About

As Mayer Brown continues to expand worldwide, so do the efforts of our pro bono program. In this issue you can read about some of the ways we are making a difference around the globe. From Chicago to Chittagong, London to Lima—a growing, global pro bono practice for an expanding global law firm.
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Asian University for Women: From Dream to Reality

Since 2001, Mayer Brown has been actively involved in the efforts to create the Asian University for Women (AUW) in Bangladesh. Now, the dream of former Mayer Brown associate Kamal Ahmad to establish a residential, liberal arts university for women from diverse backgrounds in and around Asia is reaching fruition.
Back in 2000, Ahmad led a World Bank/UNESCO Task Force on Higher Education and Society. The task force issued a report that pointed to the need for increased access to higher education in the world’s poorer countries.

Soon after, while Ahmad was working as an associate in Mayer Brown’s London office, the native of Bangladesh began discussing his goal of founding a university that could help advance the cause of women’s education in Asia, particularly for women from impoverished, rural and refugee backgrounds.

“We started talking about putting together a not-for-profit entity with volunteers from different parts of the world who had responded to support the concept,” recalled Ahmad, now the president and CEO of the Asian University for Women Support Foundation (AUWSF) in Cambridge, Massachusetts. “Mayer Brown took this on as a pro bono project in 2001, initially working on items like the incorporation papers, the tax exemption application and our charter. And the foundation proudly continues its association with the firm through the present day.”

“AUW’s cause is one that is near and dear to my heart because I was born, raised and educated in Asia,” said Sonia Baldia, a partner in Mayer Brown’s Business & Technology Sourcing practice and co-chair of the firm’s India practice. “I know the value of education to women in that region. I know that education can help break through some of the cultural barriers and have a liberating, transformational effect for women.”

Baldia has been responsible for coordinating the firm’s work with the AUW since 2006. That same year, a significant milestone in the university’s history was reached when the Bangladesh government approved and ratified the AUW Charter. The charter, which had been drafted by Mayer Brown lawyers, was the Bangladesh parliament’s formal acknowledgment of the AUW as an international, independent organization, guaranteeing it full academic freedom and the right to operate under the principle of non-discrimination.

“Supporting the Vision

According to Ahmad, the vision for the AUW remains consistent even after nearly a decade of activity: “The AUW’s mission is to change the future of the region through the work of a new set of women leaders drawn from within the region.”

“There’s a lot of research that shows that countries develop faster by focusing on educating women. It brings a tremendous cultural and economic impact,” commented Debora de Hoyos, Mayer Brown’s managing partner from 1991 to 2007 and an inaugural member of the AUW’s International Council of Advisors. “There’s so much benefit to be gained in the region—in addition, of course, to the benefits that go to the individuals who receive the education.”

“One of four temporary AUW buildings in Chittagong
FROM VISION TO REALITY

The 2006 adoption of the charter set into motion a whirlwind of activity that quickly moved the AUW toward functioning university status.

“I started seeing the architects getting involved, groundbreaking ceremonies, the beginning of construction—and we helped through all of these stages,” Baldia commented. “It was thrilling to see the school open, to see footage of the opening ceremony and to read and hear about the students who had begun their studies. Since then, we’ve helped the AUW enter into memoranda of understanding with numerous governments so that it can expand its reach by bringing in students from different countries. We’ve done some really interesting legal work that supports the university; I’m very encouraged with the progress that has been made.”

In April 2008, the first group of 150 Access Academy students began their one-year course of study in rented space while the AUW campus, designed by internationally renowned architect Moshe Safdie, remains under construction. This inaugural group of students attended the academy in order to bridge gaps in their academic preparation, technological skills and social and cultural adjustment. Upon graduating from this course, they began their undergraduate course of study in August 2009, at which time a new group entered the Access Academy.

Typically, AUW students will complete three years of undergraduate study and two years of graduate work, earning both Bachelor and Master of Arts degrees. As of early 2010, the AUW has welcomed 300 students from 13 different countries. The AUW student body will grow to a planned maximum complement of approximately 2,500 students as facilities are built, faculty joins and additional operational funding is secured.

“We felt that a liberal arts education would be incredibly important as a way of enhancing the students’ critical learning skills and building a common thread across the diverse religious, ethnic and linguistic backgrounds,” Ahmad explained. “But given the labor market rigidities in the region, we knew that a young woman, however smart she may be, with only a bachelor’s degree would not have ready access to jobs that lead to leadership roles. That perspective, combined with the need to train people in professions like law, education and business management, led us to change the initial four-year liberal arts college model into a five-year joint bachelor’s and master’s program.”
In addition to ongoing pro bono legal support from law firms Mayer Brown, Bingham McCutchen and Mintz Levin, the AUW has received substantial monetary gifts from a range of benefactors, including the Bill & Melinda Gates Foundation, Jack & Beth Meyer, the Goldman Sachs Foundation, the William & Flora Hewlett Foundation, the Montag Family Foundation and the Open Society Institute. From Chicago, The John D. and Catherine T. MacArthur Foundation has emerged as a key funder of the university, and Margot Pritzker is also a notable supporter. “She came to Chittagong in December 2009 and spent time with our students and teachers,” Ahmad enthused.

“There have been so many Chicagoans who have supported the UAW,” Ahmad continued. “Hanna Gray, the former president of the University of Chicago, serves on our board of directors. Dipak Jain, professor and former dean at the Kellogg School of Business at Northwestern, chairs the steering committee responsible for planning AUW’s School of Business. And Martha Nussbaum, a professor at the University of Chicago Law School, was an early supporter and an important intellectual beacon for us.” Ahmad added that Nussbaum will be the keynote speaker at a special AUW symposium in Dhaka, Bangladesh, on January 23-25, 2011, which is expected to draw more than one thousand attendees.

“We have a lot of people at Mayer Brown who are interested in giving to the global community through pro bono work,” de Hoyos concluded. “That makes working for the AUW ideal. Plus, the work is challenging due to the range of specialties and countries involved—we like to do challenging legal work. All of those things make the AUW a terrific pro bono client.”

To learn more about the AUW or make a donation, please visit www.asian-university.org.
Until just a few years ago, the concept of pro bono legal services was largely alien to those within the Latin American legal system. While certain practitioners dispensed free advice or helped with the occasional representation, providing legal services to the poor and disadvantaged was thought of as charitable work rather than as part of a lawyer’s professional obligation.

“In countries that have experienced long periods of dictatorship and authoritarian governments, and that have large numbers of marginalized people, it is critical that members of the legal profession provide pro bono services in order to increase access to justice and reinforce the rule of law which, in turn, is important to strengthening democratic institutions,” said Marcia Tavares Maack, Mayer Brown’s Assistant Director of Pro Bono Activities. “Without a strong rule of law, you cannot have a fully functioning democratic society.”

DEVELOPING A DECLARATION

Working with key contacts at corporate law firms in Latin America, the New York City Bar Association’s Cyrus R. Vance Center for International Justice organized conferences in Argentina, Chile and Brazil between 2001 and 2003 to promote the pro bono concept and discuss ways to inculcate it. This discussion was furthered at a 2005 strategy session in New York, during which lawyers and other concerned parties from six different Latin American countries agreed to develop a new declaration that would define pro bono legal work and determine the minimum number of hours that pro bono lawyers would be required to perform in order to fulfill their obligations.

“The declaration drafting committee worked on the first draft of the Pro Bono Declaration for the Americas for nearly two years, holding conference calls at least once a month and meeting in person several times before circulating it to a wider group of interested parties in the legal community for feedback on the content and to obtain buy-in to the concept,” said Elise Colomer Grimaldi, Director of Latin American Programs at the Vance Center.

“Without a strong rule of law, you cannot have a fully functioning democratic society.” —Marcia Tavares Maack

One of the toughest challenges the drafters faced was determining the average number of hours per year the lawyers at the firms signing on to the PBDA should be required to complete, with 20 hours ultimately emerging as the consensus. Additionally, it was agreed that pro bono service was not charity but rather a responsibility or obligation for all members of the legal profession to perform. Signatories to the PBDA would also agree to support non-governmental organizations (NGOs) dedicated to delivering public interest legal services.

“The drafting of the PBDA was a very interesting and nourishing experience,” said Paula Samper-Salazar,
a partner at Colombian law firm Gómez-Pinzón Zuleta, who served on the drafting committee. “It was especially encouraging to witness the bonding among participants from different countries.” This collaborative spirit extended past the drafting and into the actual rollout of the PBDA, as committee members promoted the PBDA within their own countries while also making time to attend launch events in others.

THE IMPLEMENTATION PHASE

The PBDA was formally introduced in early 2008 at events in New York and Mexico City. More than 400 law firms, bar associations, law schools and NGOs from the United States and Latin America have since signed on. The US signatories were asked to sign, in part, so that they could lead by example, showing that world-class firms and supportive bodies are committed to the exact same terms to which their Latin American brethren were being asked to agree.

Since the official launch, the Vance Center, supported by a number of parties in Latin America and the United States, including Mayer Brown, has continued to promote the PBDA. Signing the PBDA is just a first step for Latin American signatories as they develop the culture and institutions needed to drive pro bono legal services from concept to reality.

“We are very pleased with the progress of our endeavor to date. In Argentina, Chile, Brazil, Colombia and Peru, pro bono referral programs have been set up—by the bar association in Argentina and through new, free-standing organizations in the other countries. In Mexico there is also a new program that provides individual representation for the poor,” said Joan Vermeulen, the Vance Center’s Executive Director. “While some of this activity began prior to the declaration’s launch, the PBDA acted as a catalyst to spur lawyers to create the needed mechanisms within law firms and to develop the referral organizations that are needed to establish a pro bono culture.”

Maack has been involved with the effort since late 2006, speaking at conferences, visiting law firms in Peru and Colombia to promote the PBDA and attending the 2009 openings of pro bono clearinghouses in those countries. She has also coordinated a number of video conferences in which pro bono coordinators from North American firms have worked with their counterparts in Latin America to discuss ways to structure their pro bono programs.

“The creation of the Colombian clearinghouse Fundación Pro Bono, which was established in June 2009, has already allowed us to make significant
progress,” Samper-Salazar noted. “To date, 17 law firms representing some 450 lawyers have joined the Fundación and taken on more than 40 cases.”

“Furthering the Cause

Progress has come about through the actions of thousands of lawyers who have given serious consideration to their responsibilities under the PBDA and have established pro bono programs at their firms, helped to organize and support pro bono clearinghouses and taken on projects. But most would readily acknowledge that they received extensive guidance, and even a push to act, from outsiders with deep experience in pro bono practice.

