

# On the Leading Edge of Pro Bono Criminal Defense Work

More than half of all US states spent less than \$10 per capita for indigent criminal defense services in 2005, according to a report by indigent defense advocacy organization, the Spangenberg Group. Despite the Sixth Amendment's guarantee of representation, defendants who cannot secure private counsel typically do not receive the same quality of representation as those defendants who can.

"In talking to people all across the US about the state of indigent defense, there is clearly a crisis. There is inadequate funding to ensure that people are getting quality representation," said Rick Jones, executive director of the Neighborhood Defender Service of Harlem and lecturer in law at Columbia University Law School.

"Caseloads are also out of control; in some places you have lawyers who have 400 or 500 clients at a time. There's just no way anybody, even the best lawyers, can provide quality representation with a caseload that large. Training is also an issue; people are just not being sufficiently trained to do the work — criminal defense work is complex and complicated."

One channel for relieving some of the pressure on the public defense system is pro bono representation by private law firms. "Mayer Brown is one of the few

firms that have become involved in representing indigent defendants. Most large firms have not," Jones commented. "When large law firms commit to these efforts, and do so in a meaningful way, they can bring tremendous resources to the undertaking. If more firms would commit to developing in-house capabilities and engage in some of the more complex and serious cases, like representing people in murder cases at the trial level, then certainly they would bring resources to bear that many public defender's offices simply can't."

A 2005 study published by the American Bar Association's Standing Committee on Pro Bono and Public Service entitled *Supporting Justice: A Report on the Pro Bono Work of America's Lawyers* found that of those lawyers who reported doing pro bono work, fewer than 20 percent did so in the criminal law field, despite the clear benefits of working on criminal cases.

"Any civil litigator who undertakes this kind of work will tell you that they come out of the experience a better trial lawyer and a better negotiator," Jones said. "It makes you a better lawyer in a lot of ways: from out-of-court skills such as client relations, negotiating and strategizing to such in-court technical skills as picking a jury, giving an opening and closing statement and cross-examining witnesses. It makes you a more confident civil litigator once you've had that experience."



Mayer Brown’s programmatic approach to pro bono criminal defense work dates back a decade, when Marc Kadish, the firm’s director of pro bono activities and litigation training, first approached Cook County Judge James Linn about gaining court experience for associates in Judge Linn’s Chicago courtroom (see article in the spring 2007 *Pro Bono Update*). Mayer Brown’s Chicago office has since taken approximately 30 pro bono criminal defense cases, including 15 murder cases. Many of the firm’s other US offices have also made it a practice to handle criminal defense trials.

According to Jones, in an article he wrote for *The Champion*, the magazine of the National Association of Criminal Defense Lawyers, together with only a few peer firms, Mayer Brown represents “the gold standard” for firms with a complex indigent defense trial practice.

### Providing High-Quality, Impassioned Representation

“The level of quality that Mayer Brown brings to a pro bono defense, compared to solo practitioners, can make a tremendous difference in criminal proceedings,” noted New York-based Mayer Brown litigation associate Shane Kelbley, who helped win former New York City police officer Richard DiGuglielmo Jr.’s 2008 release from prison.

DiGuglielmo was convicted in 1998 of depraved-indifference homicide in the shooting death of a man who was attacking DiGuglielmo’s father with a baseball bat. “Our work is thoroughly reviewed, ‘blue booked’ and cross-checked. There’s no missing anything in these matters. I think defendants who receive pro bono representation from big firms like Mayer Brown benefit tremendously.”

“It’s rare that you get an opportunity to work on a case like this one, which involves a cause that is genuinely in the service of justice for a person who never should have been in jail for ten years,” added Brian Willen, a former Mayer Brown associate who also worked on the DiGuglielmo case. “Being part of a team that ultimately makes a difference between someone spending perhaps the rest of his life in a small cage and someone being out and having his life back is a pretty remarkable thing.”



Mayer Brown represents “the gold standard” for firms with a complex indigent defense trial practice.

**Rick Jones**

Led by New York partner Andrew Schapiro, the team successfully argued that a key witness had been pressured by police between the time of his initial statement and his appearance at trial to change his version of the events leading up to the shooting.

“The state fought everything,” remarked Schapiro, who first began working on the case in 1999, shortly after DiGuglielmo was convicted and given a prison sentence of 20 years to life. “We had to file hundreds of pages of briefings along the way just to get this hearing. Brian and Shane did that. They calmed down our witnesses. They sat with and held the hands of the family, and they’re working side by side with me on the state’s appeal.”

