

The Heart of the Matter

JENNER & BLOCK

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Pro Bono and Community Service News

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Our Mission

Service for the public good is deeply rooted in Jenner & Block as exemplified in our mission:

To exceed our clients' expectations every day by providing the highest caliber of legal counsel and advice, to contribute to the legal profession, to maintain our long tradition of public and community service and to provide our people with outstanding and challenging career opportunities.

Welcome

As Co-Chairs of the Firm's Pro Bono Committee, we welcome you to the first edition of Jenner & Block's pro bono and public service newsletter: The Heart of the Matter.

Our commitment to public service dates back to the very beginnings of the Firm in 1914, and continues to thrive today, as the articles in this newsletter demonstrate.

The importance we place upon performing pro bono work is perhaps best exemplified by the dedication of our past and present leaders.

The Firm's late name partners, Albert E. Jenner, Jr. and Samuel W. Block, worked on many pro bono cases for civil and constitutional rights and were widely recognized for their contributions to public service. For example, among many other honors and commissions, Bert Jenner served as legal counsel to the Warren Commission to investigate the assassination of President Kennedy, and also as a member of the Presidential National Commission on the Causes and Prevention of Violence.

Following that exemplary tradition, many of our attorneys have been recognized with prestigious awards for their faithful commitment to service on behalf of the indigent. See page 5 for our most recent award winners.

Jenner & Block attorneys have dedicated hundreds of thousands of hours representing pro bono clients before courts throughout the country, including the United States Supreme Court. One such case, *Witherspoon v. Illinois*, is detailed on page 4.

In addition, our attorneys support many philanthropic and community service organizations, and participate in events that bring together the partners, associates and support staff, as you'll see in some of the other stories in this newsletter.

We hope you enjoy reading The Heart of the Matter. In this and future editions, we hope to share with you Jenner & Block's many pro bono accomplishments, both past and present.

Sincerely,

Charles B. Sklarsky

Barry Levenstam

David W. DeBruin

Ukrainian woman wins asylum

INS waives appeal

Thanks to the pro bono efforts of Jenner & Block Associates Laura Thomas and Clark Johnson, Alla Gerasko, a retired Jewish school-teacher from Ukraine, won her freedom in March 2001. In Ukraine, Ms. Gerasko was targeted by right-wing nationalists in an escalating campaign of violence against Jews, with two members of a Ukrainian paramilitary organization coordinating attacks upon Ms. Gerasko. She was attacked on the street, harassed at her job and at home, had been the victim of a hit-and-run auto accident, and her apartment had been firebombed.

The request for political asylum was presented to Judge Fujimoto in Immigration Court on March 6, 2001. A key issue in the case was whether the Ukrainian government was unable to provide Ms. Gerasko protection from her attackers. Through extensive

groundwork, Laura and Clark presented the court with a chronology showing the steady increase in violent acts against Ms. Gerasko, contrasted to a chronology of inactivity and misdirection on the part of the local police, putatively charged with protecting Ms. Gerasko. They also painted a compelling picture of current social and economic upheaval and increasing anti-Semitism in Ukraine.

Judge Fujimoto ruled from the bench, granting Ms. Gerasko's application for asylum and taking time to compliment Laura and Clark for their concise, well-organized and effective witness examinations. The INS then waived appeal, meaning that Ms. Gerasko is free to remain in the United States.

She now lives in a small town about an hour and a half outside of Chicago with a family friend. ●

Giving WINGS to women and children in need

Led by Partner Lynn Grayson and Associate Margot Klein, 15 of the Firm's women attorneys and summer associates recently spent a full day painting, cleaning and repairing two group residences that temporarily house homeless women and children in Chicago's northwest suburbs.

The effort was part of the Chicago Bar Association's Alliance for Women "Women Everywhere: Partners in Service Day," an annual project to aid community service agencies dedicated to helping women.