“For my perspective, the key driver has been the Vance Center and the US law firms that have led by example by coming down to make personal contacts and meeting with partners of different law firms,” said Beatriz Boza, the founder and executive director of the NGO Ciudadanos al Día, which has taken on pro bono clearinghouse duties in Peru. “We have seen consistent action from them over the last three years as they have preached, written and engaged with us, calling upon their business partners at law firms here to meet their obligation to serve and showing how they themselves do it. This is something that will make us all better lawyers.”

“Just a few years ago there was a lot of talk at Latin American conferences about whether the legal profession had an ethical obligation to perform pro bono work,” Maack commented. “More recently, it seems that the conversation has advanced and a new understanding has taken root around how firms in Latin America can institutionalize and develop their pro bono programs and meet their PBDA obligations.”

While the remaining challenges differ somewhat from country to country, there is fairly broad agreement that pro bono has to cascade from the large law firms to more of the medium- and small-sized firms and solo practitioners. In those countries where the public does not have a high opinion of the legal profession and system, reform efforts in tandem with visible pro bono results will almost certainly be required in order to demonstrate that lawyers work for the entire population, not only those who can afford to pay for their services.

“In the US, pro bono practice evolved gradually over time. The same thing will happen in Latin America.”

—Joan Vermeulen

“In the US, pro bono practice evolved gradually over time. The same thing will happen in Latin America as lawyers come to experience how valuable this type of work is in terms of their professional development and the ties it helps them develop to the places where they live,” Vermeulen concluded. “Additional development and evolution will take place as people work together—NGOs developing an understanding of how law firms can help them carry out their mission and law firms getting more comfortable with their ability to provide valuable assistance.”

Marcia Tavares Maack
Working with Appleseed to Bring About Systemic Change

A core tenet of Mayer Brown’s pro bono program is that in addition to helping individuals, the firm’s program should try to bring about systemic change. “That’s one of the reasons that we are excited to be involved with the Appleseed network,” said Marcia Tavares Maack, Assistant Director of Pro Bono Activities. “Their philosophy dovetails very nicely with ours.”

A network of 16 not-for-profit North American public interest centers, Appleseed strives to overcome injustice through large-scale reform efforts. “Our signature way of working is to leverage the talents of the pro bono bar and other professionals to effect structural systemic changes that open the door to opportunity and justice,” said Betsy Cavendish, Executive Director of the 17-year-old organization.

Mayer Brown established a relationship with Appleseed several years ago. After Hurricanes Katrina and Rita, the firm underwrote a fellowship in 2006 and 2007 that supported the joint Texas Appleseed-Texas Equal Access to Justice Foundation Lend-A-Lawyer program. The Mayer Brown Legal Fellow coordinated the program, which added staff to help Texas legal aid organizations that were overwhelmed with low-income hurricane evacuees from Louisiana and Mississippi. Following this initial monetary investment, Mayer Brown has donated many hours to working on several notable projects on Appleseed’s behalf. The firm is also a member of the Appleseed Leadership Council, and two Mayer Brown lawyers serve on the organization’s boards.

“What appealed to me when I first learned about Appleseed was that it provided a unique way for lawyers to take on problems and develop solutions that allow people to access opportunities. By driving systemic change, you can help many, many people,” said Steve Gates, who first joined the national Appleseed board in 2004. Since then, Gates has joined Mayer Brown’s Houston office as special counsel to the firm’s Energy practice. He became co-chair of the Appleseed board in February 2009.

“Mayer Brown is the type of firm that we like to work with,” Cavendish added. “It’s strategic. It’s generous. It staffs teams well, and it collaborates well. And with expertise in so many areas, Mayer Brown can carry out projects in a very thorough, responsible and credible way, which helps us multiply by many times over the work of our own staff.”

In order to maximize the potential of the firm’s relationship with the organization, several years ago Litigation partner Adrian Steel from the Washington, DC office, who serves as co-chair of the firm’s pro bono committee, requested that Cavendish and her staff present a range of Appleseed projects that Mayer Brown could work on across offices and practices. The firm then selected several projects, including one that focused on the rights of unaccompanied immigrant minors in the United States.
ENSURING PROPER CARE OF UNACCOMPANIED IMMIGRANT MINORS IN US CUSTODY

Each year, thousands of children who migrate to the United States without a parent, guardian or responsible adult, are apprehended in the United States or as they try to cross the border from Mexico. Some of these children are victims of persecution, trafficking and violence, while others hope to be reunited with their families or simply find a better life.

Concerned that problems in the detention and repatriation system were not being redressed, Appleseed and Mexico Appleseed launched a project in 2008 at the urging of Mexico’s first lady, Margarita Zavala, to help protect the rights of these unaccompanied immigrant minors.

Mayer Brown has been helping Appleseed with the detention and repatriation issues by conducting site visits on both sides of the border. The visits are meant to verify that the detained children are being humanely and properly treated in accordance with the 1986 Flores Settlement Agreement—which lays out the conditions under which unaccompanied minors can be held in the United States—and that the guidelines set forth in the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) are properly employed during the repatriation process.

According to Steel, the firm hosted a group of experts on the subject of unaccompanied minors in 2008 and agreed to help out by conducting site visits to US detention centers that house these minors, including US Customs and Border Protection stations and long-term detention facilities run by the Department of Health and Human Services. The main goal was to look into whether the terms of the Flores Agreement were being followed.

Teams of lawyers from Mayer Brown, Akin Gump and DLA Piper have been working together to make these visits under the auspices of the Center for Human Rights and Constitutional Law, whose General Counsel, Carlos Holguin, successfully represented the plaintiffs in Flores.

“Mayer Brown is collaborating effectively along a number of axes—working with several other pro bono law firms, as well as multiple Appleseed centers as clients—interviewing these vulnerable children and also working with the highest reaches of the Mexican government, and all points in between,” Cavendish commented.

Shantell Feeser, an Environmental associate in the Chicago office, worked with Susan Baur, a Tax associate from the New York office, and Chicago Banking associate Stephanie Roark to prepare training materials for the Mayer Brown lawyers who would be making site visits. “We worked on questionnaires to be used in interviewing the minors as well as the facility personnel,” Feeser said. “We also prepared guidelines and checklists that the lawyers use to help them make the most of their limited time at these sites.”

In July 2009, Maack led a team of lawyers on a visit to Brownsville, Texas. The team included Roark, Banking associate Maria (Gaby) Sakamoto from the Chicago office, and six other lawyers from the other two firms.

“The group divided up—some of us interviewed at a detention facility, while others visited several border patrol sites that serve as temporary holding facilities. We had the right to go to the centers under the terms of the Flores Settlement, which calls for this monitoring to verify compliance,” Sakamoto said. According to Sakamoto, most of the detainees interviewed were males between the ages of 13 and 17.

“An important part of the interview process was to let the children know that everything they said was confidential,” Roark noted.

Since then, additional site visits have been conducted in Texas, Arizona and California along the Mexican border.

Mayer Brown’s work on the repatriation issue centers around how the process works in practice and whether the requirements of the TVPRA are being met. The TVPRA expedites repatriation for children from Mexico who have not been or do not risk being trafficked, who have no credible fear of persecution, and who are able to make an independent decision to withdraw their application for admission to the United States.

According to Steel, there are important questions to be asked about the repatriation of Mexican children: “It was important that we look into the repatriation process. Are these minors being properly screened when the US obtains custody of them? Are the US screeners properly trained? Are the right questions being asked to find out if there is trafficking abuse or whether they have a fear of returning home? What happens to them after they are returned to Mexico?”
“In order to make these determinations, our site visits have also included interviewing Mexican children who have been repatriated and meeting with Mexican consular and immigration officials and those who run the Mexican shelter system in order to obtain a complete picture of how the system works and how it might be improved,” Maack said. “We have also been working with the Mexico City-based law firm of Jáuregui, Navarrete y Nader, one of Mayer Brown’s alliance law firms, which has been studying the Mexican legislative framework in order to ensure the welfare and rights of children through the repatriation process in Mexico.”

Steel expects that the project team will likely write up its findings and deliver them to Appleseed by mid-year 2010.

Other Mayer Brown lawyers who have worked on the unaccompanied immigrant minors project include Washington, DC Litigation partner Robert Jenkins, New York Finance associate David Avila, Washington, DC Financial Services Regulatory & Enforcement associate Alicia Kinsey, Chicago Environmental associate Kerry Kolodziej and Washington, DC Litigation associate Rebecca Valentine.

“Appleseed is addressing societal ills that most people, regardless of political persuasion, would agree need to be addressed.” —Charles Kelley

ARGUING FOR THE PUBLIC’S RIGHT TO KNOW

Another Appleseed program with which Mayer Brown became involved was the so-called “school-to-prison pipeline.” Begun in 2007, this multi-year program stemmed from concerns that zero-tolerance policies in the Texas educational system were taking students out of the classroom via the disciplinary system and essentially creating a gateway that led these youths to prison.

The project’s goal is to determine if the means through which students are disciplined at school—including suspensions, expulsions and placements in Disciplinary Alternative Education Programs, which provide alternative educational settings for students who have been removed from their regular schools—affect the dropout rate, and whether such an effect predicates involvement in the justice system.

One offshoot of the project was a study of what kind of force the police had historically used, or were entitled to use, when working in schools or responding to incidents at them. Texas Appleseed requested this information from a number of school districts; while many of them complied—indeed, some had already made this information publicly available on their web sites—several claimed that this information had to be kept secret in order to ensure student and police safety.

“The Spring Branch School District in Houston went to the Attorney General and obtained an opinion saying that this kind of information fell within the law enforcement’s exception to the Texas Public Information Act, and that they didn’t have to turn it over,” said William H. Knul, a Litigation partner in Mayer Brown’s Houston office. “What they did share was so heavily redacted that it didn’t give any information at all with respect to policies for weapons like Tasers and pepper spray, which can be very harmful to people with certain conditions.”

On behalf of Texas Appleseed, Knul filed suit in Harris County in November 2009 to compel the release of Spring Branch’s policies. “The idea is simply to bring this information out into the open so that there can be an open dialogue with everyone concerned about what’s appropriate, and go forward from there,” he said. “It’s about getting the public involved in making decisions that can affect people in some very important ways.”

The matter is expected to be determined on motion for summary judgment sometime in 2010.

ANALYZING PAYDAY LENDING PRACTICES

Among the ongoing projects for Texas Appleseed is the promotion of “fair financial services,” which includes examining the practice of lenders offering short-term or “payday” loans, typically for amounts less than $500, that frequently result in the borrower paying more in fees than the original loan amount. Appleseed estimates that more than $2 billion worth of these loans are made in Texas annually through approximately 2,500 storefront lending locations.

Through a loophole in state law, these businesses avoid regulatory oversight and licensing. Appleseed is working to close this loophole and to require Texas
to enforce federal interest rate limits on loans to members of the military, a practice followed in a number of states. In early 2009, Mayer Brown agreed to study the issue in depth.

