The Heart of the Matter

JENNER&BLOCK

Pro Bono and Community Service News

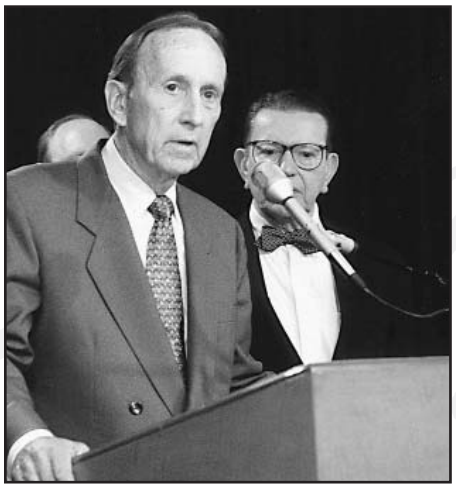
Summer 2003

Firm Plays Leading Role in National Death Penalty Debate

From the U.S. Supreme Court to the local courts to the Bar, Jenner & Block attorneys have been undaunted advocates on behalf of those facing the death penalty – a group that traditionally has had difficulty obtaining adequate and qualified legal counsel.

On June 26, 2003, the U.S. Supreme Court ruled 7-2 in *Wiggins v. Smith* that attorneys, especially in capital cases, must diligently investigate the background of their clients in order to find possible mitigating evidence that could sway a jury's or a judge's sentencing decisions. The Court threw out the death sentence of Kevin Wiggins, a pro bono client of the Firm, saying that his initial trial attorneys failed to investigate powerful mitigating evidence – including horrific accounts of an abusive childhood – that might have swayed a jury's decision to sentence him to death in a post-conviction hearing. Kevin Wiggins was convicted and sentenced in 1989 in connection with the murder of an elderly woman in her home.

As reported by *The New York Times,* Partner Donald B. Verrilli, Jr., who argued Mr. Wiggins' case before the Court, called the ruling "a powerful reaffirmation of the right to counsel and the historic importance of *habeas corpus*." As a result of the Court's decision, Mr. Wiggins was granted a new sentencing hearing, but Mr. Verrilli has intimated that he intends to eventually argue for Mr. Wiggins' full freedom, as he believes his client is innocent. "This is not the end of this fight as far as I'm concerned," Mr. Verrilli said in an interview with *The Washington Post.*



OFFICE OF THE GOVERNOR

Mr. Verrilli's work for Mr. Wiggins was recently profiled in *The National Law Journal* and was one of several key elements in the publication's decision to award Jenner & Block its 2002 Pro Bono Award. The article, entitled, "Death Penalty Pros," singled out the Firm as taking a "leadership role in addressing the need for counsel in capital cases."

The National Law Journal article also profiled the significant work of Jenner & Block Partner Thomas P. Sullivan (pictured above), who served as Co-Chair of Illinois Governor Ryan's Commission on Capital Punishment, and whose report was widely considered to be an influencing factor in the Governor's historic decision to grant clemency or pardon all of the individuals on the state's Death Row.

Mr. Sullivan was widely quoted in the national news media following the release of the report. "The message from this report is clear: repair or repeal. Fix the capital punishment system or abolish it. There is no other principled course," he argued.

In addition to his work on the Governor's commission, Mr. Sullivan has invested himself in numerous national and local activities in his fight to reform the nation's criminal justice system (see page 5).

Also singled out was Partner Terri L. Mascherin who represented one of the inmates pardoned by Governor Ryan and has been equally active in the national debate as well as in the Bar. In recognition of her continuing work on this important issue, Ms. Mascherin was recently selected by the American Bar Association to Chair the Board of the ABA Death Penalty Representation Project. "I can't imagine a group more in need [of representation]," she told *The National Law Journal*. The Project aims to educate the Bar and the public about the dearth of legal aid available to those on death row and to recruit qualified attorneys who can assist those on death row with their appeals. Ms. Mascherin has also been active at the local level, organizing events such as the reception following a performance of the Broadway play "The Exonerated" in Chicago.