The work of the Jenner & Block volunteers benefitted two safehouses operated by Women in Need Growing Stronger (WINGS), a not-for-profit comprehensive housing program dedicated to ending homelessness for women and children throughout the area.



Pictured (from top) Partner Christine Picker, Summer Associate Sarah Ralph, Associate Lisa Gates.

Courtesy of Jason Brown/Pioneer Press

Words of thanks

Mr. Charles Sklarsky,
Supervisor
Pro Bono, Jenner & Block

Dear Charles Sklarsky,

My name is Mr. Kenneth Wesley. I am a client of Jenner & Block via its Pro Bono program. My case has just reached closure, and as supervisor, I am corresponding with you regarding the performance of attorneys Richard Duffin and Brent Stratton.

Since September of last year, Attorney Richard Duffin has represented me in each and every aspect of my case. He had visited me twice, included me in strategy decisions, argued passionately twice in court, filed litigation, answered my phone calls, and negotiated an acceptable plea-bargain. He is a positive credit to the Law Firm!

Along the way, Attorney Brent Stratton's input as his assistant in the courtroom exceeded being noteworthy. As a team they are formidable.

They both were concerned professionals who together took a "fragile situation" and secured it. I rate their performance "Exemplary," so much so, I'm writing you this complimentary letter from my Heart.

Also, I thank this firm, its pro bono committee for accepting my case. "God Bless You All!"

Sincerely,

Firm wins landmark decision for wilderness protection

On June 25, a federal judge in Utah granted Jenner & Block's motion for summary judgment in a ruling that will significantly help wilderness protection throughout the Western United States.

In the case, *Southern Utah Wilderness Alliance v. Kane County, San Juan County, Garfield County, and the Bureau of Land Management*, county governments in Utah attempted to block wilderness protection efforts by the Department of Interior. The counties claimed they had rights of way over the federal land based on an obscure 1866 statute granting rights of way to anyone who "constructs" a "highway" over federal land. However, the Jenner & Block team moved for a summary judgment declaring that the

counties' claimed rights of way were not valid roads.

In a ruling that the Southern Utah Wilderness Alliance has described as a landmark decision for conservation efforts in the West, Judge Tena Campbell of the United States District Court for the District of Utah agreed with our reasoning, finding that rights of way cannot be created by mere usage of paths through the desert.

The hard work and creativity of Associate Elizabeth Appel Blue and Partner Jerome Epstein, who dedicated three years of pro bono service and commitment to this case, aided by others in the Firm's Washington, D.C., office, led to this significant victory.

The case involves part of an 1866 mining law granting rights of way to states for highway construction across federal lands "not reserved for public uses": areas such as national forests or parks. Environmentalists have charged that, because lands with roads are ineligible for wilderness status, local officials in Utah and other Western states have claimed jurisdiction over trails to disqualify areas from being designated wilderness.

The law has become the focal point of an increasingly vehement campaign by local officials and off-road vehicle enthusiasts who want greater vehicular access to public lands in the West. Officials in Utah and elsewhere in the West frequently have argued that any track constructed by "continued use," even if by horses or foot traffic, is subject to a right-of-way claim, and they have asserted claims over thousands of obscure trails and tracks in Utah alone. At times they have built on those claims by using bulldozers to improve trails on lands including national parks.

Campbell's ruling upholds a decision by the federal Bureau of Land Management that rights of way are valid only if the trails were mechanically constructed. The judge also upheld the bureau's definition of a highway as a road that is "public in nature."

Heidi McIntosh, conservation director for the Southern Utah Wilderness Alliance, called our office directly from the court the evening of the decision, saying the ruling would significantly help wilderness protection throughout the West.

"It makes sure we will be able to protect wilderness areas, parks and wildlife," MacIntosh told *USA Today*. •



Negotiating a sticky wicket – for a good cause

Led by Partner Gail Morse, Jenner & Block helped Open Hand Chicago raise over \$26,000 this summer by fielding two 8-player teams at the annual Croquet du Soleil benefit held on Chicago's lakefront. Chicago's leading provider of food and nutritional services for people living with HIV/AIDS, the non-profit agency has served over 3.5 million meals through its grocery centers and home-delivered meal program.