“We helped Appleseed by writing a white paper on payday lending and the legislative effects of efforts to curb certain payday lending practices,” said Mayer Brown Financial Services Regulatory & Enforcement partner Michele (Mitch) Gibbons, who works out of the firm’s Houston and New York offices. Gibbons led a sizeable team that included lawyers from four of the firm’s offices and a number of different practices. Individual Mayer Brown experts worked on discrete sections of the report, allowing them to perform their work over the course of a few weeks while Gibbons managed the process over an eight-month period.

“People from our corporate practice analyzed public filings to see what kind of risk disclosures and forecasts payday lenders made. Litigators looked into what kind of actions had or could be brought by and against payday lenders by analyzing case and pre-emption laws. Our finance experts picked apart the terms of these payday applications to see whether they followed the guidelines set forth by the payday lending organization groups regarding disclosures and proper ways of disclosing fees and such, and summer associates reviewed legislative initiatives throughout the country,” Gibbons said.

“We studied this issue from a legal perspective and presented the facts and findings to Appleseed to help inform their work,” she continued. “We did not take a position or make recommendations.”

Texas Appleseed is leveraging Mayer Brown’s work to argue for reform and continues this effort into the 2010 Texas legislative session.

**THE BEGINNING OF SOMETHING GOOD**

As Appleseed continues to develop new projects, Mayer Brown is committed to doing its part to help the organization drive results.

“Mayer Brown will continue to be a partner that Appleseed can rely upon, and a staunch supporter of its programs,” Kelley said. “The firm will look for opportunities to assist Appleseed in the litigation arena and with information gathering, and we will take the lead from time to time on projects where we can help Appleseed accomplish the systemic changes it’s seeking.”

“We really appreciate Mayer Brown for its pro bono work as well as its community leadership through actions like board service, participation on our Leadership Council and the support of fellows as staffers,” Cavendish concluded. “Mayer Brown has supported us in many ways, and we’re grateful for every element of this support.”

To learn more about Appleseed, please visit [www.appleseeds.net](http://www.appleseeds.net).
Assisting an Organization that Helps Women Who Are Homeless

For more than 30 years, Sarah’s Circle has worked on behalf of disadvantaged women in Chicago’s Uptown neighborhood. The organization provides daytime shelter, meals, case management services, housing support and wellness and clinical services, as well as laundry, locker, bathroom and shower facilities, to hundreds of women each year to help them rebuild their lives and reach their unique potential.

Building upon a relationship that goes back more than a decade, Mayer Brown is now helping Sarah’s Circle enter a new phase as the organization seeks to purchase a building that will allow it to expand its services, increase the number of women it helps and improve its delivery capabilities.

“Back before I attended law school, I had worked at Sarah’s Circle in a direct-service capacity,” recalled Jennifer Rakstad, Career Development Attorney in Mayer Brown’s Chicago office. “Then, in 1999, after I became a Mayer Brown associate, someone I had worked with at Sarah’s Circle asked if I would join the organization’s board.”

Soon after Rakstad joined the Sarah’s Circle board of directors, Mayer Brown began lending pro bono assistance that helped to further professionalize the not-for-profit organization. “We helped out by working on things like the organization’s conflict of interest and personnel policies as well as contract and lease reviews,” Rakstad commented.

In 2001, Rakstad became president of the board, a position that she held until stepping down to start a
family in 2003. “I think the biggest thing that happened during my four years on the board was our transition from a working board to more of a policy board,” she said. “For me personally, I feel like I really developed my leadership skills, first by being on the board at such a young age and then going on to serve as board president at a relatively early stage in my career. And I treasure the many different people I have met through my service to Sarah’s Circle.”

Rakstad continued to support the organization and attend many of its fundraising events after stepping down from the board. Then, in 2006, the board of directors asked her to help in the search for a new executive director, which culminated in the hiring of Katherine Ragnar, who continues to serve in that position today.

Under Ragnar’s leadership, Sarah’s Circle has continued to grow, serving an average of 63 women per day in 2009, prompting the organization to begin searching for a new property to serve as headquarters. The organization’s goal is, for the first time in its history, to own its base of operations. Mayer Brown Government & Global Trade partner Mary Richardson-Lowry acted as an adviser early in the process, helping Ragnar and her staff prepare for discussions with government officials regarding financial assistance.

“I wanted to put Sarah’s Circle in contact with the right people within the governmental structures so that they could tell the story about their history, mission and philosophy,” Richardson-Lowry commented. “When you get the right people at the table, great things can happen.”

“Sometimes as a lawyer you get so focused on the technical aspects of the law that you don’t have the opportunity to sit back and reflect on whether you are making a difference in people’s lives.” —Mary Richardson-Lowry
This preparation helped Sarah’s Circle secure funding from several governmental sources, including the US Department of Housing and Urban Development and the city of Chicago, to supplement the individual support the organization has received through its fundraising efforts.

Lawyers from Mayer Brown’s Real Estate practice, including partner Jeff Usow and counsel Jack Edelbrock, are assisting Sarah’s Circle with the purchase of a 16,000-square-foot building in the Uptown neighborhood; architectural and planning services are being provided on a pro bono basis by the firm of Perkins & Will. Sarah’s Circle also plans to pursue Leadership in Energy and Environmental Design (LEED) certification for the new building, which will feature rooftop gardens and rainwater recovery systems among other “green” features.

“This new building really has the capacity to facilitate a transformation of the agency,” Ragnar revealed. “We’ve been around for 30 years, and over that time the number of women that we serve has grown quite a bit—we’ve gone from simply providing a daytime support program for women to becoming a multifaceted agency that also provides permanent supportive housing. The building will provide us the space we need to upgrade our facilities, to increase our critical case management services and to add 10 additional units of housing.”

“I really enjoy working with Kathy and everyone involved with Sarah’s Circle,” Edelbrock said. “Part of the motivation for doing something like this is the appreciation that you feel—and I’ve felt it in spades on this matter.”

“Sometimes as a lawyer you get so focused on the technical aspects of the law that you don’t have the opportunity to sit back and reflect on whether you are making a difference in people’s lives,” Richardson-Lowry noted. “This is one of those projects where you can offer resources that will ultimately enhance or change the quality of a person’s life. It’s quite rewarding to play even a small part in that.”

Judy Krueger, wife of Mayer Brown Chairman Bert Krueger, is the president of the Sarah’s Circle board of directors, and both are committed supporters of the organization. “Sarah’s is fortunate to have Kathy and her staff who provide such critically needed services so well, and a large following of committed individuals in the greater Chicago area who dedicate so many talents and resources to Sarah’s mission,” Bert Krueger said. “It has been particularly pleasing to me to see so many individuals at Mayer Brown contributing their skills to taking Sarah’s to a new level for the benefit of their clients and the community as a whole.”

Upon successful completion of its fundraising goals in 2010, Sarah’s Circle will be in the position to close on its acquisition of the existing property by the end of the year and commence the extensive renovations required to move into its new headquarters in late 2011 or 2012. To learn more about the organization, donate or volunteer, please visit www.sarahs-circle.org.
Finding a Niche—and Making a Difference

One frequently cited reason why transactional lawyers do not engage in more pro bono work is that they cannot find something that matches their area of practice. While there is certainly no shortage of interesting work for litigators, opportunities for non-litigators are not as prevalent.

Early in 2009, Christine Matott and Mary Meixner, Chicago-based associates in Mayer Brown’s Employment and Benefits practice, were discussing just such a problem with partner Debra Hoffman. She recommended that they put to work their experience with qualified domestic relations orders (QDROs), a highly technical legal instrument that entitles one party in a divorce to receive a share of the benefits from the other party’s retirement plan.

“It’s rare that those of us who practice ERISA and benefits law have the opportunity to perform pro bono work in our area of expertise, but it seemed that the QDRO area presented a way for us to help,” Hoffman said.

“We suggested the idea to the Chicago office pro bono committee and they were excited by the possibility,” Matott said. “Mary and I then approached representatives of Cabrini Green Legal Aid to see if this was an area in which they might be able to use our assistance.”

“We replied with an enthusiastic ‘Yes!’” recalled Robert Hurley, Legal Director for Cabrini Green Legal Aid (CGLA), which provides free legal services to low-income Chicagoans. “Our family law attorneys who would typically handle these orders are already very busy with divorces, child custody cases and other matters. In fact, the drafting of a QDRO can actually require more work than the associated divorce case.”

“For low-income individuals who do not own property, retirement savings or a retirement plan are typically the single-largest marital asset,” Hurley continued. “For our clients, QDROs are simply life changing. In their old age, even a small share of a former spouse’s pension can make the difference between being on the verge of homelessness and living a somewhat comfortable lifestyle.”

The Mayer Brown associates quickly established their working relationship with the family law lawyers at CGLA. While the legal aid staff members handle the direct client interactions throughout the course of the divorce proceedings, Mayer Brown deals with the retirement plan administrators.

“Our main focus is on drafting the QDROs,” Meixner noted. “They are very complicated and must be completed correctly in order to receive the approval of

“Even a small share of a former spouse’s pension can make the difference between being on the verge of homelessness and living a somewhat comfortable lifestyle.”

—Robert Hurley
“QDROs require a substantial time investment and intense concentration, which would take these attorneys away from other high-priority work.”
—Christine Matott

the plan administrators.” Once the orders are drafted and approved by these administrators, the CGLA lawyers enter them in court.

“We help free up the Cabrini Green attorneys, allowing them more opportunities to meet with their clients,” Matott said. “QDROs require a substantial time investment and intense concentration, which would take these attorneys away from other high-priority work.”

“Partnering with Mayer Brown in this way is a great help to our agency,” said Robert B. Acton, CGLA’s Executive Director. “CGLA’s family law practice is stretched thin given our desire to be there for clients in need. Two full-time staff attorneys at CGLA will provide full litigation services to more than 225 clients this year.”

“More important than the time that Mayer Brown saves our family law attorneys is the significant degree of technical expertise that they bring. They have incredible substantive knowledge in this area,” Hurley added.

“When we began the project I thought there would just be one or two people helping us out, but I’ve seen a good-sized team mobilize to help,” he continued. “I think that really speaks to Mayer Brown’s commitment to pro bono service.”

Building upon the initial successes with Cabrini Green Legal Aid, Mayer Brown began helping an additional Chicago-based legal aid organization, the Legal Assistance Foundation, with QDROs late in 2009.

“It has been rewarding for me to see my fellow Benefits lawyers, who have had limited experience with pro bono, embrace it over the course of this work, proving that there is a real role for pro bono work in our practice,” said Matott, who enjoyed working with the organization so much that she joined its Young Professionals Board (see story beginning on page 27).

“It has been great to see the associates take on the QDRO project as their own,” Hoffman said. “They have really devoted themselves to this work and taken ownership of it.”