For details on "The Exonerated", see back page.

Highlights

Parents Regain Custody of Children After Five-Year Legal Battle

On March 6, 2003, Jenner & Block won an important pro bono victory on behalf of its client, who successfully regained full custody of her two daughters after a five-year legal fight.

The client and her husband, both Mexican citizens, had lost custody of their children in November 1997, having been accused of physically abusing their youngest daughter. The couple had always maintained their innocence, but were hampered in their ability to vindicate themselves in part because they spoke no English and were unable to effectively communicate with their former attorneys.

Jenner & Block became involved in the case in November 2000, when Associates Heather L. Kramer and Blair R. Zanzig, supervised by Partner Debbie L. Berman, responded to a request by the Mexican consulate for assistance. At the time Jenner & Block became involved, the State's petition seeking to permanently terminate the client's parental rights was pending. A trial was imminent.

After a short period of discovery, and literally minutes before a hearing on a motion to compel the deposition of the State's lead medical expert, the State, with concurrence from the Guardian Ad Litem's office, agreed to drop the termination petition. Prior to this development, the client and her husband were limited to visiting their daughters for only an hour each month.

Over the course of the next year and a half, Ms. Kramer and Mr. Zanzig advocated on behalf of the Firm's client in numerous evidentiary hearings to establish the client's statutory fitness as a parent. Jenner & Block also persuaded the court to increase the parents' visits with their children incrementally from one hour of supervised visits per month to five days of overnight visits per week.

Finally, ultimate victory was achieved when the court found the client to be a fit parent, able and willing to care for her children. The parents left the courtroom with full legal custody of their daughters.

Liberian Client Wins Asylum

On February 25, 2003, Jenner & Block won an important pro bono victory on behalf of its client, who was granted asylum by Immigration Judge Carlos Cuevas as a result of persecution he suffered in Liberia between 1991 and 1999. The Firm's client was persecuted because of his Krahn ethnicity and his former position as a senior member of the National Democratic Party of Liberia, a party opposed to the current Liberian government. The client was a victim of repeated arrests, interrogation, torture, starvation and imprisonment. He was represented by Associates Sunil R. Harjani and Blair R. Zanzig, who were supervised by Partner Lawrence S. Schaner.

The road to victory was a long one. Mr. Harjani began working on the case in December 2000. After several delays, the hearing on the client's asylum application began in June 2001. At that hearing, Mr. Harjani conducted the direct examination of the client's treating physician, who established that the client had suffered from Post-Traumatic Stress Disorder as a result of being tortured and imprisoned in Liberia. Mr. Harjani also completed the direct examination of the Firm's client, but the conclusion of the trial was continued several times.

On the last day of the trial, Mr. Harjani conducted the direct examination of a Northwestern University professor of political science, who corroborated the client's account of events, and opined that the Firm's client faced a serious risk of future persecution, and even death, if he were returned to Liberia.

Coalition for Homeless Honors Jenner & Block

For the pro bono work performed in a widely-reported case against a school district's "zero tolerance" policy, Jenner & Block as well as Partner Daniel J. Hurtado and Associate Denise Kirkowski Bowler were honored by the Chicago Coalition for the Homeless in an awards presentation held recently at the Firm.

The case, *E.S. v. Community Consolidated School District 168*, marked the first time in the nation that a court noted and embraced the American Bar Association's position against such blanket school disciplinary policies.

Appearing in the accompanying photograph from left to right are Mr. Hurtado, CCH staff attorneys Laurene Haybach and Patricia Nix-Hodes, and Ms. Bowler. Also receiving a separate award on behalf of Jenner & Block was Partner Barry Levenstam (not pictured), Co-Chair of the Firm's Pro Bono Committee. The Firm's award was presented by CCH's Executive Director John Donahue.