DiGuglielmo was released from prison in September 2008 after a Westchester (New York) County judge threw out his conviction, ruling that prosecutors had withheld evidence about their treatment of eyewitnesses. The county district attorney has appealed this decision.

A thorough, team-based approach also proved key to Mayer Brown’s pro bono representation of Abraham Lesnik, a former Boeing scientist who was charged with unlawful retention of national defense information after federal agents found in 2006 that he had wrongly taken several hundred documents to his home. After pleading guilty to a single count of



Allison Benne



Lisa Cornehl



Heather Lewis  
Donnell

## Support the NDS

A nonprofit public law office, the Neighborhood Defender Service of Harlem strives to make justice a reality for those farthest from its reach through an innovative approach that involves civil and criminal lawyers, social workers, investigators, paralegals, and college and law school interns in the aggressive defense of its clients. NDS is located in the community it serves, and its neighborhood-based office fosters the development of strong relationships with clients and their families to facilitate the investigation and preparation of cases.

Interested parties can contribute funds to the NDS via JustGive at [www.justgive.org](http://www.justgive.org).

retaining national security information in 2008, the 68-year-old Lesnik faced a government recommendation for a four-year prison term and a six-figure fine. Partner Marc Harris and associate Lisa Cornehl from Mayer Brown's Los Angeles office performed extensive research into similar cases in order to support their argument that the penalty sought by the federal prosecutors was excessive.

"We went through every 'mishandling' case that had been brought by the federal government in the last 40 years and described for the judge the facts of each case," Harris recalled. "We also scoured the public record to find data proving that hundreds, if not thousands, of cases similar to Dr. Lesnik's had been resolved without charges ever being filed. Even in those cases where charges were filed, there were just a handful in which a jail sentence was imposed.

"Our job at sentencing was to convince the judge that these outlier cases should not be used as precedent in Dr. Lesnik's case, and that a felony conviction, accompanied by the loss of his career and a sentence of probation, was punishment enough."

"There's no way that a public defender, or even a small private firm, is going to be able to do this level of work," noted Kadish. "They just don't have the time or the resources."

Based on the defense presentation, the court sentenced Dr. Lesnik on December 8, 2008, to three years of probation and a \$25,000 fine.

"I always encourage younger attorneys to think about issues and causes and institutions that are important to them in their life and that may need the assistance of a firm like Mayer Brown, and to think about ways to bring pro bono work into the firm," said Chicago litigation associate Steve Sanders. "It's good for those organizations or individuals, and it's good for the firm. Just as importantly, I think it helps attorneys feel a more personal connection to the work that they do, and helps them feel like they have more control over their professional lives."

## Utilizing a Global Firm's Resources

Firms such as Mayer Brown enjoy resources that are not always available to public defenders — resources that can make a tremendous difference in a criminal matter.

---

"I always encourage younger attorneys to think about issues and causes and institutions that are important to them in their life ... and to think about ways to bring pro bono work into the firm."

**Steve Sanders**

---

"Pro bono programs help a lot of people who would really just get lost and not receive adequate representation," commented Chicago litigation associate Nicole Highland, who served a one-year internship in the Cook County public defender's office prior to joining Mayer Brown. "Not to downplay the resources of our government, but they're just not sufficient to handle the caseload that's out there."



Robert Entwisle



Marc Harris



Nicole Highland

Highland worked with Chicago associates Heather Lewis Donnell and Sarah Reynolds on the defense of Aurelia Gonzalez, who was charged with multiple counts of kidnapping. Gonzalez, a mother of four who had a history of mental illness and an IQ below 60, was no longer able to have children but pretended to be pregnant in 2005. This fake pregnancy culminated in her visiting John H. Stroger Jr. Hospital in March 2006, where she spotted a couple from her neighborhood with their infant daughter. When the mother received a phone call at the same moment that the father was called up to fill out some paperwork, Gonzalez offered to hold the baby. The father assented, and Gonzalez walked away with the infant, who was in her possession for approximately 10 minutes before the police took the baby back after being alerted to her whereabouts at nearby Rush Hospital.

The Mayer Brown team undertook extensive research on mental health and worked with a psychiatrist and psychologist to prepare for the January 2008 trial. Although Gonzalez was found guilty of aggravated kidnapping and unlawful restraint and sentenced to six years, she was also found to be mentally ill, and so eligible for mental health treatment while serving her time. On June 8, 2009, however, the First District Appellate Court overturned the aggravated kidnapping conviction, shortening the defendant's sentence to three years.

"It was rewarding to be an advocate for someone who otherwise would not have had the kind of resources that Mayer Brown was able to marshal on her behalf," commented Donnell. "I believe that our team provided our client the best defense that she could get and we will continue to do so through the appellate process."