In addition to Hoffman, Matott and Meixner, other Chicago office lawyers from the Benefits practice who have worked on QDROs for Cabrini Green Legal Aid or the Legal Assistance Foundation include Christina Cerasale, Rebecca Davenport, Elizabeth Dyer, Jacob Glazeski, Karen Grothberg, Ryan Liebl, Anna O’Meara and Cecilia Roth. ♦
International Pro Bono Roundtables

The idea of having roundtable meetings to discuss pro bono initiatives in countries where pro bono was not well developed was conceived by a small number of international law firms in conjunction with the Public Interest Law Institute (PILI), a not-for-profit organization and pro bono clearinghouse based in Budapest and New York. The roundtables began in Western Europe and now reach as far as Hong Kong and Mainland China.
Here are a few examples of what some of the roundtables have achieved and how Mayer Brown has been involved.

**Hong Kong:** A member of Mayer Brown JSM’s Pro Bono Committee participates in the regular meetings of the Hong Kong Legal Community Roundtable, a forum for international law firms to discuss development of pro bono work in Hong Kong and the region. These meetings have included briefings by non-governmental organizations, such as World Wide Fund for Nature, Ashoka and the HK Society for Prevention of Cruelty to Animals, on their activities and requirements for legal assistance.

**Belgium:** In Brussels, as in other cities, the Pro Bono Roundtable comprises an informal forum composed mainly of major international law firms. The roundtable aims at developing local committees, planning initiatives and generally serving as a forum for people to share ideas and information about pro bono work. According to Brussels associate Charles Helleputte, who attends the roundtable, “the Brussels roundtable serves as a clearinghouse for pro bono opportunities arising in the city that are developed outside of the traditional Brussels bar’s pro bono activities.”

**France:** In Paris, as well as offering an open forum for discussion, the roundtable provides an opportunity to listen to presentations on one or more pro bono projects. For instance, there was a presentation on the “Bus d’Urgence,” an ongoing project whereby attorneys travel on a bus (provided by not-for-profit organization Droits d’Urgence) to different suburbs every two weeks to advise local people (mainly on immigration issues). Another presentation was given by Avocats Sans Frontières (Lawyers Without Borders) inviting lawyers to participate in the work they do.

Mayer Brown has been a member of the Paris Roundtable for several years, and associate Céline Bondard writes: “There is a genuine interest from the attorneys at the roundtable to see the projects presented come to light. The opportunity to use pro bono work to develop business relationships is never mentioned as an argument to undertake one project over another. The projects are not linked to any existing clients of the firms but rather are stand-alone projects coming from the various associations involved.

“...The attorneys involved in the roundtable wish to see pro bono work develop in France, and in Europe generally. We are aware that it is more developed in the US, for instance. The level of motivation of associates for particular projects is one subject of conversation.

“Most of the projects are directed to international law firms with a capacity to enroll a large number of attorneys for pro bono projects. Small law firms are quite left out of these roundtables, which I believe to be detrimental to the projects. I think of all the attendees (about 20-25 attorneys at each roundtable), most come from international law firms and there is maybe one law firm that has fewer than 15 attorneys.”

**Germany:** The Frankfurt Pro Bono Roundtable is possibly the most developed of the roundtables. Founded in December 2006, the roundtable includes almost all of the international US- or UK-based law firms with a presence in Germany. The meetings take place at regular intervals of six to eight weeks.

Associate Malte Richter and partner John Faylor are members. Malte explains that “The general goal of the roundtable is to improve the legal environment for conducting pro bono work in Germany, since—with only a few exceptions—the rendering of legal advice at no cost is prohibited in Germany. To this end, the roundtable has been liaising with local and federal bar associations in order to discuss regulatory issues.”

In 2009, the roundtable started to set up Pro Bono Deutschland e.V., a not-for-profit registered association; official formation is expected in 2010. The association will put the roundtable on a more formal footing and promote the provision of pro bono legal services. It will endeavor to increase the areas in which pro bono services can be legally rendered in Germany under statute, professional codes and other regulatory provisions, and support attorneys who do pro bono work, in cooperation with bar associations and other professional organizations. Finally, it will facilitate access to pro bono services for charitable and non-governmental organizations, foundations and institutions and, in some cases, to individuals (most indigent individuals are, however, eligible for state aid). Ultimately, the association could serve as the platform for a pro bono clearinghouse in Germany. ♦
Talking Pro Bono: Marc Kadish Interviews Cabell Chinnis

Cabell Chinnis is a member of the firm’s Management Committee and the Partner-in-Charge of the Palo Alto office. Cabell agreed to talk with me about the firm’s new management structure, work-life balance and his views on pro bono.
Marc Kadish: The firm recently changed its management structure. Why did that occur?

Cabell Chinnis: The firm had expanded. We had a number of very successful combinations in France, Germany, the UK and Asia, but we had the same governance structure in place since before these combinations. This was an opportunity for us to move to a new structure that would reflect the global nature of the firm.

MK: We now have a Management Committee and a Partnership Board. What are the roles of each of these respective entities?

CC: The Management Committee is responsible for proposing strategy to the Partnership Board and for all other aspects of operating the firm. The Partnership Board participates in the setting of compensation for equity partners in the firm, approves strategy and selects the members of the Management Committee.

MK: Do Management Committee members have specific responsibilities?

CC: Yes. For example, I have responsibility for several practice areas, including tax controversy, tax transactions, environmental and litigation. I also have responsibility for lateral recruiting and finances.

MK: Does it take up a lot of time? How often do you meet?

CC: So far, it has been averaging about 30 hours per week. We talk at least once per week and meet face-to-face at least monthly.

MK: That’s a significant time commitment, in addition to being Partner-in-Charge of the Palo Alto office and a practicing Tax Controversy lawyer. How do you balance all that?

CC: It can be difficult. For the first six months of the Management Committee’s existence, we spent a lot of time making sure that we were off to a strong start, so I expect it will taper off a bit. I think the real tension is when the Management Committee role takes you out of town and your clients want you, too.

MK: Balance is something we talk about a lot with the pro bono program. There’s always a question for a young lawyer having to learn how to balance fee work with free work. This balance is what I call a “creative tension.”

CC: I think you’re right. One of the biggest challenges that young lawyers face is not necessarily ramping up on certain technical skills, but adapting to a work environment that’s very different from what they encountered in school. A very important role of the pro bono program is to help lawyers confront the creative tension with multiple projects, which is the same tension that they confront when working for multiple partners and for multiple clients.

MK: When I think of a model of a lawyer successfully combining pro bono and client chargeable work, I think of Don Falk, one of the partners in the Palo Alto office who does a lot of pro bono work and still has a successful career. I checked our records; Don has been involved in eight pro bono cases in the past six years.

CC: I’m a tremendous fan of Don Falk, so it doesn’t surprise me to hear you say that. He is a lawyer who knows how to balance the competing demands with great success, and he would be a great person for newer lawyers to speak with.

MK: Over the past two years the practice of law in large law firms seems to have changed. What do you think is going to happen?

CC: The changes that we’ve seen in the practice have been unprecedented. The other learned professions, like physicians and architects, have not enjoyed the financial success that lawyers have enjoyed. You wonder why one learned profession would be singled out from a trend that seems to have affected all others. I think we’re worth it, but this could be a time of change.

MK: Do you think that there will be a permanent change in how large firms are organized? When I came to Mayer Brown, there were equity partners, counsel and associates. Now there are different types of partners, counsel, associates, staff attorneys, contract lawyers and even academic affiliates. Do you think this expansion of “citizenship” will continue?

CC: I do. I think that with such a challenging market, one means of responding is to be flexible. How a law firm structures itself—the kinds of positions it offers—is a means of flexibility. And it also strikes me as reflective of a larger value, which is to try to accommodate the personal needs of very talented individuals.

MK: Do you think it is economically viable or possible for a young lawyer to say, “It’s so important to me to
do pro bono work that I am willing to take a reduction in pay. I want to devote 25 percent of my time to pro bono work every year, and to do so, I’m willing to make 25 percent less in salary”?

CC: I hope that as an institution we have the ability to accommodate people. But, as a practical matter, it is an extremely challenging undertaking. I think that this economic crisis has forced all law firms to rethink how we interact with, compensate, assess and promote lawyers. We need to carefully examine, and possibly move away from, lockstep and look for more flexible models, maybe using skills and experience benchmarks.

MK: That's something I've thought about as well. Getting away from lockstep—where salary and position follow seniority—and looking more at benchmarks, which I see as a series of strengths and competencies that young associates should obtain as a measure of their progress. Do you see that as being the direction in which we are gradually moving?

CC: It's certainly one possibility. The Committee on Professional Advancement developed guidelines for associates that described what skills and job performance abilities a young associate should have at certain mileposts in his or her career: Second year, fourth year and sixth year broken down for both transactional and litigation associates. That document was so popular with associates that it became a more widespread part of the coaching and mentoring that we do.

MK: Obviously, one way for an associate to meet various skill benchmarks is through pro bono work. It is part of the litigation benchmarks currently, though I don't believe there are corresponding benchmarks for transaction associates.

CC: I think that pro bono is important in helping a young associate establish certain skill sets. For example, taking a deposition within your first two years. That is easier to do in our pro bono cases than it is in these very large institutional cases we have. But it's difficult to align in other practices like corporate or finance. I want to point out that I'm saying these things because we are talking about benchmarks and training, but I don't want to detract from the ultimate importance of pro bono, which is our commitment to the community.

MK: Absolutely. Our firm was one of the first to really tie pro bono work and training together, but yes, we don't want to lose sight of the real purpose. But I do want to come back to our discussion of alternate business models. Because of the economic upheaval, more clients articulate that they do not want junior associates staffed on their cases. I wonder whether we could work out an arrangement in which a first-year associate would concentrate on skill development by doing a great deal of pro bono work. Maybe half of their time in the first year is pro bono and they receive a lower starting salary. Then, depending on how successful they are during that first year, they would receive a significant increase in their second year. Do you think a program like that could ever work?

CC: For litigation, I think the possibility is there.

MK: Sure, it's more difficult to find the kind of challenging transactional projects. As someone who had a litigation background, it took me a long time to be able to articulate a vision of transactional pro bono work. But what if we could bring in more programs such as our work with the Corporation for Supportive Housing and pro bono microfinance work?

CC: It's hard to answer in the abstract. My initial reaction is that these projects might be difficult to find in sufficient volume to keep our new transactional associates busy each year. But I also wonder whether the kind of work that these projects entail is aligned sufficiently with the demands that we put on our junior transactional associates. I don't know what the overlap is in skill sets and experience between these projects and the client work they are going to face. But it is certainly something that we can consider as we continue to look for viable alternatives to our current system. We need to make sure that we are doing our best for our clients, but also for our associates.

