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NLJ PRO BONO AWARDS

In the business of doing good
Pro bono projects help firms define their identities.

Michael Moline/Staff reporter
January 1, 2007

When he became managing partner of Bingham McCutchen’s New York office two years ago, Robert M. Dombroff’s mandate was to hire more attorneys and raise the outpost’s profile. Pro bono, he realized, would be part of that, but how to be more than just another cog in the pro bono machinery?

"Everywhere you went you would just be one of a variety of firms doing the same thing," he said. He wanted to "make us stand out from the pack."

The solution was what the profession calls "signature" pro bono—in this case, a commitment by Bingham to provide legal support for a group of Harlem schoolchildren and their families through financier George Weiss’ Say Yes to Education foundation. Since the organization supports the kids from preschool through high school, Bingham was making a 15-year commitment.

Such are the dynamics of pro bono publico practice: in Dombroff’s words, "the intersection of doing good and good business." As Dombroff notes, the program is bringing Bingham recognition, boosting morale and fulfilling his attorneys’ obligation to help the downtrodden—"part of that commitment you make as a lawyer."

Once again, The National Law Journal recognizes the firms that met the call from people or organizations that otherwise might not have benefited from the advice of counsel. Selecting the recipients of our 2006 Pro Bono Awards was tough—we received scores of nominations for worthwhile efforts, but settled on four firms of singular achievement in the areas of human and civil rights:

Perkins Coie of Seattle was among the first to recognize its obligation to defend the rights of people like Salim Hamdan, who had been a driver for Osama bin Laden and was among the so-called "enemy combatants" being held indefinitely at the U.S. military base in Guantánamo Bay, Cuba.

Sidley Austin launched its own signature capital litigation project, fielding 80 attorneys on behalf of 15 death row inmates in Alabama.

Heller Ehrman helped prosecute two men who murdered a nun in Brazil.
New York firm Kramer Levin Naftalis & Frankel challenged a Florida law that essentially drove nonparty-related organizations, including the League of Women Voters, out of the business of registering voters.

Across the profession, firms have been taking steps to institutionalize the pro bono apparatus. Sidley, for example, eliminated a 60-hour yearly cap on pro bono hours that was taken into account for associate bonuses.

"The firm has made it easier for those who want to do pro bono to step forward and volunteer," said John Gallo, a partner in Sidley's Chicago office.

The trends seem positive. Results for 2006 aren't in yet, but 37.3% of the attorneys at the nation's 200 largest law firms reported contributing at least 20 hours of pro bono work in 2005, The American Lawyer, an NLJ sister publication, reported in July. The magazine found an 8.2% gain in the number of lawyers in those firms doing at least 20 hours of pro bono work.

The Pro Bono Institute at the Georgetown University Law Center reached similar findings. The large law firms the institute works with contributed 27,485 hours on average in 2005, compared with 22,520 hours in 2004. If that seems a relatively modest increase, it's "trending in the right direction," said Esther Lardent, the institute's president.

To take a longer view, in 1995, 130 firms reported contributing 1.58 million hours to pro bono law; in 2005, the 81 firms that have reported to the institute thus far gave away more than 2.2 million hours, Lardent said. "Obviously, firms have increased in size," she said, "but that is a 41% increase with about two-thirds of the firms reporting."

The institute found that 61% of the work went in support of low-income people or groups that work with them.

As large firms have become even larger, they're looking for projects that leverage their complexity and reach. Such efforts are "more than just a compilation of their individual parts," Lardent said. "They go so deep and they can have an amazing impact."

That's driving the move into signature projects like Bingham's. The Say Yes to Education program adopts kindergarten classes in struggling schools and offers the social and educational support the children need to succeed, paying college tuition for the ones who graduate from high school. Bingham has helped families with immigration problems, helped one working mother fight eviction from the family's apartment and helped another young mother who was left to care for her four younger siblings after their mother died.

Even nonlegal staff gets involved, Dombroff said, serving as playground monitors during summer school.

Lex Mundi, an international network of 160 law firms, created a foundation to support social entrepreneurship—that is, investment in enterprises intended to reap social as well as financial rewards. Already the organization has helped to establish businesses and arrange financing in India, Sri Lanka, Indonesia and Mauritius. It provided legal representation to a consumer group in South America.