Firm Helps Enforce Government Agency's Freedom of Information Act Obligations

On February 7, in an unanimous published opinion, the D.C. Circuit reaffirmed the federal government's obligation to broadly construe requests made pursuant to the Freedom of Information Act (FOIA). Elaine J. Goldenberg, an Associate in Jenner & Block's Washington D.C. office, was appointed by the Court to represent the interests of the FOIA requester, and was assisted by Partner Deanne E. Maynard. The case involved a FOIA request by an incarcerated individual who sought a copy of all the documents pertaining to his criminal case from the Executive Office for United States Attorneys.

"It's fairly common for an incarcerated person to ask to see his or her criminal case file – in this case, the government was extremely unforthcoming," commented Ms. Goldenberg. The government interpreted the FOIA request very narrowly and, as a result, produced only 14 pages of the requester's file. Only during the course of the district court proceedings did the requester learn that the government was in fact withholding approximately 6,000 pages of documents pertinent to the requester's criminal case file. These documents were also encompassed by a more expansive interpretation of the language of his request. When the requester appealed to the D.C. Circuit, the court appointed Ms. Goldenberg to argue on the requester's behalf.

In its decision, the court largely agreed with Ms. Goldenberg's arguments and concluded that the government's narrow interpretation of the request was "simply implausible" and, given the Circuit's requirement that FOIA requests must be liberally construed, was "also wrong." The Court of Appeals therefore reversed the district court's judgment for the government and remanded for further proceedings.

Although the D.C. Circuit declined to require the government to produce all of the documents immediately, it did open the door to that possibility in future cases, noting that there could be cases in which the government's interpretation of a request is "so unreasonable as to raise the inference that the agency is not acting in good faith."

"This FOIA requester now has an opportunity to receive the documents to which he is entitled under his request, which is good news. In addition, the Circuit's strong statement that the government is obliged to give requests a broad interpretation will help future FOIA requesters receive information in a timely manner," concluded Ms. Goldenberg.

Partners Receive MCCA Rainbowmaker Award

Partners David W. DeBruin and Deanne E. Maynard received the Minority Corporate Counsel Association's Rainbowmaker Award at the MCCA's Annual Midwestern Region Diversity Dinner on April 30, 2003.

The Rainbowmaker Award was created by the MCCA to honor exceptional lawyers whose advocacy in support of a more diverse legal profession has made the recipient a very special "rainmaker" – one who has created rainbows of opportunity for future generations of lawyers.

The award is reserved only for the most exceptional of contributions. In fact, the only recipient to date has been Mr. Thomas Gottschalk, the General Counsel of General Motors, in 2001.

Mr. DeBruin and Ms. Maynard were selected to receive this award for their leadership in preparing the *amicus* brief filed with the U.S. Supreme Court in the University of Michigan admission cases on behalf of the 65 corporations that support the view that diversity in higher education is a compelling state interest.

On June 26, 2003 the U.S. Supreme Court upheld the University of Michigan's Law School admissions policy, relying in part on the Firm's brief on behalf of the corporations. Justice O'Connor wrote in the Court's majority opinion, "...American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints."

Pictured are Mr. DeBruin (left) and Ms. Maynard (center) accepting the award from MCCA's Executive Director Veta Richardson (right).

Firm Authors Report Suggesting Additional Military Commission Safeguards

In light of the capture of several thousand "enemy combatants" in the U.S. war on terrorism, the Board of Regents of the American College of Trial Lawyers (ACTL) recently approved a report that analyzes the use of military commissions for the trial of accused terrorists. The military commissions, labeled by *Legal Times* as "essentially…a new system of wartime justice," is a relatively novel legal institution, built on countless new rules of trial procedures and evidence developed by the Department of Defense since 2001.

The report provides the legal and historical background for the commissions, summarizes the procedures for the military commissions and offers recommendations on areas that the ACTL thinks are in need of review to ensure that the accused are offered a reasonably fair trial in accordance with U.S. legal tradition.

> "Candid communication... is essential to effective legal representation."