MK: I’d like to cover one final area. You clerked for Justice Powell when Bowers v. Hardwick, the famous case involving gay rights, was handed down. Your involvement in it has been discussed in four books that I’m aware of.

CC: I’m aware of those books and won’t go beyond the authorized disclosures here. Justice Powell was the swing vote on the case during the year that I was clerking. Originally, he was voting in favor of gay rights. At the last minute he changed his vote, which he almost never did. I think there was a tremendous amount of disappointment expressed both in his
ultimate vote and in my involvement as a gay clerk serving in his chambers.

**MK**: How so?

**CC**: Based on some statements that Justice Powell made, a number of people wondered, had I taken a more active role in discussing the issue with him, talking about it, explaining to him the personal consequences of his decision, whether he might not have changed his vote. I certainly think that those are legitimate questions. You have to remember, though, I was not the clerk involved in the case, and when I left the Court on Friday, he was going to vote in favor of gay rights. By Monday, he’d reversed his decision.

**MK**: It seems rather unfair that people would expect that you had the power to influence the Justice when you weren’t even assigned to the case.

**CC**: It was extraordinarily rare for Justice Powell to seek advice from another law clerk on a case if he wasn’t working on it. Each case was assigned to one clerk. This case was particularly troubling for Justice Powell because he couldn’t find a way intellectually to align a notion of gay rights with how he read the Constitution. He subsequently stated publicly that changing his vote was a mistake.

**MK**: Thank you for your candor in discussing such a personal issue. I admire your honesty and openness in discussing the case and your own personal life. And thanks very much for your time.

**CC**: Thank you, Marc. ♦
Building a Bridge to Asia

As Mayer Brown continues to grow its legal practice in Asia, the firm is pursuing new opportunities to develop relationships with law firms and governments around the globe. Several of Mayer Brown’s US offices have supported this effort recently, with the Chicago office working with delegations of lawyers and legal experts from Vietnam and China, and the Washington, DC office hosting a Vietnamese trade official for several months.

AN IN-DEPTH EXPERIENCE

In 2009, the International Law Institute (ILI) hosted its first-ever delegation of eight Vietnamese officials, who participated in a six-month program that covered a range of subjects, from generalized courses in legal research and writing and the US legal system to specialized training on the World Trade Organization, trade law, intellectual property rights and arbitration. During the latter half of the program, the delegates were placed at law firms in Washington, DC to observe how American firms work on a day-to-day basis.

“The ILI has a long history of hosting foreign delegations in the US,” said ILI Executive Director Kim Phan. “Our mission is to foster prosperity through the rule of law, helping countries establish a strong legal infrastructure and systems in order to achieve economic growth.”

Mayer Brown hosted Le Hoang Tung, a legal expert from the Vietnamese government’s Complaint Settlement and Anti-Corruption Department. Duane Layton, leader of Mayer Brown’s Government and Global Trade practice, served as Tung’s mentor during his internship.

“We were very pleased to host Tung, as he had experience with trade law, particularly around antidumping policies and related areas,” Layton commented. “We enjoyed showing him how a premier law firm operates—to demonstrate how American lawyers interact—and to share our perspective on subjects like US trade law and the WTO dispute resolution process.”

“Participating in this program has taught me a great deal about the American legal system.” —Le Hoang Tung
While the terms of Tung’s visa precluded him from doing client-billable work, Tung did identify key contacts within the Vietnamese governmental and legal structures and help to interpret a ruling from the Vietnamese government regarding a trade matter.

Tung and his fellow delegates would spend four days per week at their host firms, then meet at the ILI on Fridays for additional training, field trips and to share their experiences. Weekends allowed them to travel to cultural and historical sites in Washington, New York, Boston and other localities.

“Participating in this program has taught me a great deal about the American legal system and enhanced my understanding of international trade law and international dispute mechanisms,” Tung said. “I very much enjoyed my time with Mayer Brown; all of the knowledge and experience that I gained will help me in my future work. I hope that I was able to help the firm as well.”

“The International Law Institute is proud to develop such strong personal and professional relationships with foreign delegations. It is a pleasure to work closely with each delegation to contribute to their legal skills and experiences, which, in turn, allows each participant to better improve the development of their country,” said Robert Sargin, ILI’s Deputy Director and CFO.

“The relationships that we help each delegate foster with leading scholars, legal professionals, law firms and senior US governmental officials will benefit them throughout their professional careers as they continue to consult with these resources,” he continued. “ILI is very proud of its roles as a training institution and a force that helps to develop systemic changes in developing nations by establishing highly sustainable, long-term relationships between delegates and training partners such as Mayer Brown.”

**MAKING THE MOST OF A FEW HOURS**

During the summer of 2009, Mayer Brown’s Chicago office was visited by a pair of delegations for half a day each: a group of Vietnamese legal experts hosted by the American Bar Association, Rule of Law Initiative (ABA ROLI), and a group of predominantly Chinese undergraduate law students who were taking part in a program at the Chicago-Kent College of Law.

The Chicago-Kent group visited Mayer Brown on August 5, 2009, to observe how a large American law firm conducts its business domestically and abroad and learn how the firm structures its pro bono program. Lydia Lazar, Chicago-Kent Assistant Dean for International Law and Policy Development, notes that this three-week summer program is partially intended to interest these young (average age of 20 years) students in enrolling in one of the school’s LLM programs at some point in their careers. “Even if they only spend these few weeks with us, we’re exposing an entire generation of Chinese lawyers to American values, principles, the rule of law and the concept of pro bono work,” she commented.

“The summer program is just one piece of the internationalization taking place at our law school,” Lazar continued, noting that Chicago-Kent offers three different LLM programs, which enroll approximately 75 international students each year.
In addition, for the past several years, the school has offered an innovative “split” LLM program in which Chinese and Thai students (many of whom are older, experienced practitioners or judges) complete half of their studies in their native country and half in Chicago.

The ABA ROLI program brought a delegation of high-level Vietnamese lawyers, legal educators and governmental regulators to Chicago for several weeks to learn more about American legal standards and education. The delegates spent the morning of July 29, 2009, in our Chicago office receiving an introduction to pro bono practice in the US legal system. Presenters at this event included Steve Scudder, counsel for the ABA Standing Committee for Pro Bono, and Marc Kadish, Mayer Brown’s Director of Pro Bono Activities and Litigation Training.

“The concept of pro bono is just being introduced into the practice of law in many Asian countries,” Kadish noted. “Last year I spoke about the topic at Mayer Brown’s Bangkok office in a session that was teleconferenced to our other Asian offices. Matt Rooney, a partner in our Chicago office and the co-chair of our firmwide pro bono committee, also went over to Hong Kong and Beijing to discuss pro bono. We now have several representatives from our Asia offices on the committee.”

“It was a great opportunity for Mayer Brown and the ABA to share our experiences with developing strong pro bono systems here in America and to talk about how important it is for lawyers to be engaged in making a difference for people who really don’t have any other avenues for achieving justice,” said Scudder. “As the larger American firms become more globalized, they’re bringing with them American ideas about pro bono service. Ideally, those models of pro bono become acclimated to the justice system within which those firms operate.”

These exchange programs have the potential to benefit participating firms as well. “Having Asian legal experts from ministries or government offices visit the US is very helpful for our Asian practice in terms of building brand awareness,” noted Dao Nguyen, a partner in the Mayer Brown JSM Ho Chi Minh City office. “For example, it may lead to opportunities for us to assist the Vietnamese government in areas like trade or anti-dumping matters.”

“Even if they only spend these few weeks with us, we’re exposing an entire generation of Chinese lawyers to American values, principles, the rule of law and the concept of pro bono work.” —Lydia Lazar
Associates Energizing Not-for-Profit Organizations

Partners at law firms serve on the boards of not-for-profit organizations as a way of giving back to the community, helping support causes that they believe in and developing networking opportunities. Benefits to the not-for-profits include obtaining business advice from seasoned legal professionals and expanding fundraising opportunities.

Recently, an increasing number of not-for-profit organizations have introduced junior-level advisory committees to supplement their existing management and governance structures. Doing so has allowed them to harness the energy of a younger group of professionals, freeing their boards of directors to focus on strategy and policy while broadening the organizations’ exposure to a new generation. As these new opportunities to serve their communities have developed, Mayer Brown associates in several US offices have jumped at the chance to get involved.

“Board service can be very beneficial to a lawyer’s career,” said Howard (Scott) McCue, a partner in Mayer Brown’s Wealth Management—Trusts, Estates & Foundations practice. “It can also be helpful in your life because even as we look for balance with work and family, we all need some things that charge us up a little bit.”

NEW ENERGY, NEW IDEAS

While there is obviously no substitute for the experience that the members of a board of directors bring to not-for-profits, those who represent a younger generation of professionals have fresh perspectives that let them develop and pursue ideas that an organization might not otherwise consider.

“Because CVLS already conducts several annual fundraisers involving sports themes, we thought a different theme might be a good way to expose the organization to people who have other interests,” said Shennan Harris, a Litigation associate in the Chicago office. Harris is among the inaugural members of the Junior Board of Directors of the Chicago Volunteer Legal Services (CVLS), an organization that supplies legal services to the working poor. “We held a fundraiser at an art gallery and it proved to be quite successful. So now, we have decided to organize an annual fall fundraiser following on that success.”

Chicago Banking & Finance associate Maria (Gaby) Sakamoto is a founding member of the Young Professionals Board of the Legal Assistance Foundation, an organization that provides legal assistance in civil cases to low-income residents of Cook County, Illinois. “The LAF is really looking to us to get the word out about the great work that the organization does, and to raise money so that it can continue doing it,” she said.

Alison Ross, a Litigation associate in the New York office, joined the City Harvest Leadership Council last year as an extension of the volunteer work that

“[Board service] can also be helpful in your life because even as we look for balance with work and family, we all need some things that charge us up a little bit.” —Scott McCue
While a number of the firm’s associates are just beginning to explore ways to help the community through service with not-for-profit advisory committees, a pair of longtime Mayer Brown lawyers from the Chicago office have taken things a step further, demonstrating a deep commitment to improving education by founding a pair of not-for-profit organizations. Senior counsel Seth Weinberger of the Global Information Technology practice founded Innovations for Learning more than 17 years ago; more recently, Litigation partner Robert Kriss helped to found the Chicago Council on Science and Technology, a public education and policy forum.

Innovations for Learning is dedicated to bringing technology to the primary school classroom to help students learn. Weinberger developed the idea when his children reached schooling age in the early 1990s as he worked with several other families to establish a new preschool in Evanston, Illinois. Underwhelmed by the educational computer hardware and software offerings in the marketplace, he formed Innovations for Learning as an outlet for developing software to help new students improve their reading skills. For a period of several years, Weinberger would spend hours each night programming after performing his daytime duties as a Mayer Brown partner. Around 1998, the organization found a publisher for its software, which allowed it to hire programmers so that Weinberger could concentrate on more big-picture items while continuing to consult with leading educators regarding ways to apply technology to learning.