"What sets us apart is that we have indigenous law firms, and many of them, so you have somebody in Slovakia who is indigenous to that country and knows their legal system. We would have a firm in India, where [U.S.] firms really can't practice," said David Roll of Steptoe & Johnson LLP in Washington, who is managing director of the foundation.

Elsewhere, the legal side of the Hurricane Katrina cleanup intensified in 2006, according to Lardent. New York's Weil, Gotshal & Manges sent associates south to help residents fight for federal emergency benefits; Reed Smith helped to rebuild a battered criminal justice system; Strook & Strook & Lavan of New York teamed with the Citigroup Inc. legal department and the Lawyers' Committee for Civil Rights Under Law in a program called Second Wind, to help the small businesses that will be key to the rebuilding of New Orleans, Lardent said.

"It's a pretty daunting task," said H. Thomas Wells Jr. of Maynard, Cooper & Gale in Birmingham, Ala., co-chair of the American Bar Association's Disaster Response and Preparedness Committee, permanent successor to the task force the ABA formed in response to the disaster on the Gulf Coast. "There's a lot going on, and there are a lot of moving parts to it as well."

Citigroup's involvement reflects another development: enlistment of corporate law departments in pro bono work. Lardent's institute thus far has signed 52 law departments to a commitment to involve at least half their staff attorneys in pro bono projects.

"There are legal issues and needs that we didn't even talk about 10 years ago," Lardent said, like predatory lending and Medicare prescription assistance problems. "We keep pushing the rock up the hill, but the hill gets steeper."

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Pro bono lawyers were key in a series of 2006 voting rights lawsuits, particularly a high-profile Florida case that was the first to hold that voter registration by private groups is protected by the First Amendment.

Litigators from New York's Kramer Levin Naftalis & Frankel teamed up with two advocacy groups—the Brennan Center for Justice at New York University School of Law and the Advancement Project in Washington—to overturn a 2005 Florida law that had shut down voter-registration groups such as the League of Women Voters.

A Miami federal judge issued a preliminary injunction blocking enforcement of the law as an unconstitutional infringement on speech. The ruling in August allowed voter-registration groups to enroll voters in time for the 2006 mid-term elections. The groups had halted efforts for fear of huge penalties the new law would have imposed.

The effect of the decision went well beyond the Sunshine State.

"The Florida case is the leading edge on a new jurisprudence of voting rights," said Deborah Goldberg, director of the democracy program at the Brennan Center. *League of Women Voters of Florida v. Cobb*, No. 06-21265 (S.D. Fla.).

Within a month, the Florida decision was cited in rulings in Ohio and Georgia
striking down voter-registration restrictions. Project Vote v. Blackwell, No. 1:06CV1628 (N.D. Ohio), and Association of Community Organizations for Reform Now v. Cox, No. 1:06CV1891 (N.D. Ga.).

"A lot of laws were put into place in 2005 and 2006 that would have prevented people from even getting to the polls," said Wendy R. Weiser, deputy director of the Brennan Center’s democracy program and co-counsel in the case.

The Florida law imposed fines and deadlines on groups engaged in voter registration but exempted political parties. It provided for a mandatory $250 fine for each voter registration form submitted more than 10 days after the form was completed, $500 for each registration form submitted after a registration deadline and $5,000 for each registration form not submitted at all. The penalties applied without exception. Individual registration gatherers-most of them volunteers-would be personally liable.

"We immediately determined the Florida law had serious constitutional problems," Weiser said.

The case was put together in the hope of taking a winning ruling to other states. "It was going to be a seminal case," Weiser said. "It was extraordinarily important that the case be litigated well and thoughtfully."

A team of Kramer Levin associates, including Erin Walter and former Brennan Center counsel Craig Siegel, gathered facts in support of a bid for preliminary injunction.

Kramer Levin was under pressure to put the case together quickly because of the impending midterm elections. "We were most eager to get immediate relief because the harm was being felt every day," said Kramer Levin partner Eric Tirschwell, who headed the firm’s team on the case. The suit was filed in May.