For example, the Department of Defense procedures for the trial of terrorists permit the prosecution to withhold exculpatory information from the defense on national security grounds, without considering potential harm to the defense. "The procedures do provide that no information withheld from the defense can be considered by the commission in determining guilt, but the prosecution may withhold evidence of innocence from the defense," commented Richard T. Franch, a Partner who was on the Jenner & Block team that developed the report.

On this issue, the ACTL report recommends that the commission balance the prejudice to the defense from withholding exculpatory evidence against the national security interests involved, which is an approach that is consistent with the federal Classified Information Procedures Act.

The report also addresses the accused's right to legal representation. Although the Department of Defense procedures permit the accused the right of legal representation, they do not protect the confidentiality of communications between the accused and his lawyer. "The government's reservation of the right to monitor or record conversations between the accused and his lawyer will hamper the candid communication that is essential to effective legal representation," remarked Patricia A. Bronte, another Jenner & Block Partner who worked on the report.

To bring the Commissions more in line with traditional U.S. legal customs, the report recommends that the commissions protect the confidentiality of communications between the accused and his or her lawyer, and that such communications should be neither discoverable by the prosecution nor admissible at trial.

One strength of the Commission's procedures, noted the Jenner & Block partners, is that the rules allow for a review of all commission decisions – convictions, acquittals and sentencing determinations – by a three-member review panel. The ACTL report, they added, includes a series of recommendations designed to ensure that this review is meaningful.

For example, the current procedures do not require the commissions to issue written findings of fact or conclusions of law, yet the review panel is limited to a review of "material errors of law." The ACTL report recommends that the Department of Defense require commissions to issue written findings of fact and conclusions of law, and that the scope of review be expanded to include mixed questions of law and fact and all sentencing decisions (which would ordinarily be considered factual issues).

The report was authored by Mr. Franch, a member of the College's International Committee, and Ms. Bronte. Associates Allan V. Abinoja, Denise Kirkowski Bowler, Zubair A. Khan, Oliver J. Larson and John T. Ruskusky also made significant contributions to the report.

The full report is available on Jenner & Block's website, www.jenner.com.

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High Court Strikes Down Texas Sodomy Law in Landmark Civil Rights Decision

On June 26, 2003, the U.S. Supreme Court struck down a Texas sodomy law that criminalized only same-sex conduct, but not identical conduct by different-sex couples. The Justices voted 6-3 that the law was an unconstitutional violation of privacy as well as a violation of due process guarantees. In March, Partner Paul M. Smith made a widely-acclaimed argument before the U.S. Supreme Court on behalf of two male petitioners who challenged the constitutionality of the law.

Justice Anthony Kennedy, who wrote the majority opinion, concluded that homosexuals have "the full right to engage in private conduct without government intervention."

The Chicago Tribune summed up the importance of *Lawrence v. Texas* by estimating that "the Court's decision could be among the most significant civil rights rulings in years."

Mr. Smith commended the decision saying, "It's a great day for all Americans because the Court has recognized that all Americans are shielded from government intrusion into the bedroom and their choices of sexual partners."

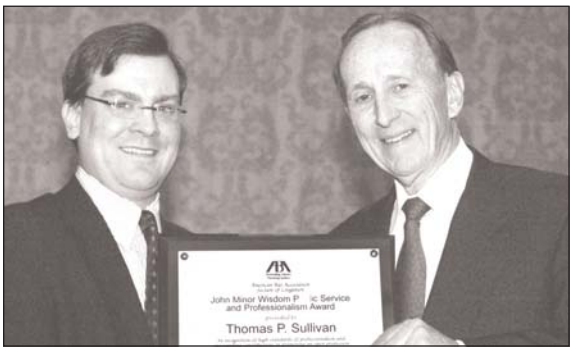
The Firm in *Lawrence v. Texas* worked on a pro bono basis with the Lambda Legal Defense and Education Fund. The legal team in this matter also included Jenner & Block Partner William M. Hohengarten and Associates David C. Belt, Daniel Mach and Sharon M. McGowan. Ruth Harlow, Legal Director at Lambda Legal, is pictured above with Mr. Hohengarten (left) and Mr. Smith following the decision in *Lawrence v. Texas.*

Sullivan Receives ABA's John Minor Wisdom Award

Partner Thomas P. Sullivan was selected by the American Bar Association to receive this year's John Minor Wisdom Award for his significant contributions to public service and the community. Mr. Sullivan received the award on April 10, 2003 at the ABA's Section of Litigation Annual Conference in Houston, Texas.