The past several years have seen tremendous growth as Innovations for Learning has launched its TeacherMate Handheld Computer System and expanded its reach to schools in 14 states as well as the international markets, with pilots under way in Mexico, Singapore and South Korea and plans to expand into Rwanda.

“There’s an opportunity to make school systems a lot more effective through technology. Many students are falling behind and falling through the cracks, and to some extent this stems from the failure to use innovative ways to teach,” Weinberger commented. “The computer revolution has opened up incredible new opportunities, but some school districts are not thinking hard enough about how to use these tools to help their students.”

While Weinberger devotes most of his working hours to his organization, Robert Kriss continues to serve as a full-time Mayer Brown partner while serving on the board of directors at the Chicago Council on Science and Technology, where he also sits on the education subcommittee. Kriss, who has a strong interest in scientific literacy, learned of the activities coalescing around the founding of the council in 2007 from his father-in-law, Dr. Alan Schriesheim, a former director of Argonne National Laboratory.

“The organization’s mission is to educate the public on matters involving science and public policy—and how science affects public policy,” Kriss commented. “We strive to provide provocative, reliable information about science that helps to enrich the lives of those in the Chicago area.”

While much of the organization’s programming is aimed at educating adults, Kriss has also initiated a program to help increase school children’s interest in science. “I want to encourage as many young people as possible to study science, because I believe that we need many more talented, well-educated scientists to help us deal with our societal challenges,” he said.

“So I’ve spearheaded the establishment of the council’s first science writing competition, which is for seventh-grade students in the Chicago Public School system. They will be writing two-page essays speculating how the world will be changed 50 years from now as a result of science and technology.”

Kriss has also combined his interests in science and writing in another way: he has written a science-themed novel that he hopes to have published in the near future.
she has done with the anti-hunger organization since 2004. “The council is primarily about fundraising and spreading the reach of the City Harvest message to increase institutional support from different corporations and businesses in the city,” she commented. Beyond traditional fundraising events, Ross also hopes to introduce new programs such as “skip lunch, fight hunger,” through which Mayer Brown employees would opt to donate the money they would have spent on lunch one day to City Harvest—perhaps even in partnership with a client.

“It really is a great networking opportunity. You get to meet many people from other firms and companies that you wouldn’t normally meet. That’s one of the biggest benefits.”
—Gaby Sakamoto

NETWORK DEVELOPMENT

One ancillary benefit that most professionals who serve on these groups readily acknowledge is the way in which their service helps them to expand their personal and professional networks.

“This has given me a chance to meet people at a wide range of law firms from throughout the city,” noted Sarah Streicker, who joined the Young Professionals Board of the Chicago Bar Foundation in 2005 and currently serves as its vice president. “There are also participants who are not lawyers, so it has been a great way to get to know these future leaders from banks and consulting firms early in their careers.”

“It really is a great networking opportunity,” Sakamoto added. “You get to meet many people from other firms and companies that you wouldn’t normally meet. That’s one of the biggest benefits.”

According to Ross: “This kind of involvement can also help you to build better connections with some of your immediate clients or some of the people that you might work with at other law firms because it’s something neutral that you can talk about. It can strengthen existing relationships.”

OPPORTUNITIES ABOUND

“I have been on a lot of boards over the years, and this service has been very useful to me and to the firm,” noted McCue. “You certainly don’t have to be on a dozen boards, but if you find something that really interests you, then you should pursue it.”

“Even though we aren’t providing legal advice, as lawyers we have a skill set and a point of view that is enormously helpful to boards and councils of not-for-profit organizations,” commented Ross, who, in addition to working with City Harvest, also received permission from the firm to sit on the National Brain Tumor Society’s board of directors.
“Even though we aren’t providing legal advice, as lawyers we have a skill set and a point of view that is enormously helpful to boards and councils of not-for-profit organizations.” —Alison Ross

“Even early in your career, you would be surprised how capable you are of doing really important work on these boards.”

“Mayer Brown certainly encourages associates to become involved in their communities,” said Marc Kadish, the director of the firm’s pro bono program.

“We recognize the benefit to the organizations, to the firm and to the lawyers. Associates who are interested in participating on these kinds of groups just need to speak with me or one of the two co-chairs of the firmwide pro bono committee, Adrian Steel and Matt Rooney, and obtain permission from the firm’s general counsel. Before the associates start, we provide some basic advice on the responsibilities as well as the potential difficulties faced by lawyers working on such groups.”

“A lot of times junior associates are a bit shy about seeking out opportunities like this, so it is very helpful when our more experienced lawyers share what they know about different possibilities,” said Chicago Employment and Benefits practice associate Christine Matott, who joined the Cabrini-Green Legal Aid Young Professionals Board in 2009 after working on a pro bono project for the organization (see story beginning on page 16).

“I think that the firm has such a strong commitment to the community and to pro bono work that associates who find opportunities that they wish to pursue will find plenty of support from their colleagues,” Ross concluded. “Organizations have a strong need for young, inspired leadership.”

Shennan E. Harris
Marc R. Kadish
Christine S. Matott
Howard M. McCue III
Alison L. Ross
Maria G. Sakamoto
Sarah E. Streiker
Robert J. Kriss (sidebar)
Seth Weinberger (sidebar)
Can an exchange of heated, politically themed emails support a misdemeanor conviction for breach of the peace? That is one of the issues currently being considered by the Nebraska Supreme Court in State of Nebraska v. Darren Drahota. In that appeal, the defendant is being represented pro bono by Mayer Brown Academic Affiliate Eugene Volokh.

While Volokh, a professor at the UCLA School of Law, teaches courses on a range of subjects and publishes on a broad array of legal issues, he has a special passion for free speech law. “A reader of my blog [The Volokh Conspiracy, which features commentary by Volokh and 18 others, predominantly law professors] sent me an item from the Lincoln Journal Star about this case,” Volokh recalled. “I first thought that I would blog about it, but then decided that I should do something rather than just writing about it. So I contacted the defendant and offered to take the matter up to the Nebraska Supreme Court on a pro bono basis.”

ANGRY WORDS LEAD TO MISDEMEANOR CONVICTION

The ruling in question had to do with an email exchange that took place in the first half of 2006 between Drahota, a student at the University of Nebraska, and his former political science professor William Avery, who was at the time running for the state legislature. The emails generally consisted of political discussions, but several of Drahota’s emails used epithets and personal insults. Avery asked Drahota to stop contacting him, labeling Drahota’s words as “extreme, vile, and angry.”

Drahota did cease writing him for four months before employing a new email address in June of 2006 to send several more messages to Avery, who then took the matter to the Lincoln, Nebraska, police department. Following a bench trial before the County Court of Lancaster County, Nebraska, Drahota was found guilty of a misdemeanor charge of disturbing the peace and fined $250 on January 30, 2007.

Drahota represented himself before the Nebraska Court of Appeals, which upheld the lower court’s verdict. The court ruled that Drahota’s communications were not constitutionally protected in light of the US Supreme Court’s Chaplinsky v. New Hampshire opinion, also known as the “fighting words doctrine.” Chaplinsky is a famous decision in which Justice Frank Murphy wrote of “certain well-defined and narrowly limited classes of speech... including the lewd and obscene, the profane, the libelous, and the insulting or ‘fighting’ words...which by their very utterance inflict injury or tend to incite an immediate breach of the peace” that are not subject to First Amendment protection.

ELEVATING THE MATTER TO THE STATE SUPREME COURT

After Drahota agreed to pursue this potential appeal to the Nebraska Supreme Court in late June 2009, Volokh set to work on the petition for review and the accompanying brief. He also enlisted the pro bono services of Nebraska lawyer Gene Summerlin, a longtime online acquaintance for whose firm Volokh has consulted, to help with procedural advice and to perform the actual in-state filings.

In order to bolster the chances of having this matter heard by the court, Volokh also set to work soliciting amicus briefs. The ACLU of Nebraska, the Foundation for Individual Rights in Education and a group of law professors filed motions for leave to file such briefs. On September 30, 2009, the Nebraska Supreme Court sustained the petition for further review, agreeing to hear the case.

PREPARING THE ARGUMENT

Over the next two months, Volokh drafted and filed the merits brief, enlisted amicus briefs for the merits phase and prepared for what would be his second-ever court appearance. Several moot court sessions were held. The first two were held at the UCLA School of Law, with Volokh inviting his students to attend one of these sessions so they could see their professor face the kind of scrutiny that they themselves typically experienced in his classes.

Several Mayer Brown appellate lawyers—senior counsel Philip Lacovara, partner Donald Falk and
associate Steve Sanders—and Director of Pro Bono Activities & Litigation Training Marc Kadish joined Volokh on a teleconference for his final moot court session just days before his court appearance.

“We tried to come up with questions that would challenge Eugene and tried to imagine and present the perspectives of the Nebraska Supreme Court justices,” Falk recalled. “We wanted to poke around any weaknesses in the case, prepare him for what the other side might say in rebuttal and look at any aspects of his side of the case that might trouble the court. We addressed both technical and practical issues.”

Lacovara also suggested a pragmatic strategy. “While the constitutional issue was clearly the most interesting part of the matter and very important in a long-range sense, the goal of getting a reversal of the conviction for the client might make it desirable to convince the court to adopt a narrower approach to the statute so that a conviction would be invalidated without requiring some broad and possibly controversial constitutional ruling,” he said. “That is, it is often in the client’s interest to press for the least dramatic outcome so long as it is in the interest of the particular client and leave some further issues to be litigated another day in somebody else’s case.”

“I was both confident and nervous,” Volokh noted. “I knew the law and I knew the record. I was pretty confident that I could present things effectively in an oral presentation because, after all, this is what I do all the time in an academic context.”

PRESENTING THE CASE

On December 2, 2009, Volokh appeared before the Nebraska Supreme Court. He argued that emails, like the letters to the editor in newspapers that have been featured in previous free speech cases, cannot lead to an immediate breach of the peace and are thus protected speech.

The court appeared to be in some agreement with Volokh, amplifying points he had made during the respondent’s argument and suggesting that Avery was not compelled to open and read Drahota’s messages—and that Avery as a candidate for the state legislature was a public figure and had thus consented to forfeit some privacy. The bench made it clear that it distinguished between harassing speech delivered in-person or via the telephone versus words expressed through written communications, as one may opt out from the latter type.

“My sense from the oral argument was that the court would come out on our side—a view reflected by most of the Nebraska-based lawyers with whom I spoke,” Volokh said.

“It certainly looked like the court knew that it would be a radical step to affirm the judgment against Drahota, and Eugene did really well presenting the case,” noted Falk.

