from the New York area.

In its third year, the program last summer attracted over 60 New York area students and featured panel discussions by professors and law students. The program is sponsored by the Puerto Rican Bar Association and Puerto Rican Legal Defense & Education Fund and was held at Mayer Brown’s New York office. It is structured to supplement any formal orientations provided by individual schools and ease the transition to law school. In addition to introducing students to learning strategies, the event also provides a forum to introduce students to the

PRBA mentors and internship and job placement information. It also gives students an opportunity to meet one another in an informal setting before classes begin.

Link Program. Link matches low income students with mentors who provide a personal and financial commitment to high school students. The program was founded by a priest on the west side of Chicago. The program draws students from the south and west sides of Chicago who attend various public and private high schools. The Link organization identifies students on the basis of financial need and academic promise. Funding for the program comes from corporate sponsors and individual donors. Individual sponsors commit to an intensive multi-year involvement in the students’ lives. Partner John Gearen is Chair of the Link Board.

Northside College Preparatory. Northside is the flagship of the Chicago Public Schools new college preparatory high school initiative. Opened in 1999, it is the first new Chicago public high school built in 20 years. Mayer Brown attorneys have agreed to help teach colloquium courses on legal topics and commit \$10,000 to the school to help develop the program.

Providence-St. Mel School. The mission of Providence-St. Mel is to “move youngsters from economically distressed families through the education system,” says Paul J. Adams III, President and former Principal of Providence-St. Mel School. For more than 20 years, the westside college-prep school has provided a quality



Pat Sharkey presents a check to Dr. James Lalley, Principal of Northside College Preparatory High School. Also present (from left) are Tim Devine from Northside, Marc Kadish and Lori Monthei.

education for thousands of inner-city children. Providence-St. Mel serves students K-12. The school boasts a 100 percent college acceptance for every graduating class since 1978. Mayer Brown Managing Partner Debora de Hoyos has served as Chair for the school's Board of Trustees. The firm provides legal counsel to the school.

Stockton Reading Day. For the past seven years, Mayer, Brown & Platt and Andersen have participated in an educational sponsorship program with Stockton School. This program, started by Mayor Daley, gives some of the city's major corporate organizations an opportunity to make a difference in the lives of our city's children. During this time MBP and Andersen

have conducted several reading days throughout each school year. These reading days entail mornings in which volunteers (both professionals and administrative staff) take a trip to Stockton School in Chicago's Uptown neighborhood to read with the 3rd grade classes. The day also includes a reading-related activity such as a book summary, an animated drawing and/or class presentations, as well as the sharing of juice and cookies brought in by MBP and Andersen. In recent years, at the end of each school year, we have organized a field trip to Navy Pier with the children to visit the Children's Museum. The program was launched by partner Roger Kiley, Jr. An annual contribution of \$5,000 is made to the school. •



Marcella Barganz, Magali Matarazzi, Sonia Ravin, Maria Bries and Geraldine Delaney participated May 18, 2001 in the Women Everywhere: Partners in Service Project sponsored by the Chicago Bar Association Alliance for Women and Young Lawyers Section. The group volunteered for the day at A Sporting Chance Foundation which provides and promotes sports and fitness opportunities for girls to enhance their physical well-being, self esteem, leadership, team building and academic skills. More than 500 lawyers and judges participated in the event. Maria Bries organized and coordinated the Mayer Brown team.

This group of paralegals attended a training luncheon Wednesday, October 31, to enable them to begin working on matters for the Center for Elder and Disability Law. The men in back are (L to R) Willie Jamison, Howard Rosenberg and Kevin Warns. In front (L to R) are Rachel Stern, Sharon Klaber, Trudy Doyle, Debra Burger, Patricia Slotter (of the Center), Della Humphrey, Carla Matthews, Christina McClure (in white), Helene Siegel (forwardmost), and Michael Czopek.