The John Minor Wisdom Award, named for the renowned Fifth Circuit Judge and civil rights pioneer, honors lawyers who demonstrate personal and professional commitment to providing free legal services to the poor, the disenfranchised, and other underrepresented groups.

As the ABA's press release announcing this award stated, Mr. Sullivan's service in the pro bono defense of the indigent is remarkable, from "the so-called McCarthy Delegates, who were prosecuted for refusing to disperse during the 1968 Chicago Democratic Convention, to the 'Chicago Seven' trial. He has also been a major participant in efforts to reform the death penalty system, including the landmark litigation that led to the U.S. Supreme Court's decision prohibiting trial judges and prosecutors from peremptorily excluding potential jurors because they were personally opposed to the death penalty."



Thomas P. Sullivan (right) receives the John Minor Wisdom Award from Steven Schulman, Co-Chair of the ABA's Pro Bono and Public Practice Litigation Committee.

More recently, the ABA stated, "Tom served as Co-Chair of former Governor Ryan's Commission on Capital Punishment," whose internationally acclaimed report was undoubtedly a factor in Governor Ryan's extraordinary decision to pardon or grant clemency to all of those in Illinois' Death Row. This public service was also instrumental in the Firm's obtaining *The National Law Journal's* 2002 Pro Bono Award.

Other pro bono efforts cited by the ABA include, "challenges to the practices of the House Un-American Activities Committee, bringing voting rights litigation on behalf of African Americans, and combating race discrimination, including housing discrimination and racial profiling, reforming of governmental agencies, addressing overcrowding at the Cook County jail, and fighting corruption in the City of Chicago government."

Concluded Scott Atlas, Chair of the ABA Section of Litigation: Mr. Sullivan is "one of America's most esteemed legal practitioners."

Sullivan a Leading National Advocate for Reforming Criminal Justice System

Partner Thomas P. Sullivan has invested himself in numerous activities in his fight to reform the nation's criminal justice system. During the last year, for instance, he published articles in influential legal publications and national newspapers, including in *The Chicago Tribune* and *The National Law Journal*. Those articles urged the adoption of the recommendations of the Governor's Commission on Capital Punishment, including those which apply to non-capital felony cases. In addition, Mr. Sullivan:

- Spoke about the Governor's Commission's recommendations around the nation and the world, including at an international conference in Brussels, Belgium; at the American Judicature Society; American Bar Association; University of California-Santa Barbara; Council of Europe; University of Illinois/ACLU; American Academy of Psychiatry and the Law; National Association of Criminal Defense Lawyers; National Judicial College; Skokie, Illinois' Am Shalom Temple; and at the University of Chicago, John Marshall and Northwestern Law Schools;
- Appeared on television and radio programs regarding the Governor's Commission's recommendations;
- Participated in Amnesty International's video, "Too Flawed To Fix;"
- Was a featured speaker on "Crazy Brains, Insane Murderers" panel at Chicago Humanities Festival;
- Acted as *amicus curiae* in support of a petition for writ of *certiorari* to the United States Supreme Court in the Delma Banks capital case from Texas. The stay and *certiorari* were granted just hours before Mr. Banks was scheduled to be executed;
- Spoke at Annual Corporate Counsel Institute meetings on legal and ethical obligations of in-house counsel in Chicago and San Francisco;
- Judged the final round of national criminal trial competition sponsored by the National Association of Criminal Defense Lawyers; and
- Served as a member of the Board of Directors, Constitutional Rights Foundation.