In addition to boots-on-the-ground factual development, Kramer Levin lawyers brought trial experience. Weiser brought understanding of the constitutional issues and presented arguments in court. The Advancement Project, which seeks to increase voting in low-income and minority communities, brought its close relationships with voter groups and elections supervisors.

"I give Kramer Levin a tremendous amount of credit for their diligence and thoroughness with pleadings, fact development and, of course, the [preliminary injunction] hearing," said Elizabeth S. Westfall, senior attorney with the Advancement Project.

Kramer Levin typically handles white-collar criminal and regulatory defense work. The voting rights litigation was "particularly fun because we don’t get to be plaintiffs that often," Tirschwell said. "It’s really a whole different ball game."

So far, Kramer Levin, a medium-sized firm of more than 300 lawyers, has donated more than $1 million in billable time plus $75,000 in expenses.

"This certainly was a very substantial commitment and undertaking for any firm, and certainly for a firm that is not in the largest tier in terms of lawyers," Tirschwell said. "We understood when we made the commitment that it was going to require the dedication of substantial resources."
For the law firm Heller Ehrman, 1,510 hours of pro bono work led to justice for the murder of an American nun and a nudge toward reform for the Brazilian legal system. It might even save lives in the future by letting criminals know they will be held legally accountable.

That is what attorneys in Heller Ehrman's Washington office hoped for when they agreed to represent the family of Sister Dorothy Stang, a 73-year-old nun who was murdered in early 2005 by gunmen allegedly in the hire of rich landowners in Brazil.

Under Brazilian law, the family of the victim of a crime has the right to participate in the prosecution, according to Brent Rushforth, a firm shareholder and co-lead attorney on the case. So David Stang, Sister Dorothy's brother, set out to enlist the help of an American law firm.

"I knew that international exposure would be vital," Stang said. "And it proved to be so."

Sister Dorothy held dual American and Brazilian citizenship. She worked to protect the Amazonian rainforest and help the poor farmers who lived in Brazil's Pará state.

But she was seen as an enemy of local landowners, said Rushforth. Over the past 20 years, more than 1,400 people in northern Brazil have been murdered in conflicts over land, he said, and the murderers are rarely brought to justice.

Along with Jeffrey Hsu, special counsel to Heller Ehrman, Rushforth traveled to Brazil to work with Brazilian prosecutors on the case. Rushforth's son, Blake, who is fluent in Portuguese, took a year off from his studies at George Washington University Law School to work as their translator.

Rushforth and Hsu described the Brazilian prosecutors as courageous, facing danger themselves for representing victims like Sister Dorothy against powerful landowners.

"They don't see it as any more acceptable than we see it," Rushforth said. The Brazilian lawyers look to the American criminal system as a model for how justice should be done, he added. "There is a real thirst for justice there."

Because of the potential threat of retribution, Rushforth and Hsu were strongly cautioned not to leave the city of Belém, the state capital.

"We stayed close to the prosecutors, and we did not go out into the Amazon region where the assassination took place," Rushforth said. It was a challenge to understand which pressure points to push, but they learned a lot from the Brazilian lawyers, Hsu said.

Rushforth and Hsu could not make legal arguments in court without a Brazilian license, but they performed legal research and drafted appellate briefs in trying to federalize the case under a new Brazilian law to ensure a fair trial.

They made court appearances and corresponded with judges of the Brazilian supreme court, other courts in Pará and with the Brazilian attorney general.

"We needed to keep the spotlight on the case, so we wanted to stay closely connected," Rushforth said.
The case went to trial in December 2005. The two gunmen, or pistoleiros, were both convicted, with the triggerman sentenced to 28 years and his accomplice to 17 years. The middleman was convicted of murder and conspiracy to commit murder and drew an 18-year sentence. Lately, the team has been pressing to bring the two landowners accused of hiring the pistoleiros to justice, and expects them to stand trial by early this year.

Hsu and Rushforth are determined to see the case through.

"It's the first time in Pará that they have had a core group under arrest to stand trial," Hsu said.