Shane Kelbley



Justin McCarty



Alison Ross



"If every law firm took on the representation of one or two individuals in complex murder cases in their jurisdiction each year, it would take a tremendous strain off of the public defender offices."

**Rick Jones**

### Developing Better Lawyers

While some aspects of criminal law typically prove challenging to civil-focused lawyers, most who have undertaken pro bono criminal representations concur that the experience made them better lawyers.

"I think that indigent defense provides balance for us by keeping us engaged in the community while exposing us to a different aspect of the justice system," remarked associate Alison Ross from the New York office, who has been working with fellow New York associate Allison Benne and a team from the Neighborhood Defender Service of Harlem (NDS) on the defense of Natavia Lowery, accused in the October 2007 murder of celebrity real estate agent Linda Stein. "It reinforces our practice at Mayer Brown because we have the opportunity to think critically about different issues and how to come to a problem from a different perspective. I think the more time you get to practice those skills, the more you reinforce the analytical work that you're doing at the office."

"We drafted our very first motion for this case, and were able to act as the stand-in for the prosecution during mock oral arguments," Benne noted, commenting on the experience that she and Ross have obtained on the Lowery matter. "We were able to do our first direct and cross-examinations. So we've gained new legal training and tools and skills. It has also been a great opportunity for us to probe the deeper questions about what justice means, especially in the criminal justice system, where it is a little tricky to navigate."

“I very much enjoy the increased responsibility and leeway in what you get to do on a pro bono criminal representation,” commented Chicago litigation associate Justin McCarty.

Working under Kadish, McCarty, with then-summer associate Robert Entwisle, took on post-trial representation of convicted murderer Daniel Lucas. Lucas and five others were charged together but tried separately for a double murder. Although not accused of the actual shooting, Lucas was found guilty of aiding and abetting the murders. The Illinois statute seemed to call for a natural life sentence. At sentencing McCarty was able to convince the trial judge, Judge Linn, that Lucas could be given less than a life sentence because of his minimal involvement.

“The work tends to be qualitatively different than what you do working for big clients,” said McCarty. “I’ve been doing a lot of accounting malpractice work, which is very different from working in the criminal justice system. So it’s a nice change as well.”

---

“We were able to do our first direct and cross-examinations. So we’ve gained new legal training and tools and skills.”

**Allison Benne**

---

Steve Sanders argued before the Illinois Supreme Court in support of Judge Linn’s sentence in Lucas’ case. “When you’re working on something that’s of great interest to you, you’re going to be happier in your work,” he said. “I’ve appreciated the opportunities that Mayer Brown gives to take on interesting pro bono matters.”

“I’m used to doing civil litigation with big corporations, where there is no one person who you’re helping,” commented Cornehl in regard to her work on the Lesnik matter. “This was not a life-and-death matter *per se*, but we were fighting for a man’s livelihood. It made the matter more challenging — I wanted to help him and found that I was much more nervous about it than any other case that I’ve worked on. Pro bono work has proven to be a great way to round out my experience and has added to my development as a lawyer.”

“We received great trial experience, which can be hard to come by at a large firm early on in your career,” Reynolds noted in recalling her experience with the Gonzalez case. “That was definitely the best part.”

---

“I think that indigent defense provides balance for us by keeping us engaged in the community while exposing us to a different aspect of the justice system.”

**Alison Ross**

---

## Working Toward Best Practices

According to Rick Jones, some firms shy away from criminal defense representations due to the time commitments that pre-trial preparation and the trial itself require. Corporate-focused firms tend to be wary of the potential for unfavorable publicity due to association with a criminal matter. Others may believe that they lack the in-house expertise to give meaningful criminal representation.

“I really think that every major law firm ought to have an indigent defense department,” Jones asserts. “In the same way that they’ve got a corporate law department, a tax law department and a white-collar litigation practice, they ought to have a dedicated staff that does pro bono work and works on indigent defendant cases in state court.”

In the interim, firms can benefit by developing a formal in-house program dedicated to pro bono work, including indigent defense. Doing so helps develop a culture receptive to pro bono efforts while offering the opportunity to broaden lawyers’ experience base.

“If every law firm took on the representation of one or two individuals in complex murder cases in their jurisdiction each year, it would take a tremendous strain off of the public defender offices,” Jones concluded. “These firms are uniquely positioned to ease the pressure on the public defense system and everybody would win. The judicial system wins, the court system wins, the clients win, the bar wins and the law firms and their individual partners and associates win via the experience gained in trying these cases.” ♦



Sarah Reynolds



Steve Sanders



Andrew Schapiro