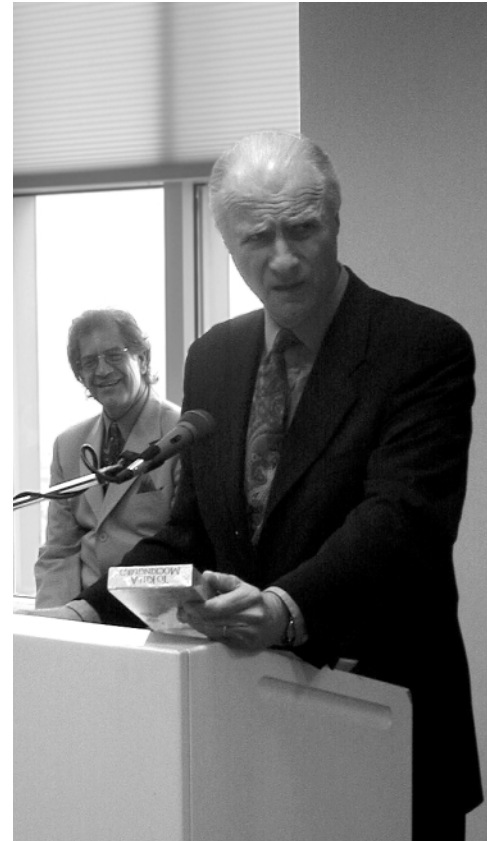


“Justice, Justice Shalt Thou Pursue”



John Halbleib, standing with his wife Jeanne, was honored for his work in the Hershey Trust case at the firm's Chicago Pro Bono luncheon June 20th.

More than 150 MBP lawyers, members of outside legal groups, and client families attended this year's Pro Bono Luncheon on June 20—the best-attended ceremony so far. The luncheon had a number of interesting features. The keynote speaker was Philip Lacovara, New York office partner and lead attorney for the Watergate Special Prosecutor's office in the 1970s, who recounted some of the little-known behind-the-scenes maneuvering during the historic legal battle. The MBP Pro Bono Award had its inaugural presentation at the luncheon as well: John Halbleib was given the award in recognition of his work involving the Hershey Trust. Also honored were attorneys handling pro bono appeals before the U.S. Court of Appeals in Chicago (known as our 7th Circuit Project) and attorneys in the environmental practice area. The award itself was a framed print illustrating the biblical admonition: “Justice, Justice Shalt Thou Pursue.” Along with each award, Marc included a videotape copy of *To Kill a Mockingbird*—a story that represents the lawyer as a person of emotion and conscience struggling within a fallible system. •



The Environmental practice was cited for its pro bono contributions. In presenting the award, Marc Kadish noted that “at least half of the lawyers in the environmental practice have participated in pro bono programs and done significant cases.” In accepting the award on behalf of the Environmental practice, John Berghoff eyed his copy of *To Kill a Mockingbird* and joked about whether the memento was “an appropriate gift to bestow upon an environmental attorney.”



Featured speaker Philip Lacovara discussed his experiences as a principal Watergate prosecutor and how young associates can strike a balance between their billable work and pro bono public service.

Making a Difference in a Child's Life

Incredibly satisfying.

That's how Mayer, Brown & Platt Los Angeles partner Todd Stark describes doing pro bono adoption work. "With a relatively minimum time commitment, it is an opportunity to have a tremendous impact upon children and their families' lives," says Todd.

For more than a year, Mayer Brown's Los Angeles office has worked with the Alliance for Children's Rights in moving children from the foster care system into permanent homes. So far Mayer Brown attorneys have helped place 42 children with 24 adoptive families.

A Los Angeles judge recently concurred with Todd's assessment of Mayer Brown's adoption work, "Although the compensation is zero, the value of the work is priceless."

A recent round of adoptions was handled by Todd, who also serves on the board of

the Alliance, and Jamie Wrage, with assistance from Judy Knutson and summer associates Teddy Miller and David Egdal. Armen Papazian represented two families in adopting children recently. In many cases the children are being adopted either by their relatives or foster parents.



Armen Papazian of the Los Angeles office of Mayer, Brown & Platt appeared in the courtroom of John L. Henning and represented Zaldy and Miriam Lopez in the adoption of Samantha Angelica Lopez.

The Alliance, with the help of outside attorneys, facilitates over 1,000 adoptions a year, helping move adoptions more quickly through the court system. Without The Alliance's help, some foster children wait years for their adoptions to be finalized. •



Race Judicata

Mayer, Brown & Platt was again the largest sponsor of the Chicago Volunteer Legal Services 5K Run and Walk, Race Judicata. In addition to helping sponsor the event, an after-work run/walk along the Lakefront on August 16, 2001, the firm footed the entry fee for each MBP participant. Joanna Horsnail (#1104), a diehard runner, spearheaded firm involvement for the fourth year in a row. The event raised more than \$80,000, which will go to support CVLS in its effort to provide legal assistance to low-income Chicagoans. Mayer, Brown & Platt contributes \$40,000 annually to CVLS.