Rushforth recalled the first time he and Hsu stood up and confronted the Brazilian judges with the lawlessness in Pará.

"We said that it was time for that to stop," Rushforth said. "It wasn't clear that the courts would have done anything without international attention and American lawyers working on the case."

The firm donated $850,000 in billable hours, plus out-of-pocket costs of $28,000. Dedicating so much time to this case made keeping up with their regular duties even more of a challenge. Between trips to Brazil, Hsu and Rushforth spent many late hours at the office.

They reckon the sacrifices were nothing compared to the payoff.

"We aren't going to be able to cure the ills of the region overnight," Rushforth said. "But it sends a powerful message to those acting lawlessly."

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Firm's project is a matter of life and death

Vesna Jaksic/Staff reporter
January 1, 2007

During a plane ride returning from a business trip two years ago, Geoffrey Ezgar reluctantly looked over the case file of an Alabama death row inmate his law firm had been asked to represent.

Ezgar, a partner in the San Francisco office of Sidley Austin, was disinclined to spend pro bono resources on an inmate convicted of a triple homicide, whose trial and first appellate counsel seemed perfectly competent.

What he read changed his mind. It suggested that key information had been overlooked—that the accused was financially stable and lacked motive to commit the underlying robbery; that the DNA evidence analysis was flawed; that two jurors may have committed misconduct by visiting the defendant’s home.

Since then, Ezgar has volunteered more than 450 hours on the case, traveled to Alabama numerous times and kept in contact with the inmate, William "Corky" Snyder, who is awaiting a hearing date on claims of ineffective counsel and juror misconduct.
"I do not believe the full story was presented, I don't believe what was presented was effective and I believe he's innocent," said Ezgar, 37. "I love what I do as a lawyer—I represent corporate clients—but representing Corky reminds me of the need and the importance of the justice system."

Sidley accepted the case under the rubric of its Capital Litigation Project, which the firm launched in 2005. More than 80 attorneys from the firm's six U.S. offices have volunteered thousands of hours to 15 death penalty cases in Alabama.

"The commitment that Sidley has made to death penalty representation is unprecedented," said Robin Maher, director of the American Bar Association's Death Penalty Representation Project. "I'm not aware of any other law firm that has committed this amount of resources, people and funding to this number of cases at one time."

The 1,712-attorney firm got involved after one of its lawyers heard Maher speak during a December 2004 recruitment drive in Chicago for lawyers to provide pro bono representation in Alabama. The state lacks a statewide public defender system and pays $1,000 tops to attorneys representing the condemned in capital post-conviction proceedings.

Sidley teamed up with Maher and the Equal Justice Initiative of Alabama, a nonprofit group that provides representation to indigent defendants, and built teams of five to seven lawyers. Sidley recruited law students nationally and local volunteer counsel in Alabama, said Alexa Warner, an associate in the firm's Chicago office who has been coordinating the capital cases. Most of the appeals allege poor trial representation and take years to resolve, said John Gallo, a partner in Chicago.

"Many of our clients had absolutely horrific upbringings, but virtually none of that information was brought to the attention of the jury" denying fact-finders crucial mitigating evidence, he said.

The capital litigation project is one of two firmwide projects in Sidley's pro bono portfolio. Last fall, the firm started a political asylum program and matched its offices with nonprofit agencies that refer asylum seekers facing deportation.

For the Capital Litigation Project, the attorneys donated nearly 18,000 hours in the first 11 months of 2006, Warner said. Overall, the firm donated more than 50,000 hours in 2005, with 447 lawyers volunteering more than 20 hours apiece, said Ron Flagg, a partner in Washington who chairs a firmwide pro bono and public-interest law committee. The final 2006 figures were expected to significantly exceed those numbers, Flagg said.

"Part of our responsibility as lawyers is to make a contribution to our local and national communities, so it's a fulfillment of our professional obligation," he said.

It also helps recruit associates, is valued highly by clients and broadens the participating lawyers' experience, he said. "There is tremendous satisfaction that you get, whether it's representing individuals in a capital punishment case or an asylum case or a landlord-tenant case or family law. And obviously in capital punishment and political asylum, you're literally dealing with life and death."

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