A Pro Bono Tradition:

Monumental Victories From The Past

Witherspoon v. Illinois

Pro bono cases are often the most substantial in changing our justice system. The landmark death penalty case *Witherspoon v. Illinois* (1968), which invalidated the death sentence of William Witherspoon, was one of Jenner & Block's most significant pro bono cases. The United States Supreme Court ruling in *Witherspoon* saved 350 people on death row across the country, all of whom received new sentences.

The Firm's involvement began in 1964 when Federal Judge James B. Parsons appointed as new appeals attorneys two past chairmen of the Chicago Bar Association's Defense of Indigent Prisoners Committee: current Jenner & Block Chairman Jerold S. Solovy and Partner Thomas P. Sullivan.

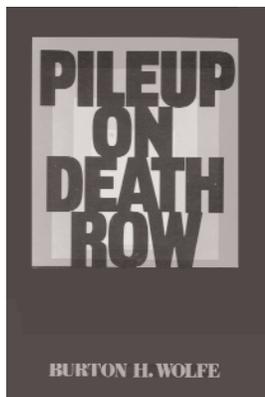
"As Jerold Solovy studied the voluminous transcript of Witherspoon's trial, he noticed that of 96 persons questioned during the selection of the jury 47 were excused for cause because they had scruples against the death penalty," notes author Burton H. Wolfe in his 1973 book, *Pileup on Death Row*. "Although the procedure was normal, somehow it struck Solovy as being 'impermissible and "unconstitutional"."

With the help of Tom Sullivan, he brought this argument to the Illinois Supreme Court. It was dismissed, and subsequently appealed to the United States Supreme Court.

In oral argument before the Court, the Firm's name partner Albert E. Jenner Jr. contended that the jury was tainted with members in favor of the death penalty due to an Illinois statute that provided for challenges for cause in murder trials "of any juror who shall, on being examined, state that he has conscientious scruples against capital

punishment, or that he is opposed to the same." Under the limitations of this statute, the argument went, victims were no longer being tried by a fair and impartial jury, which they are guaranteed under the Sixth and Fourteenth Amendments.

The Supreme Court agreed and ruled 6-3 that states could not disqualify potential jurors merely because they "might hesitate to return a verdict inflicting [death]."



This landmark case, which Jerry Solovy refers to as the crowning legal achievement of his career, has applied to every death-penalty case in the country since then.

And in the intervening 33 years, he and Tom Sullivan have continued their dedication to public service work. Among many other honors, Jerry chaired a blue-ribbon commission charged with recommending changes in the court system in the wake of the Operation Graylord investigation into judicial corruption in the Cook County Courts, and Tom sits on a special panel appointed by Illinois Gov. George Ryan to review the application of the death penalty in the state.

Between them, they have handled literally hundreds of pro bono cases. ●

While in prison, Bill Witherspoon became an author, writing magazine articles about social reform and the justice system and publishing a 1968 book, *Death Row*, based on interviews with nine other men on Death Row.

He also organized the "Voice of Youth" program to deter troubled youths from criminal activities by means of audiotapes and pamphlets produced in Cook County Jail. The program won commendations from Michigan Gov. George Romney, who said it "restores my faith that the social outcast does indeed make the best social worker."

In 1972, Partner Daniel Murray joined Jerry Solovy's campaign to win parole for Mr. Witherspoon. The two lawyers gathered support from the warden of the Cook County Jail, several Quaker organizations and noted author Nelson Algren, among many others, and organized a petition signed by every guard at Old Joliet Prison. In 1979, after many parole hearings, their efforts bore fruit and Mr. Witherspoon won his freedom.