Seventh Circuit Project

EPA Overreaches

In an unprecedented decision, the U.S. Court of Appeals in Chicago dismissed an EPA Superfund suit that would have given the agency the authority to destroy a 74-year-old Wauconda, Illinois, man's property even if contamination on the property were trivial.

In its decision, the U.S. Court of Appeals upheld a federal district court's finding that the agency acted "arbitrarily and capriciously" in seeking to enter John Tarkowski's property, dig up the property looking for drums and removing materials, including Mr. Tarkowski's personal property. Mayer Brown attorneys Mark Ter Molen, Susan Brice, and Richard Bulger represented Mr. Tarkowski.

"The EPA sought to dig up and destroy Mr. Tarkowski's property without any evidence of an environmental hazard," said Mark. "The court's decision should provide comfort that the EPA can not cavalierly destroy someone's property in conducting an environmental witch hunt."

The appellate court rejected the government's argument that courts are powerless to review EPA's cleanup choices, noting that EPA "sought a blank check from the court. It sought authorization to go onto Tarkowski's property and destroy the value of the property regardless how trivial the contamination that its tests disclosed." It added: "[i]n effect, the agency is claiming the authority to conduct warrantless searches and seizures, of a particularly destructive sort, on residential property, despite the absence of any exigent circumstances. It is unlikely, even apart from constitutional considerations, that Congress intended to confer such authority on the EPA."

Mr. Tarkowski is indigent and lives on a 16-acre site in Wauconda. The court noted Mr. Tarkowski had "built his house out of surplus materials, and his yard is full of what his upscale neighbors regard as junk." Mr. Tarkowski, a disabled building contractor, had been harassed by his neighbors for many years.

In 1979, the EPA concluded Mr. Tarkowski's property posed no environmental hazard. Again in 1995, the EPA rated the property a zero on its hazard scale. In 1997, state authorities at the EPA's

request, took soil and water samples but found no evidence of legally significant contamination. •

"Structural Error"

Brad Hunt represented Driefus Harbin, who had been convicted of conspiring to sell crack and sentenced to 33 years. Harbin, who is from Gary, Indiana, was 18 when he was arrested. Harbin had two codefendants, each of whom also was sentenced to about 30 years. On the sixth day of the eight-day trial, some new information came to light about one of the jurors: the juror told the judge that he knew the mother of a government witness. The judge let the parties voir dire the juror about this, and in the voir dire it emerged that the juror knew the witness's mother from Narcotics Anonymous. The government moved to strike the juror for cause. The judge denied the motion because he found that the juror could be impartial. Then the judge did something very strange—he told the government that since they had not used all their peremptory challenges before trial, they could use one to get rid of this juror (who happened to be the only black male on the jury for all black male defendants). The government did so, the juror was replaced, and the defendants were convicted.

On appeal we argued that the district court erred by allowing the mid-trial peremptory challenge. As far as we know, this is the first case in history in which any court, state or federal, has allowed a party to exercise a peremptory challenge in the middle of a trial. The fact that it was the middle of the trial is significant because parties can exercise peremptory challenges for almost any reason, without explaining themselves, so the government could have removed this juror based on his demeanor and perceived leaning against the government. We argued that, in essence, the district court ceded unilateral control over the composition of the jury to the government. The 7th Circuit agreed and found that it was "structural error," meaning that reversal was proper even though we could not prove that our clients had been harmed by the error. The 7th Circuit vacated the convictions and remanded for a new trial.

"I have greatly enjoyed working on this case," Brad says. "I consider working with Mr. Harbin and doing the oral argument before the 7th Circuit two of the highlights of my legal career." •

Second Circuit Project

U.S. Court of Appeals in New York Overturns Murder Conviction

The U.S. Court of Appeals in New York overturned the 1976 murder conviction of Jehan Abdur Raheem in a significant opinion that discusses suggestive police lineups and admissibility of evidence.