Tradition of Public Service

Prentice Marshall's Days as a Pro Bono Pioneer

The Hon. Prentice Marshall is a former partner at Jenner & Block, law professor, and federal district court judge who was instrumental in shaping what has come to be known as the Firm's "legendary" pro bono program. In February 2003, Mr. Marshall shared with The Heart of the Matter *new insights into the driving force behind his love of the law and remarkable commitment to pro bono service.*

Prentice Marshall said his passion for the law really began in 1937 at the age of 11. His family lived in Oak Park, Illinois, and it happened that the local high school football team was in the midst of a 37 game winning streak. The team was invited to play in Florida's Orange Bowl on Christmas night that year against Miami High School, another grid iron powerhouse at the time, and Oak Park accepted.

But, when Miami learned that Oak Park's quarterback was an African-American by the name of Lew Pope, they demanded that he not play in the Orange Bowl. As it turned out, recalled Mr. Marshall, Mr. Pope did participate in the radio broadcast of the game. "Picture if you can, some fellow in the Orange Bowl's press box telephoning the play-by-play action to Mr. Pope, who would relay what was going on to the folks in Oak Park from the high school auditorium stage."

It was one of the "truly lasting impressions of my life," said Mr. Marshall. "As an 11-year old sports buff, I just couldn't figure out why they wouldn't let the young man play the game."

Following this incident, Prentice Marshall's father suggested that his son read Clarence Darrow's autobiography, *The Story of My Life*. "That's when I decided to become a lawyer. One of the things that impressed me most about Darrow was his obvious love of the competition, the contest. Darrow, you see, was involved in some very highly-contested trials, and he thrived on it. I did, too. I loved it."

As it turned out, the challenges of criminal law and pro bono service seemed to follow Mr. Marshall throughout his early years as a lawyer.

After he graduated from the University of Illinois Law School in 1951, Mr. Marshall clerked for Judge Walter C. Lindley of the 7th U.S. Circuit Court of Appeals in Chicago. Judge Lindley, he said, was noted for appointing lawyers to help out in *pro se* cases. Two years later, Mr. Marshall went to work for Johnston, Thompson, Raymond and Mayer, the firm that would later become Jenner & Block. Name partner Floyd Thompson was already a prominent criminal defense lawyer, said Mr. Marshall, "and he believed that anybody accused is entitled to representation – so, I figured that I had found a place where I was going to enjoy myself."

The day after Mr. Marshall started working for the Firm, he was appointed to his first pro bono case. "After my clerkship for Judge Lindley, I was so intrigued by the cases that I witnessed before the Judge that I went to all of the judges – there were only six of them then – and said that I would accept assignments. Of course, I wasn't expecting my first case so soon!"

Altogether, from 1953 to 1973, when he was nominated for the federal bench in Chicago, Mr. Marshall had at least 25 trials and about 20 appeals. When he won, he won fairly and squarely. "While I loved the contest, I never believed in winning at any cost…I lived by the facts, stated in the light most favorable to my client."

According to Mr. Marshall, his most memorable pro bono case involved a youth named Roland Monroe who had been prosecuted and convicted in 1936 of murdering an elderly woman on his newspaper route. "Roland was fifteen and a schizophrenic," Mr. Marshall said. "The only thing that saved his life was his age – he was too young for the death penalty to be imposed." As Mr. Marshall recalled, Roland Monroe had been sentenced to prison for 199 years.

In 1955, Mr. Monroe filed from prison a petition for writ of error with

the Illinois Supreme Court. "The Illinois statute for murder in those days said no less than 14 years but no more than life in prison. Roland astutely challenged the validity of the 199 year sentence on the grounds that it was more than life, and therefore was an invalid sentence," Mr. Marshall recounted.

However, when the Chief Justice of the Illinois Supreme Court appointed Mr. Marshall to argue Monroe's case, he took a different tack.

"*Griffin v. Illinois* had been decided in 1956, which held that if the transcript of the trial was essential for a complete appellate review, then the equal protection clause required the state to provide a transcript to an indigent defendant. I decided that we weren't going to argue the validity of a 199 year sentence, because upon reviewing a transcript of his trial, I found serious trial errors. Based on those arguments, the Supreme Court granted Monroe a new trial."