“This seemed like a case that never should have been brought as a criminal prosecution, and I think everybody on our side was quite comfortable advocating that the conviction should be reversed,” Lacovara said.

“If the opinion is left to stand, it may well open the door to all sorts of prosecution of what amounts to rude conduct far beyond anything that had previously been recognized as criminal by other courts,” Falk concluded. “In this matter, the holding of the intermediate court of appeals was so broad that leaving it on the books and allowing it to gain currency would be a very big deal.”

At press time, the Nebraska Supreme Court had not yet released its opinion.
European Pro Bono Roundup

In addition to the work detailed in our international roundtables story (see story beginning on page 18), Mayer Brown is involved in a wide range of pro bono and community service activities throughout Europe. Below is a summary of work performed in our European offices.

Belgium: The Brussels office continues to be active, providing a speaker for another seminar for non-governmental organizations organized by international pro bono referral charity Advocates for International Development, and assisting Marie Stopes International with managing the process of registration of not-for-profit entities in Senegal, the Democratic Republic of Congo and Rwanda using local legal advisers (Charles Helleputte acting).

France: The Paris office has taken on several pro bono cases recently, including providing intellectual property advice for Advocates for International Development (Nathalie Morel and Marie-Elodie Morice advising) and research on terrorism for Geneva Call (Yasmine Haghighi acting). The office has also developed a partnership with French microfinance institution PlaNet Finance: undertaking intellectual property work (Céline Bondard advising) and, through the Mayer Brown Public Interest Fellowship Program, seconding incoming New York associate Cheryl Fakhry to the organization for one year. Céline Bondard, who transferred from New York to Paris in 2008, has been active in raising awareness in that office of the need and opportunities to provide pro bono services.

Germany: The pro bono activities of the German offices have continued to grow, with pro bono opportunities being increasingly promoted. These have included continuing advice for not-for-profit organization ASSIST (John Faylor), trademark advice for FINCA (Stephanie Hartung), assistance for Bet Tzedek in their efforts to obtain compensation for Jewish Holocaust survivors from the German government (Constantin Rehaag and Jan Kraayvanger), advice on changes in German compliance and data protection laws for Transparency International (Tim Wybritul), and help for an indigent Eritrean refugee in her dispute with her former landlord (Annika Langguth and Marco Wilhelm).

UK: The London office continues to take on numerous domestic and international pro bono cases and staffs several legal advice clinics, as well as running various pro bono and community schemes. Highlights for 2009 included:

- Taking on more projects for Advocates for International Development than any other firm in the year ending August 31, 2009
- Starting a new project to provide legal and secretarial support to London law centres carrying out immigration and human trafficking work
- Supervising law students at a new clinic
- Raising more than $93,000 for its 2009 Charity of the Year, Richard House Children’s Hospice

PILI European Pro Bono Forum: Mayer Brown was represented at the third European Pro Bono Forum, organized by the Public Interest Law Institute, by members of the firm’s EU Pro Bono Committee: Céline Bondard, Julie Dickins (a PILI Advisory Council member) and Malte Richter (who moderated one of the panel sessions). The Forum was attended by more than 160 participants, a similar number to last year despite the economic downturn, who came from 30 countries, a geographical increase. Mayer Brown once again sponsored the Forum, which largely focused on sustaining pro bono practice in economically turbulent times. Céline has been asked to join PILI’s local committee for the organization of the fourth European Pro Bono Conference, which will take place in Paris on November 18-19, 2010.

PILI, which now has four clearinghouses—Global, Russian, Hungarian and a new Chinese clearinghouse—reported that it had seen immense growth over the 12 months to September 2009, doubling the number of pro bono matters placed through its clearinghouses (from 108 for the same period in 2008 to 211 matters in 2009). The number of NGOs served also increased (from 57 in 2008 to 101 in 2009).
Pro Bono and Community Initiatives in Asia

by Jane Saunders

The Asian offices have always been involved in our local communities, lending support to a number of community charities over the past few years. Our contributions to the community are well-recognized. For example, we have been a Gold Sponsor for The Community Chest, one of the largest charitable organizations in Hong Kong, for more than a decade. We focus each year on several specific charitable initiatives, such as:

- A significant donation to the HDF Mercy Centre in Bangkok, which was used to fund the construction of a new school for 227 children
- Our involvement in the Hong Kong Student Aid Society English Reading Programme, through which many of our employees gave their time and support to teach English to underprivileged children

We also combine our charitable spirit with team building and entertainment by participating in community events such as the Central Rat Race and the Dragon Boat races. These events are institutions here in Hong Kong and are great fun for participants and attendees.

Furthermore, we have partnered with HSBC, one of our Global 7 clients, to support the HSBC Social Enterprise Business Centre. The HSBC-SEBC aims to promote social entrepreneurship and improve the business performance of social enterprises. More than 60 of our lawyers have registered as “Social Angels,” and they are regularly called upon to use their skills to provide solutions to the commercial and legal questions that small social enterprises may encounter.

More recently, we have formalized our commitment to pro bono with the formation of the Asia Pro Bono Committee. The committee has begun fielding requests from around Asia, and recently approved a number of pro bono matters, including:

- Acting for The Asia Society Hong Kong in the opening and operation of a new Arts and Cultural Center
- Assisting the Methodist Church with its redevelopment plans
- Advising the Helena May—an association promoting the welfare of women and girls in Hong Kong
- Assisting The Absolutely Fabulous Theatre Connection Company Limited—a charity sponsored by our client the Swire Group, in applying for tax exemption status
- Assisting the American Bar Association in organizing a team from China to participate in the Moot Court Competition to be held in Hong Kong
- Advising Mother’s Choice, a charity dedicated to caring for babies and children needing permanent homes, and for single girls and their families facing crisis pregnancies, in the drafting of its Local Adoption Program documentation

“JSM’s support means a lot to our centre and the social enterprises we support,” said Howard Ling, Senior Manager, HKCSS-HSBC SEBC Project. “Very often, the solutions proposed for one organization can be applied to other social enterprises that face the same problems. One single solution, one group taking the time to share their time, experience and knowledge, can make a big difference. A big ‘Thank you’ to JSM.”
GOING GLOBAL

This issue of our Pro Bono Update demonstrates the global nature of our program. As our firm continues to expand, it has been important to me to be sure that our pro bono program does as well. And while the pro bono culture isn’t as institutionalized elsewhere as it is in the United States, there is great need for our help and a great desire in the lawyers I speak with to change that culture and address these needs.

Last issue, I wrote about teaching trial advocacy in Cambodia and visiting our Bangkok office to speak about our pro bono program. Since then, Matt Rooney, co-chair of the firmwide pro bono committee, has made presentations about pro bono work both in our Hong Kong and in our Beijing offices (a report on some of the activities of our Asian offices appears on page 34). We have increased our activities with the Public Interest Law Institute in both Russia and China; have been talking with members of the ABA’s Rule of Law Initiative (ABA ROLI) in Vietnam, Bangladesh and Tajikistan; and have been working with the ABA ROLI programs in China and Cambodia.

Marcia Maack has spoken at several pro bono conference in Latin America (see story beginning on page 6), and has also spoken with our new colleagues at Tauil & Chequer about participating in our pro bono program.

I’m happy to see the pro bono culture continue to expand across Europe, and Mayer Brown is a significant part of that. As you can read in two stories this issue, our European offices are involved in interesting and important work throughout the region (see stories beginning on pages 18 and 33).

Finally, we now have a functioning firmwide pro bono committee with representatives from our US, Latin American, European and Asian offices. With the addition of these new committee members, we are now able to do pro bono work in every corner of the globe.

BANGLADESH, CAMBODIA AND VIETNAM

This year was the second in a row that I visited Cambodia to teach trial advocacy at the request of Steve Austermiller from the ABA ROLI program. Matt Rooney volunteered to participate with me. Last year 160 students participated; this year we had approximately 200. With the participation of Matt and a second interpreter, we were able to divide the students so that more of them had the opportunity to conduct the simulated trials. As an educator, there is nothing more exciting than critiquing a student who has done a good job. Seeing a huge smile erupt on their faces when you compliment their work makes it all worthwhile!

After the completion of the program, Matt spoke at our office in Ho Chi Minh City. Dao Nguyễn, the partner in charge of our Vietnamese offices, sent an email that they would like to “take part in a very important firmwide...commitment to pro bono work.”

I went to Bangladesh after Cambodia. I had been invited to visit and speak at the Asian University for Women (AUW) (see story beginning on page 2). I was the first person from the firm to visit the school. I spent a day and a half meeting with the administration, faculty and students before making a presentation to

To Talk of Many Things

by Marc Kadish

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

—Lewis Carroll
the student body on a lawyer’s role in seeking social justice throughout the world. AUW is exploring the possibility of establishing a law school. The firm has volunteered to assist with this work. AUW set up a series of meetings for me in Chittagong and Dhaka in order to move the process forward.

SERVING ON BOARDS

In my last column I also wrote about my serving on the national board of directors of the Corporation for Supportive Housing, a not-for-profit group that helps communities create permanent housing with services to prevent and end homelessness. I also wrote about a new program the firm’s pro bono committee was starting to encourage young lawyers to serve on junior boards and other similar groups for not-for-profit organizations. In this issue we report on the progress of this new program, including five associates working with six organizations (see story beginning on page 27). The benefits for both the lawyers and the organizations are substantial, even if the time spent does not count as pro bono under the definition that we follow.

But, although we want our lawyers to be involved in the communities in which we live, when we speak of this service, we are referring only to service on boards of not-for-profit organizations. Service on for-profit boards is generally not allowed by firm management. And, while not subject to the same concerns or level of scrutiny, even service on the board of a not-for-profit requires permission from the firm’s general counsel.

There might be a question as to whether service on a junior board or similar entity requires the same permission. Junior boards normally concern themselves with fundraising and networking opportunities. They can provide training for future regular board membership. They normally do not involve the same issues of governance or policymaking as with a regular board.

The firm has determined that prior approval is not required for a lawyer to serve as a director, officer or member of a governing body of a school board, neighborhood organization or a similar not-for-profit community body or housing association in which the lawyer resides.

If there is any question about the application of these rules, especially the issue of serving on junior boards, contact Matt Rooney or Adrian Steel, co-chairs of the firmwide pro bono committee, Marcia Maack or me. We can help you consult with the firm’s general counsel. •
Inviting Controversy—
Pro Bono Work for
Governmental Organizations

Deciding whether a proposed project is an appropriate use of a firm’s pro bono resources can be very difficult. Like many law firms, Mayer Brown has adopted the definition formulated by the Pro Bono Institute’s (PBI) Law Firm Pro Bono Project. One particularly contentious area, where the definition is not always that helpful, is whether, and when, it is appropriate to provide pro bono resources to governmental organizations. To discuss the issue, I sat down with four members of our firmwide pro bono committee who have expressed strong opinions on the issue: Charles Kelley, a litigator; Allen Erenbaum, a government practice lawyer; Matt Rooney, a litigator and co-chair of the committee; and Marcia Tavares Maack, the Assistant Director of Pro Bono Activities. I began by asking about the specific parts of the definition that address assistance to governmental organizations (see sidebar).