In January 1976, Mr. Raheem was identified as one of three men who participated in the murder of a Brooklyn tavern owner (originally reported in the December 1999 *Update*, “The Usual Suspect”). Mr. Raheem, who was not a suspect in the case and was being held by police on an unrelated charge, was included in a police lineup with the suspect because there were not enough police officers available to fill out the lineup.

Two witnesses who identified Mr. Raheem in the lineup later testified that they were influenced by the fact that Mr. Raheem was wearing a black leather coat in the lineup similar to one worn by the killer. One witness first was unable to identify anyone in the lineup, and both witnesses wrongly identified another man as having been involved in the murder.

In 1996, Mr. Raheem commenced a habeas corpus action contending that his due process rights were violated because the lineup was unduly suggestive and that the identifications should have been excluded. Although the district court agreed that the lineup was impermissibly suggestive, it concluded that the evidence was nonetheless reliable because there was other corroborating evidence of Mr. Raheem’s guilt.

Mayer, Brown & Platt attorneys argued before the U.S. Court of Appeals for the Second Circuit that Mr. Raheem’s conviction resulted from an unconstitutionally suggestive lineup, and that the district court improperly relied upon other inadmissible evidence.

The U.S. Court of Appeals found that the identifications were critical to the prosecution’s case because the state presented no other corroborating evidence to tie Mr. Raheem “to the events.” The appellate court noted that fingerprint, palm print, and other physical evidence did not point to Mr. Raheem. There was also no evidence

that Mr. Raheem’s coat bore any evidence of bloodstain residue despite testimony that “quite a bit” of blood “had gotten on the shooter’s coat.” The U.S. Court of Appeals granted Mr. Raheem’s writ of habeas corpus and ordered the charges be dismissed unless the state affords Mr. Raheem a new trial within 120 days.

The state has decided to petition the U.S. Supreme Court for a writ of certiorari, which Mayer, Brown & Platt attorneys will oppose.

Catherine Sharkey in our New York office is now handling the case, under the supervision of Philip Lacovara. She took it over from Norman Williams, who argued the case before the Second Circuit and who now teaches law at Willamette University College of Law. It is the first case in a projected Second Circuit Project by our New York office modeled on Chicago’s Seventh Circuit Project. •

Deliberate Indifference

Louis Thompson, a pro se New York state prisoner, filed suit, alleging deliberate indifference on the part of state correctional and hospital officials to his serious medical needs, in violation of his Eighth Amendment rights. Mr. Thompson, who suffers from jacksonian epilepsy, was repeatedly denied his prescription medications, following their confiscation as part of a prison cell search. The district court dismissed Mr. Thompson’s complaint for failure to allege a physical injury, which the court concluded was necessary under 42 U.S.C. 1997e(e), and refused to allow leave to amend. The U.S. Court of Appeals for the Second Circuit appointed Catherine Sharkey as pro bono counsel for Mr. Thompson. On appeal, we argued that section 1997e(e) applies only to prisoners’ actions “for mental or emotional injury,” not to Mr. Thompson’s action. In the alternative, we argue—both as a matter of statutory interpretation and constitutional law—that, as applied to Mr. Thompson, the section should not be applied to bar either the injunctive relief or damages portion of Mr. Thompson’s complaint. Finally, we contended that, at a minimum, Mr. Thompson is entitled to an opportunity to amend his complaint before it may be dismissed under 1997e(e). •

Saving Billy Graham's Boyhood Home

The Reverend Dr. Billy Graham was born in Charlotte, North Carolina, which is a point of pride for that community. Charlotte already honors Billy Graham with a boulevard in his name and a bronze plaque, dedicated by President Nixon, bearing the words: "Birthplace of Dr. Billy Graham, World-renowned Evangelist, Author and Educator and Preacher of the Gospel to more people than any other man in history." Oddly enough, though, his boyhood home found its way to South Carolina.

As often happens, the house's historical significance went underappreciated for years. In the mid-1980s, when an office complex was about to be built on the home's original property in Charlotte, developers planned simply to demolish the house. At that point, Jim and Tammy Fae Bakker stepped in and bought the house and moved it to their PTL theme park, Heritage U.S.A., just across the border in South Carolina. As we all know, the PTL met with financial (and legal) disaster, and the park and house have stood abandoned on a ghostly tract of land for some ten years. When developers bought up the theme park land, the house again faced demolition. That is when an organization called the Charlotte Rescue Mission offered to buy and relocate the structure back to Charlotte.