Roland Monroe was subsequently retried in 1959, and was found not guilty by reason of insanity. Years afterward, the exonerated client regularly visited his courtroom champion in his downtown office on Saturday mornings.

Prentice Marshall, now retired, has been living in Florida for several years. "Just like Darrow, I still think what engaged me – perhaps engages all trial lawyers – is the contest. Nobody wins them all, but if you enjoy the contest, then you'll make a good trial lawyer."

Secrets to Success: Fishing, Baseball and Poker

By Former U.S. District Court Judge
Prentice H. Marshall

I have been asked to describe the "secrets" in my career. There are no secrets.

All I have needed to know about trial lawyering and judging I learned from fishing, baseball and poker.

Fishing taught me the importance of location, bait, patience, to recognize a bite or strike, set the hook and guide the fish into the net.

Baseball taught me that you win some, lose some and some get rained out but you gotta suit up for them all.

Poker taught me when to hold 'em and when to fold 'em and that the winners yawn and say, "Let's go home," while the losers shout, "Deal the cards."

They all taught me the ecstasy of victory, the agony of defeat.

Of course, there have been scores of mentors and colleagues.

The first was Clarence Darrow whose biography, *The Story of My Life*, I read at my father's suggestion when I was 11 years old. I resolved to become a lawyer, if I couldn't be a major league shortstop.

Next is my wife, Lorelei, who married me in 1948, three weeks before I started law school. She put us through law school and has encouraged me through all the vicissitudes of trial lawyering, teaching and judging. And our four children, Hank, Pam, Fred and Connie joined her.

In law school at the University of Illinois, I met Professor John E. Cribbet, the most dynamic teacher I have ever had who introduced me to the "big picture" and stimulated my love of law which has never waned. While in law school, I watched trials at the Champaign County Courthouse.

My next mentor was Judge Walter C. Lindley of the Seventh Circuit Court of Appeals for whom I law clerked in 1951-53. He taught me – "Do it yourself, Prentice" and that "the most avid advocate in the courtroom is the judge who has made up his mind." While clerking for Judge Lindley, I watched and listened to as many oral arguments as time permitted and following those that really impressed me, I would talk to the lawyers. Virtually all of them told me the same thing. If you want to be a courtroom advocate, try and appeal as many cases as you can.

On June 29, 1953, I became an associate with Johnston, Thompson, Raymond and Mayer (now Jenner & Block) and the next day I was appointed counsel in a criminal case. From then until I became judge in 1973, I always had at least one court appointed criminal case pending. In those 20 years, I represented 40 defendants in the Criminal Court of Cook County, the Circuit Court of Champaign County, the U. S. District Courts in Chicago, Peoria, and Madison, Wisc., the Supreme Court of the United States, the Seventh Circuit Court of Appeals, the Illinois Supreme Court and the Illinois Appellate Courts' First, Second and Fourth Districts.

At the firm, my mentors were Floyd E. Thompson (an unrelenting advocate), Bert Jenner (whose versatility was unmatched), Phil Tone (the finest lawyer I have ever known), Tom Sullivan (my companion, friend and stern critic) and John Tucker (of extraordinary creativeness).

> "If life were a poker game – I'd hold 'em and play 'em again."

While with the Johnston firm, I was constantly engaged in trials and appeals. The court-appointed criminal cases, murder, rape, aggravated assault and drugs and retained matters involving patents, anti-trust, trade secrets, zoning, labor disputes, libel, securities fraud, mail fraud, income tax evasion, corporate control, domestic relations, personal injury (plaintiff and defendant) – anything and everything in the state and federal courts throughout the country. I tried the cases alone or with one other lawyer. There were no five-lawyer cases in those days.