Upon leaving prison, he returned to his native Detroit and worked for the next 10 years with Project Start, a non-profit agency that finds jobs for ex-convicts. His work also involved lecturing groups including high school students, law students and Jenner & Block lawyers, calling for criminal justice reform and arguing against the death penalty.

He died March 4, 1990 after a long battle with cancer, survived by his wife, Luz Angela.

Awards Corner

MALDEF honors three Firm attorneys

For their pro bono work in winning the return of an Illinois family's children and in supporting diversity in higher education, three of our attorneys have been honored by the Mexican American Legal Defense and Educational Fund (MALDEF) with this year's Legal Services Awards.

The three lawyers – Partner Benjamin Weinberg, Associate Jeffrey Silver and former Partner Randall Mehrberg (now Senior Vice President and General Counsel of Exelon Corp.) – were honored at MALDEF's 21st Annual Chicago Awards Dinner.

The Legal Services Awards are given to individuals for their exemplary advancement of the legal rights of Latinos.

Ben was recognized for his representation of a Mexican-American couple in Mendota, Ill., who had had their children wrongly removed by the Illinois Department of Children and Family Services.

Based on the firm's history of taking on challenging pro bono matters, Jenner & Block was approached by MALDEF and the Mexican Consulate to represent the couple.

When Ben took on their representation, the children had been away from their parents for more than two years. After lengthy negotiations and several hearings in LaSalle County courts located two hours west of Chicago, Ben ultimately won the return of the children to the family.

Randy and Jeff were recognized for their work on the *amicus* brief filed on behalf of Fortune 500 corporations in support of diversity in higher education at the University of Michigan.

The federal district court in the



Pictured (from left) Partner Benjamin Weinberg, MALDEF Regional Counsel Patricia Mendoza, former Partner Randall Mehrberg, Associate Jeffrey Silver



2001 MALDEF Legal Services Award

Eastern District of Michigan cited the *amicus* brief in December in concluding that diversity is a compelling state interest and that the University's undergraduate admissions program is constitutional.

"The *amicus* brief has been widely recognized as a significant contribution to the national debate on affirmative action," said Robert Graham, managing partner of Jenner & Block.

"We congratulate Ben, Jeff and Randy for providing sterling examples of the positive impact of pro bono efforts. Their achievements on behalf of their clients are in the finest tradition of our firm."

A national nonprofit organization, MALDEF promotes and protects the civil rights of Latinos through advocacy, community education and outreach, leadership development, higher education scholarships and, when necessary, through the legal system. ●

Portman honored for health care efforts

The District of Columbia Bar honored Partner Robert Portman for his role as co-chair of the Bar's Health Care Decision-Making Project, "in recognition of the importance of this issue to the Bar and our community, and of [his] outstanding efforts and many hours of service."

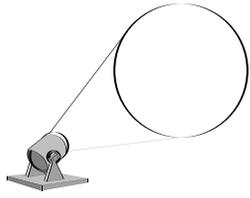
Rob, who chairs the Firm's Health Care Law Practice, was honored with the "Best Bar Project Award" for 2001.

The Project offers free community workshops on the use of advance directives (living wills and health care power of attorney) to allow individuals to exercise control over their future health care treatment even if they are

not capable of making decisions for themselves. The Project conducted workshops at more than a dozen health care and community organizations throughout the Washington, D.C. area during the 2000-2001 Bar year. Rob participated in this Project in his capacity as Community Outreach Coordinator for the Bar's Health Law Section.

Last year, the Bar named Jenner & Block Pro Bono Law Firm of the Year. ●





Not-for-Profit Spotlight

Public Interest Law Initiative Fellows

Public Interest Law Initiative (PILI) is administering a Pro Bono Initiative in Chicago to open the door for lawyers in Illinois to become national leaders in pro bono work.

Pro bono work is vital to our justice system because 80% of the civil legal needs of Illinois' low income people are not being met. PILI is dedicated to providing law students and new lawyers with experience and training in the legal institutions serving the public interest.