Billy Graham

The Charlotte Rescue Mission has a special stake in the house. One of its founders was Billy Graham's father, Frank Graham. He helped establish the mission in the 1930s as a drug and alcohol rehabilitation center. The Mission will relocate the house onto its property in downtown Charlotte.

René Toadvine, of our Charlotte office, previously advised the Charlotte Rescue Mission in retirement benefit matters, and was happy to advise them on a pro bono basis concerning this project. With the help of others in the Charlotte office, he has advised the Graham Family Home Foundation in establishing itself as a tax-exempt entity in the State of North Carolina and filing for 501(c)(3) tax-exempt status under federal tax laws. He is also helping in the effort to raise funds to move the house. The Foundation is in the process of purchasing the home from its current owner and contracting with those who will move the building back to North Carolina. Once returned, the house will be refurbished with the plan of making it into a perpetual museum and research center on the life and mission of Dr. Graham and Christianity. The Foundation will maintain the house. The target date for opening is Spring 2002. •

Marc Kadish Appointed to Illinois Pro Bono Panel

Marc Kadish was one of only seven Illinois attorneys chosen by the Illinois Supreme Court to make up the Special Supreme Court Committee on Pro Bono Publico Legal Services, a newly formed panel devoted to finding ways to promote pro bono legal work in Illinois and to encourage attorneys across the state to volunteer their services on a daily basis.

Other members include the head of Land of Lincoln Legal Assistance Foundation and a former president of the Cook County Bar Association. The panel had its first meeting October 15.

The idea for the panel came from Justice Thomas L. Kilbride from Rock Island, according to Joseph R. Tybor, the high

court's spokesman. Kilbride, who was a charter member of the Illinois Pro Bono Center, explained, "It has always been understood that it is a lawyer's responsibility to help others who are in need of legal representation, and this is a formal way of the court saying we need to be on the watch so that it happens...on a day-to-day basis." •

Illinois Amateur Association Gives Girls' Hockey Cold Shoulder

The mission of the Amateur Hockey Association of Illinois (AHA) is to develop and promote hockey in Illinois for boys and girls. A sex discrimination suit brought by Johnny's Chicago Chill 15-and-under girls hockey team charges AHA has discriminated against girls in the sport of hockey in Illinois over a ten-year period.

The suit charges AHA with thwarting the expansion and promotion of girls' hockey in Illinois, and as a result, girls' hockey is declining in the state, unlike elsewhere. There are almost 2,500 boys' hockey teams in Illinois compared to 16 girls' teams. The suit says AHA, with rare exception, has failed to provide festivals, clinics, college nights, scholarships, and other activities for girls, while providing those opportunities for boys.

Mayer Brown attorneys Alan Salpeter, Adrienne Hiegel, and Jason Fliegel are representing the girls hockey team and a number of the parents in the suit. The suit seeks redress under various federal and state discrimination laws and also includes federal and state antitrust claims. After filing the suit, Mayer Brown attorneys went

to court to stop AHA from taking retaliatory action against members of the team.

In April, Senior U.S. District Court Judge Milton Shadur issued a Temporary Restraining Order against AHA. In issuing the TRO, Judge Shadur stated that the action of AHA officials was "nothing short of disgraceful." He said the AHA officials were "making it up [the rules for girls' hockey] as they went along." As a result of the court's ruling, AHA agreed to stop the disciplinary investigations. Mayer Brown attorneys are to submit to the court a detailed accounting of fees and expenses to recover their costs relating to stopping the retaliatory action.

Johnny's Chicago Chill girls 15-and-under team had been denied entry last year into the Central States Girls Hockey League, which was the only existing elite girls league. The suit charges that when it appeared that Johnny's would gain entry to the league, AHA officials abandoned the league.

"Right now we're left with no place to play except against bigger boys' teams who

complain about the no-checking rule when playing girls," said Annie Kostiner of Johnny's Chicago Chill. "All we want is for AHA to make hockey safe and fair for girls as they do for boys."

There have been a number of hearings in the case. In July, the court denied AHA's motion for summary judgment. In August, the court denied AHA's motion to stay the suit and send the case to their parent organization USA Hockey for arbitration.