During those years in the practice, there were many non-firm mentors. To name a few: Judges Walter V. Schaefer, Abraham Lincoln Marovitz, Richard Austin, Alex Napoli, Wilbert Crowley, Bill Bauer and Birch Morgan and adversaries and colleagues at the Bar, Solicitor General Thurgood Marshall (greatest litigation strategist of my years), George Leighton, George Cotsirilos, John Powers Crowley and Max Wildman.

In 1967 I was asked to become a law professor at the University of Illinois. It was an opportunity to reunite with my family. I accepted and John Cribbet, then the Dean, again became my mentor.

The years of teaching, during which my faculty colleagues and my students were my mentors, were wonderful, but, in January 1973 lightening struck. Senator Charles Percy, a Republican, recommended me, a Democrat, to President Nixon for appointment as United States District Judge in Chicago. Here, the mentors abounded: Judges Phil Tone, Hu Will, Bill Bauer and John Crowley; lawyers, Ed Foote, Gene Pincham, Martha Mills, and Ruthanne DeWolfe, my secretaries and clerks and court reporter and all of my law clerks, each of whom was an excellent student who had just graduated from a top-flight law school and each of whom I personally interviewed (Judge Lindley – "Do it yourself, Prentice"). Three of my law clerks went directly to Justice Stevens as law clerks and a fourth to Justice Brennan. Each has gone on to a successful, productive, honorable career throughout the country including Matthew Kennelly, now a United States District Judge.

Of course as a District Judge, I tried everything – there is no specialization. But civil rights (employment and housing), prisoner's rights (medical care, living conditions and association), very complex anti-trust cases (civil and criminal) and official corruption/extortion were new to me.

One other item from Judge Lindley - I never appointed a lawyer in a civil or criminal case unless I knew the lawyer and his or her ability, diligence and integrity.

So there it is. I have worked with great lawyers and judges who reinforced what I learned from fishing, baseball and poker.

If life were a poker game – I'd hold 'em and play 'em again.

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Court Orders Harry Potter Books Back On Shelves

A U.S. District Court ordered an Arkansas school district on March 22, 2003 to return Harry Potter books back to the school library shelves rejecting a claim by the school's board that the books should be available to students only with parental permission.

A host of national groups representing booksellers, librarians, publishers, authors and teachers urged the court in an *amicus* brief to order the board to return J.K. Rowling's Harry Potter books to the bookshelves. Jenner & Block Partner Theresa A. Chmara and Associates Daniel Mach and Martina E. Vandenberg filed the *amicus* brief on behalf of the American Booksellers Foundation for Free Expression, the Freedom to Read Foundation, and prominent children's author Judy Blume, among others.

Rowling's Harry Potter books have been among the most frequently challenged books in America. However, this courtroom challenge is believed to be the first time a pro-Rowling parent sued to enforce their children's First Amendment right to free speech and to have unfettered access to a Harry Potter book.

In June, the district's board had ordered the books removed from its schools' library shelves following a complaint by a parent objecting to their alleged support of "witches" and "magic." All the Harry Potter books were removed from the libraries' open shelves and were made available to students only with written parental permission.

The dispute was embodied in a lawsuit that had been filed last summer by two parents against the Cedarville, Arkansas, School District.

Pictured from left to right are: Jane Bohman, Executive Director of the Illinois Coalition Against the Death Penalty; Gary Gauger; Brian Dennehy; and Terri L. Mascherin.

Jenner & Block Sponsors Reception To Benefit Anti-Death Penalty Coalition

Jenner & Block hosted a special reception this winter following a local performance of the Broadway play "The Exonerated" to benefit the Illinois Coalition Against The Death Penalty. Attending the February 13 performance and reception were several former Illinois death row inmates including Gary Gauger, whose story is depicted in the play. Actor Brian Dennehy, who portrays Mr. Gauger, also attended the reception.

Terri L. Mascherin, a Partner in the Firm's Chicago office, led Jenner & Block's sponsorship efforts for this event.

The Heart of the Matter is produced by Jenner & Block. For additional information or copies, please contact HeartoftheMatter@jenner.com.

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