—Marc Kadish

Allen Erenbaum  Marc R. Kadish  Charles S. Kelley  Marcia Tavares Maack  Matthew A. Rooney
Marc Kadish: The first two parts of the definition seem very clear. However, the third part can be problematic. This is where pro bono assistance is provided to governmental organizations “in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate.” What exactly does this latter part mean?

Charles Kelley: In an effort to come up with an all-encompassing definition, PBI developed one that has been prone to subjective interpretation; and at times it seems like we're trying to pound a square peg into a round hole when we try to fit things into the definition. If we think about what the motivation for pro bono is, and we go back through the initial concept of why many of us feel so passionate about the concept of pro bono—opening access to legal advice, to the courthouse, etc., for those who otherwise lack the resources or who are underrepresented—the first two parts of that definition seems consistent with one of the principal motivations.

Matt Rooney: I agree with Charles. I am concerned about the third part of the definition because I do not want us to use it to justify helping the government undertake activities that I think are contrary to the purpose of our program—helping poor people.

Allen Erenbaum: I think the way that Charles framed the issue is correct. I just come at it from a different perspective. I think it’s important to think about the broader principles rather than to focus on the particular words of the definition. My position is that government inherently operates in the public interest. That is the nature of government in the US. From that perspective, I believe most work for governmental agencies would be considered pro bono.

Marcia Tavares Maack: I have a different perspective from the three other people in this debate because, as a pro bono professional, it's my job to implement the pro bono policies of the firm in a neutral and non-ideological manner. Given that the firm has adopted the PBI definition, and regardless of my personal beliefs, I think that to the extent a specific project for a government entity qualifies under the definition, it should be considered by the committee accordingly.

MR: But we have to think about what the spirit of pro bono is supposed to be. We should be protecting civil rights and civil liberties and helping the underprivileged of our society. So when we're talking about doing work for a governmental agency, I want to see if what the agency is doing dovetails with those goals. If it's a governmental agency involved in some kind of relief effort like, for example, helping people in Haiti, then it's okay.

AE: I don't see a distinction between governmental activities and activities being undertaken by private charitable nonprofits. We look at the same characteristics of the services that we're being asked to support and if they are advancing civil rights or what I broadly call the public interest, then that box is checked off and we go on to look at something else. The fact is that for a number of things the government does, if government wasn't doing them, nobody could: they are solely governmental functions. Therefore, not assisting with those can adversely affect the

PBI DEFINITION OF PRO BONO

As used in this statement, the term “pro bono” refers to activities of the firm undertaken normally without expectation of fee and not in the course of ordinary commercial practice and consisting of

i) the delivery of legal services to persons of limited means or to charitable, religious, civic community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means;

ii) the provision of legal assistance to individuals, groups, or organizations seeking to secure or protect civil rights, civil liberties or public rights; and

iii) the provision of legal assistance to charitable, religious, civic community, governmental or educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate.
public interest, so our assistance is appropriate, and appropriately considered to be pro bono.

MTM: If you look at PBI’s “What Counts” manual, which provides a series of questions and answers about how to apply the definition of pro bono, it contains two discussions about work for governmental agencies. It specifically states that work for governmental entities that are experiencing severe budgetary constraints would fit within the pro bono definition. That being said, I don’t think that we have done a good enough job in really analyzing whether there is a severe budgetary constraint that is making it difficult for a governmental entity to fulfill its mission, and therefore, whether doing pro bono work for that entity would be appropriate.

MR: The “What Counts” discussion involves work with prosecution offices. I disagree with that discussion. We have to separate the government’s actions when they’re trying to help people from when they’re trying to prosecute people. The Constitution is written with protections for criminal defendants because of the fear that governmental prosecution actions can be abusive. I am very happy that any governmental entity has limited resources to prosecute criminal matters. The monetary constraint is important. It makes them pick important cases and makes them exercise judgment. It makes them plea-bargain. It makes it less likely that they’re going to put innocent people in jail if we’re not giving them extra resources so they can go out and prosecute more people.

AE: I think prosecutors and public defenders are serving a public interest. A prosecutor is representing the people and the people have an interest to be free from crime, to have safe communities and to see that people who have committed crimes are appropriately punished. I’m not necessarily putting them on an equal plane, but prosecuting crimes can be as much about justice as ensuring that a defendant’s constitutional rights are being represented.

MK: Matt, in my 40 years of experience in the criminal justice system, most of the victims of crime are poor people. To go back to what Allen says, isn’t helping the prosecution also helping poor people in the community?

MR: No. If you want to help these communities, we should be devoting our pro bono efforts toward organizations that work to eliminate the underlying problem causing crimes as opposed to putting Band-Aids on the fact that there’s crime in the neighborhood by putting poor people in jail.

CK: I agree. When I think of the civil rights and civil liberties issues, I think of those as the rights of individuals versus those of the majority. I don’t think of them as pure public benefit, which I believe was a little bit closer to what Allen was talking about. So I agree with Matt that providing support for prosecutorial offices or those traditional government functions for which we pay tax dollars and expect our government to execute upon, those aren’t appropriate pro bono activities.

AE: I’m not suggesting that representing the government is something we should do no matter what the context, just as I wouldn’t suggest that representing a private not-for-profit is always the right thing to do. When we are asked to represent a not-for-profit entity, we ask what their mission is, what the nature of the specific legal matter is and whether they have the means to pay for legal services. I think we should ask the same three questions when we are asked to provide pro bono assistance to a governmental entity.

CK: Whether a governmental entity has available resources is frequently a question of the political process. Taxes are collected, taxes are allocated. Discretionary decisions are made that determine how much each government entity has to spend in regards to its functions. I don’t think it’s our job to supplement the political process with free legal services.

AE: I don’t think it’s any more appropriate to say that a government lacks resources on the basis of a political process where political leaders have made the discretionary decision not to fund that activity, than it is to suggest that a private not-for-profit should have done a better job of cultivating wealthy donors or building relationships with wealthy foundations.

CK: As I stated previously, I have no problem with the first part of the definition. But I continue to have problems with the resources part of the definition.

AE: I appreciate the point that there should be limits on what resources are available to government, particularly when there is at least a potential that it is unfairly impinging on civil rights or civil liberties. But the flip side of that is that there needs to be a balance, and the government has to have the right amount of money. Because when government has
inadequate resources in order to fulfill its mission, that results in justice not being accomplished.

**MR:** If, to take a real-life example, California has passed a proposition that limits the government’s resources, what is Mayer Brown doing bailing them out? Giving them some free resources so the people who are not willing to pay the taxes that they should be paying to fund the services they need is a mistake. We are encouraging bad behavior—against the public interest.

**MTM:** I do think it makes sense for us to look at the reason for the budgetary constraint. For example, if the severe budgetary constraint is a result of a recession, rather than a choice that the government has made as to which entities are going to be funded and by how much, that makes a real difference in terms of whether we should provide them with assistance. And I think Matt makes a valid point. If the budgetary constraint is a result of decisions that the people of California have made, then we should consider whether that’s where we want to spend our limited pro bono resources.

**AE:** I think you look at why they’re limited only in two circumstances: does the agency itself have the power to get more money but has chosen not to, or secondly, has the agency taken the money it’s been given and made an inappropriate or questionable allocation of those funds so that now they are asking for free help to fulfill their core mission. Other than that, I want to encourage people not to think of government as some sort of monolithic, all-powerful entity that can do whatever it wants at any time, because it’s simply not true. We have separation of powers and in most cases, the agencies that we are being asked to represent do not have the ability to tax or otherwise raise revenue in order to provide more resources for the services they are asking us to help them with.

**CK:** I think that raises the issue that I take exception to. Going back to our California example, a prosecutor’s office doesn’t have the ability to select their own budget. But another governmental entity does. I don’t want to pretend to know how their budget gets allocated, but there is an authority in the government that determines how much of the taxing revenues are allocated to a prosecutor’s office. And while I agree that the prosecutor’s office may not have the ability to choose to get more, a political decision has been made to leave them with limited funding. And that is the political decision that is determining what the government has viewed as the value of the resources and how it wishes to expend them and I don’t think that’s where free legal services should be coming in to supplement those political decisions.

**AE:** Couldn’t you say the same thing about public defenders’ offices?

**MTM:** Both offices are clearly under severe budgetary constraints. So do we need to look at whether, by providing pro bono resources to the prosecutors’ offices and not the defenders’ offices, we are tipping the balance as opposed to creating a neutral balance between the two?

**CK:** I don’t look at public defenders’ work from the notion of government resources—that is the latter part of the definition—but rather because they are serving people of limited means.

**MR:** I don’t see a prosecutor’s office ever qualifying as meeting the mission that we should be looking at.

**MK:** Matt—What about pro bono assistance to international war crimes work? Would you preclude that from pro bono? And what about assisting a poor government in drafting a constitution or bill of rights?

**MR:** No, under proper circumstances both would qualify.

**MK:** I think we’ve articulated the basic positions, both for and against, but we haven’t reached any conclusions. My thanks to all the participants.

After this discussion, we asked our US pro bono committee to vote on a number of propositions related to this topic so that we could define our own policy. And while we still have to develop standards, the committee voted not to automatically exclude work for government organizations in the US or abroad or to exclude work for prosecutors offices.

The Association of Pro Bono Counsel has formulated a three-part test that I think is helpful: 1) what is the organization’s mission; 2) what is the specific matter for which assistance is sought; and 3) does the organization have the means to pay for legal assistance. But even this test, I’m afraid, does not answer all the questions.

Meanwhile, I hope our discussion will spur the debate and eventually lead to a more objective standard for all law firms to adopt. ◆
About Mayer Brown

Mayer Brown is a leading global law firm with offices in major cities across the Americas, Asia and Europe. We have more than 1,750 lawyers worldwide, including approximately 1,000 in the Americas, 450 in Europe and 300 in Asia. Our presence in the world’s leading markets enables us to offer clients access to local market knowledge combined with global reach.

We are noted for our commitment to client service and our ability to assist clients with their most complex and demanding legal and business challenges worldwide. We serve many of the world’s largest companies, including a significant proportion of the Fortune 100, FTSE 100, DAX and Hang Seng Index companies and more than half of the world’s largest investment banks. We provide legal services in areas such as Supreme Court and appellate; litigation; corporate and securities; finance; real estate; tax; intellectual property; government and global trade; restructuring, bankruptcy and insolvency; and environmental.

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