PILI offers internships and fellowships for law students at one of 45 affiliated public service agencies. These internships and fellowships provide the law students and new attorneys with valuable hands-on clinical experience.

PILI also sponsors a summer luncheon seminar series on various aspects of public interest law.

Jenner & Block is actively involved with PILI through fellowships and sponsorships. Additionally, Partner Larry Wolfson sits on PILI's Board of Directors.

This summer, Jenner & Block sponsored six PILI Fellows to work at five different agencies around Chicago while they are studying for the bar:

- Teresa Faherty at John Marshall Fair Housing Clinic
- Zubair Khan at Chicago Legal Clinic
- Tom Monroe and Uzma Sattar at Loyola Community Clinic
- Michael Thompson at Chicago Environmental Law Clinic
- Marnie Jensen at First Defense Legal Aid.

First Defense Legal Aid

First Defense Legal Aid (FDLA) is one of 42 Public Interest Law Initiative affiliated public service agencies throughout Chicago. This not-for-profit organization provides free and independent legal service for anyone under arrest at Chicago police stations.

Currently, anybody who is in custody is entitled to a free public defender; however, he or she does not receive representation until a judge appoints one, so people can wait in custody for 72 hours before receiving any legal assistance.

Through their toll-free, 24-hour hotline, FDLA fills this void by sending volunteers to Chicago police station to counsel clients, collect case information, explain the client's constitutional rights and ensure that the police observe these rights.

Additionally, FDLA provides community educational programs for teens and at-risk adults about their rights and the legal system. Since 1995, FDLA has served over 10,000 poor adults and children arrested by the Chicago Police by protecting their rights *before* they appear in court.

Furthermore, their educational programs have reached over 30,000 people, teaching them their rights and responsibilities when stopped by police.

Marnie Jensen, a recent graduate from William and Mary School of Law, was a summer associate at Jenner & Block in 2000 and will be joining the Firm as an associate this fall.

We asked Marnie to share with us her experience as a PILI Fellow at First Defense Legal Aid.



PILI Fellow and Associate Marnie Jensen

Why did you choose to work at FDLA?

I chose FDLA because it was something I thought I would never, and could never, do. Now that I've been at the agency for a few weeks, I see that it's something I always want to do! I grew up in a tiny town in Central Nebraska (a town of 750 people, to be exact), and there wasn't a lot of crime around there.

When I came to Chicago to work last summer, I got a taste of what Chicago faces regarding crime, gangs, etc., by sitting in on a pro bono murder trial that Jenner & Block was handling. I realized then the importance of pro bono, particularly in criminal law.

So, I guess I chose FDLA initially out of curiosity, and then to fulfill a desire to help people in underserved communities.

Attorneys prevail before U.S. Supreme Court

After 27 months of effort representing a client in a Freedom of Information Act case, Associate David Belt and Partner Deanne Maynard obtained a stunning victory when the United States Supreme Court rebuffed the Solicitor General.

In early 1999, David was appointed to represent an inmate who sought under FOIA to obtain copies of law enforcement records compiled by the United States Attorney's Office in connection with his criminal prosecution for various offenses.

The government denied the request by invoking FOIA Exemption 7(A), which permits the withholding of law enforcement records which, if produced, could reasonably be expected to interfere with law enforcement proceedings. After the District Court

granted summary judgment for the government, Jenner & Block helped the inmate argue that the exemption no longer applied when all that was pending or possible were collateral attacks on the conviction.

Just as David was about to file his brief on that issue, the government sought to abandon its reliance on Exemption 7(A) and to obtain a remand to assert yet other exemptions in the District Court. With the help of Deanne Maynard, as well as Partner Ian Gershengorn and Paralegal Cheryl Olson, David resisted these efforts, and, after full briefing and argument, ultimately persuaded the D.C. Circuit to rule that the government was required to plead all applicable exemptions in its original response to the FOIA request.