In denying AHA's motion, Judge Shadur noted that Johnny's Chicago Chill had sought assistance from USA Hockey prior to bringing the suit. "And it was in part because of the frustration of those efforts that they ended up in the litigation," said Judge Shadur.

Judge Shadur stated that USA Hockey is free to engage in voluntary procedures and "I would like nothing better. And I suspect the plaintiffs would like nothing better than to have the grievances that they have advanced resolved by voluntary action." Discovery is still ongoing and a trial date has not yet been set. •



Feedback

Dear Debora: It was nice to see you at the Mayer, Brown & Platt alumni reception; thanks again for the gathering. As I mentioned at the party, the recent Illinois Appellate Court opinion in the above-referenced matter was a big victory for Randolph Street Gallery ("RSG")

and probably for nonprofit arts-education organizations generally. The Illinois Department of Revenue decided not to pursue an appeal to the Illinois Supreme Court.

It was Mayer Brown's decision to accept the matter pro bono that set the ball rolling, and the firm committed substantial resources while the case was there. I know it's nothing unusual, because Mayer, Brown has a great commitment to pro bono representation, but I'm expressing my sincere appreciation as an "extended family member." So thanks for maintaining the environment that provided a terrific opportunity. It wasn't an earth shattering case, but we helped a small-but-wonderful organization, and along the way I learned a lot, met some terrific people and enjoyed myself when I wasn't sweating out the Circuit Court or Appellate Court results. I

hope you read over the Appellate Court opinion and take pride in the result, which Mayer Brown is part of. Best regards.

Jeffrey B. Frishman

Some of the junior class students were asked a series of questions pertaining to what their future will be like and what they expected from the next school year.... Aija McSwine (junior class) gave a confident and certain answer. "I plan to be employed at Mayer, Brown & Platt law firm. Hopefully I will be able to give back to my community and buy my mother the house she always wanted."

Knightly News, Providence-St. Mel. (with whom we have several pro bono-sponsored programs to encourage students)

Dear Ty: I have often wondered how, in a firm of hundreds upon hundreds of lawyers, a young newcomer can ever become an integral part of a cohesive whole. It would seem almost impossible not to lose some real potential stars in the crowd. The recent *Pro Bono Update* (March 2001) was something of an eye opener to me, both as to the pro bono opportunities for young lawyers (and even you) as well as the in-house litigation Training Program, plus hints of other in-house programs as well. You and your fellows are to be commended in your efforts. Keep up the good work. Best regards,

Bryson P. Burnham (MBP Partner, ret.) •

Kissinger

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State Department by Mr. Kissinger. The U.S. Supreme Court vacated those decisions in 1980 in *Reporters Committee v. Kissinger* on jurisdictional grounds without addressing the merits of the case.



AP/Wide World

Henry Kissinger

In 1980 Secretary of State Edmund Muskie proposed a complicated plan by which Mr. Kissinger's representatives would review the transcripts with government officials and determine which of them had to be returned to the State Department. Mr. Kissinger agreed to the procedure, but the plan was never implemented. In 1998, Mr. Kissinger agreed to a request from Secretary of State Albright to make the transcripts available to State Department historians who are preparing the official foreign affairs record of the Nixon and Ford presidencies. Mr. Kissinger maintained severe limitations, however, on the scope of the historians' review, including constraints on their ability to make copies of the transcripts and a prohibition on taking notes. The National Security Archive at George Washington University first wrote to

U.S. officials in 1999 seeking return of the documents and making them available to the public.

In January 2001, Lee and Craig sent a draft of a complaint they planned to file in U.S. District Court to officials at the National Archives and U.S. State Department. The draft complaint sought return of the documents under the Federal Records Act, compelling the Secretary of State, with assistance from the Archivist of the United States, to initiate action through the Attorney General to recover the records.

Suit Avoided

After receiving the draft complaint, government officials entered extended negotiations with the National Security Archive center. The government initially recommended resurrecting the 1980 Muskie plan that would have permitted selective return of documents and summaries of some documents rather than the actual transcripts.

In April, Lee and Craig wrote a response on behalf of the Center rejecting that proposal. The letter stated "In sum, federal law mandates that the government take action to recover the transcripts and, once recovered, that the appropriate agencies review them pursuant to existing legal requirements." The State Department Legal Advisor, William H. Taft IV, took the lead in corresponding with Mr. Kissinger and received his consent to return the transcripts to the State Department without a suit being filed.