The Solicitor General thought the ruling significant enough that, after the government's petition for rehearing to the D.C. Circuit was denied, he petitioned for *certiorari*. Jenner & Block opposed the petition, and in July the Supreme Court denied it.

So after extensive casework involving the preparation of oppositions to two government remand motions, two full sets of briefs, additional correspondence with the government and the D.C. Circuit, an oral argument by David in the D.C. Circuit, an opposition to a petition for rehearing, and an opposition to the government's petition for *certiorari*, David prevailed before the Court of last resort and our client has received the records he sought for so long. ●

First Defense Legal Aid

continued from page 6

What is a typical day for you at FDLA?

If I'm the first one at the office, I call our 24-hour answering service and get the messages from the night before. I then check the messages to determine whether any of our clients are still in custody. After checking the calls, I also need to respond to callers who called the night before but were not in custody. They might need a referral for a private attorney or just have another legal question.

You were a summer associate last year. Can you compare last year's experience with this year at FDLA?

It's like night and day. As a summer associate, it was a lot more relaxed: if I had a question about what I

was working on, I would just call up the supervising attorney and ask.

At FDLA, you sometimes have to make quick decisions. If you are in a police station and they won't let you see your client, you have to decide what to do. You can't leave and set up a meeting to see what you should do!

I feel a little more of a direct contribution to what I'm working on. If the client gets to go home without being charged, I feel directly responsible for getting him/her to that point.

What is the most satisfying aspect of your summer work?

It's the feeling that you are helping someone every single day. Even if it's just someone on the phone that wants to know a simple detail about his or her upcoming court date, it's important. In criminal defense, the defendants

often don't get to feel like someone actually cares about making their situation better. FDLA fills that void, too. Defendants or family members or friends can come into the office and sit face-to-face with real people and get help.

It's a great satisfaction to know that a person leaves the office feeling like someone else cares about them!

How has this work helped prepare you for your future practice?

It has just made me realize that I chose the right firm because pro bono can always be a part of my professional life at Jenner & Block. I don't want to do criminal defense for life, but I know the Firm stresses the public commitment of pro bono work, so I know I can continue with FDLA as a volunteer, on-call attorney. ●

JENNER & BLOCK

One IBM Plaza
Chicago, IL 60611
312 222-9350

Dallas
1717 Main Street
Suite 3150
Dallas TX 75201
212 746-5700

Lake Forest
One Westminster Place
Lake Forest, IL 60045
847 295-9200

Washington
601 Thirteenth Street, N.W.
Washington, D.C. 20005
202 639-6000

www.jenner.com

Jenner & Block Pro Bono Committee

Co-Chairs:

David W. DeBruin	202 639-6015
Barry Levenstam	312 923-2735
Charles B. Sklarsky	312 923-2904

Members:

Ross B. Bricker	312 923-4524
Christopher C. Dickinson	312 923-2858
Michael E. Kernan	312 923-2605
Christopher D. Liguori	312 923-2789
Thomas K. McQueen	312 923-2968
Joel T. Pelz	312 923-2609
John F. Ward, Jr.	312 923-2650
Donald B. Verrilli, Jr.	202 637-6095

Pro Bono Coordinator

Kristina Pinder Weider	312 923-8965
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The Heart of the Matter is produced by the Jenner & Block Marketing Department. For additional information/copies, please contact Geoff Potter, Editor, at 312 923-2692 or gpotter@jenner.com.



Helping feed the hungry and homeless

In July, Jenner & Block attorneys, summer associates and staff volunteered at the Greater Chicago Food Depository in southwest Chicago. At the warehouse, the volunteers packed nearly two tons of rotini from huge barrels into over 2,500 one-and-a-half pound bags for distribution to homeless shelters, soup kitchens, senior centers and food pantries. The Food Depository delivers donated food to 590 such service agencies throughout the city and suburbs. Chicago's Food Depository is one of the largest in the nation and provides 67,000 meals a day, 365 days a year.