Historical Value

"These sensitive documents are an important part of the nation's history," said Lee "We believe the information will be extremely valuable to historians and are pleased that this information will soon be available." Craig added, "I am gratified that the government lawyers ultimately agreed with our position because we were completely correct on the law, and we were able to achieve the right result."

The National Security Archive center is also calling upon Mr. Kissinger to return voluminous telephone transcripts made during his years as National Security Advisor to President Nixon. Lee and Craig said they might also be asked to help seek the return of those government records as well. •

Terror and Response

The number of people who died in the World Trade Center attack on September 11 will likely surpass almost any previous disaster in America. But the number of “homeless” businesses threatened to compound the crisis. The twin towers had housed some 300 businesses, representing an estimated 40,000 to 50,000 people—a significant fraction of the New York economy. Housing them and getting them running again was a priority.

It so happened that our New York office was commencing an expansion of its own at the time and had available space to house some of the uprooted. At last count, we had hosted nearly 400 individuals from firm clients, including the entire staff of 230 of Bank of Nova Scotia’s Lower Manhattan office. Other firms with a significant presence were Lehman (70 professionals and staff) and Canadian Imperial Bank of Commerce (54 professionals and staff), as well as small staffs from American Access Capital, Barclays Bank, Merrill Lynch, Morgan Stanley Dean Witter, Oppenheimer, and Refco. We also turned over our conference rooms to SSB/Citibank for several all-day conferences. Jim Carlson, partner in charge of the New York office, explained, “We ended up providing office space and support for two or three times the maximum number we initially expected.”

The stress of the effort was undeniable—cramped offices, fewer conference rooms, overwhelmed phones and technology—but was dwarfed by the scale of the crisis. In the week following the attack, New York staffers worked in round-the-clock shifts to support visiting staffs as well as to ease the disorientation. “Twice,” Jim Carlson recalls, “our managers in Chicago put several hundred thousand dollars’ worth of computer and IT equipment in trucks and drove them overnight to New York, and then unloaded, installed and cabled the systems.”

The quick initial response must be balanced with the need to pace the emotional recovery. “This will be a marathon, not one heroic sprint,” Jim explains. The office brought in crisis counseling services for anybody in the office who needed them. And Monday evenings were set aside for office and visitors gatherings, with refreshments and hors d’oeuvres. Mayer Brown personnel are encouraged to check on their visitors and make them feel welcome. “They feel understandably disoriented, uprooted, and somewhat insecure,” Jim has explained to the office, and the goodwill we show them now is more than just sensible business practice. “We feel it is the right thing to do for our friends and clients as citizens of New York.” •

Prisoners' Civil Rights Litigation Luncheon

Eleven lawyers from the Chicago office have worked on six appointed federal prisoner civil rights cases within the past year. On November 13, an informal lunch was held to exchange information on the cases. Luncheon speakers included Sally Elson, Supervising Staff Attorney of what

is sometimes referred to as The Prisoner's Correspondence Office, and James P. Chapman, co-author of the handbook, Federal Court Prison Litigation Project, and Project Coordinator and General Legal Counsel of the Illinois Institute for Community Law.

We welcome involvement in these cases, because, like the Seventh Circuit Project, the work is an ideal vehicle for combining pro bono work and training. •

"The Court would like to express its appreciation to Mr. Waldinger and Mr. Kadish for their services as court-appointed counsel in this case. You handled your responsibilities in a very competent and professional manner, and I am very grateful to you.

"I say that regardless of how the case comes out. I have no idea how it is going to come out, but sometimes it's the facts that decide the case rather than performance of counsel. But there is absolutely no deficiency in counsel's performance.

"So you [Defendant] got everything that I had hoped you would when I appointed counsel for you."

—Honorable John F. Grady (excerpt from transcript of proceedings, *Miller v. Burns, et al.*, a prisoners' rights case tried by Kyle Waldinger, Marc Kadish and paralegal Maureen Bismark)



At left (L to R): Jeff Sarles, Mike Scodro, Joshua Yount, Dave Jensen, Steve Kane, Marc Kadish, Sally Elson, and Jim Chapman.



At right (L to R): Charles Keckler, Lauren Frank, Mark Brookstein, Melissa Pastrana, David Pope, William Hubbard, and Bennett Lasko.

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