



# PRO BONO PUBLICO

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July 2010

### LETTER FROM PRO BONO COMMITTEE CO-CHAIR WILLIAM T. RUSSELL, JR.



William T. Russell Jr.

I recently attended two events recognizing lawyers who have devoted their careers to legal services organizations and was struck by the positive effect that their work has had on our community. But as I thought about it, I was also struck by the fact that one of the many terrific benefits of practicing law—particularly at a firm with the resources and commitment to public service that Simpson Thacher has—is that it enables us to effect significant accomplishments without devoting our entire practice to public interest law. We can achieve great results for *pro bono* clients while continuing to practice at a first-tier private firm. And our *pro bono* work on behalf of individuals often has positive effects that extend far beyond a particular client.

For example, STB associates **Linton Mann** and **Thomas Ling** recently won summary judgment in housing court on behalf of a client who had been the victim of a long series of unfounded eviction proceedings. The client's landlord filed these cases as part of a campaign to drive the client from her home so that the landlord could charge a new tenant higher rent. The governing statute provides that if a lease contains a provision entitling the landlord to attorney's fees in a successful litigation against the tenant (as most residential leases do), courts will read into the lease a reciprocal provision entitling the tenant to attorney's fees in a successful litigation against the landlord. After obtaining summary judgment on behalf of the client, Linton and Thomas filed an application for fees. While the landlord opposed the application, the matter eventually settled with the landlord paying \$30,000 in legal fees. After deducting an amount for our out-of-pocket disbursements on the case, the Firm is donating the balance of the award to the legal services organization that referred the case to us in order to further support that orga-

nization in its mission to provide free legal services to underserved communities. In addition, I learned from a friend at that organization that there have been at least two instances in which he informed a landlord's lawyer that he was going to refer an eviction proceeding to Simpson Thacher, and the landlord subsequently filed a voluntary dismissal of the case. The legal services lawyer believes that the prospect of having to pay attorney's fees is causing landlords to voluntarily abandon groundless suits that they filed to harass tenants.

Another example of a *pro bono* matter that has had positive effects beyond the individual client is the work that associates **Jim Cross**, **Dora Jimenez** and Counsel **Jennifer Reynoso** performed for Immigration Equality. They helped that organization obtain 501(c)(4) status—which enables it to engage in lobbying activity as a non-profit. Its lobbying work include efforts to obtain passage of the Uniting American Families Act, which would amend the Immigration and Nationality Act to allow citizens and legal permanent residents to sponsor their foreign-born permanent partners for legal residence in the United States. Immigration Equality's lobbying efforts have already contributed to the rescission of federal regulations requiring HIV-positive visitors to disclose their HIV status upon entry to the United States. Efforts like these would not be possible without the work that Jim, Dora and Jennifer performed.

These are but two examples of the scores of significant *pro bono* matters improving our community that Simpson Thacher lawyers handle every year while still maintaining a top-tier private practice. Each one of us can achieve great things without having to devote ourselves full-time to public interest work. If anyone wants to get more involved in our public service efforts, please reach out to Harlene Katzman, Libby McGarry or me.

### **STB'S AM LAW PRO BONO SCORE RISES IN 2010!**

We are proud to announce that Simpson Thacher received a high *pro bono* ranking in the Am Law 200 Pro Bono Report. The *pro bono* score, a significant factor in determining which firms are on the Am Law's elite 2010 "A-List" of twenty top firms, rose substantially due to the Firm's greater overall *pro bono* hours and the increased number of lawyers involved in *pro bono* activities. Congratulations to the many of you who contributed to this success.

### **STB WINS RARE REVERSAL OF ASYLUM APPEAL IN THE THIRD CIRCUIT**

On June 22, the United States Court of Appeals for the Third Circuit issued an opinion unanimously vacating a ruling of the Board of Immigration Appeals (BIA) which had denied the appeal of the asylum petition of the Firm's *pro bono* client J.P.S., a Colombian citizen who was persecuted because of his sexual orientation by FARC, a notorious Colombian terrorist organization. The Simpson Thacher team consisted of litigation partner **Joseph M. McLaughlin**, associate **Jacob Press**, former associate **Katherine Burghardt**, and paralegal **Magallie Kortwright**. This matter was referred to the firm by Immigration Equality, the only national organization fighting for equality for LGBT and HIV-positive immigrants. Immigration Equality also served as co-counsel. The Firm has accepted numerous *pro bono* asylum client referrals from Immigration Equality in recent years.

J.P.S., 30 years old, was born and raised in an impoverished neighborhood of Medellín, Colombia. Because his homosexual identity was apparent from childhood, he had suffered a long history of verbal and physical abuse. His plight worsened in 2004, when his neighborhood was occupied by FARC, a paramilitary organization that attempts to displace Colombia's civilian government through violence. J.P.S. was at this time living in his family home and working as an interior designer. When FARC guerrillas identified him as a gay man, they embarked on a vicious campaign against him, subjecting him to persistent verbal abuse, frequent stone-throwing, and more than a dozen

physical assaults—even slashing him with a knife while he stood at the door of his own home. FARC has been known to engage in such anti-gay “social cleansing” efforts.

When J.P.S.’s brothers Ruben and Luis attempted to defend J.P.S., they were shot to death in succession by FARC. Neither murder was investigated by the police. FARC then escalated its attacks against J.P.S. Fearing for his life, he fled from Colombia to the United States in August 2006, and obtained counsel for his asylum claim.

The Immigration Court denied asylum to J.P.S. in May 2008. With help from local *pro bono* counsel, J.P.S. filed an appeal with the BIA. However, in June 2009, the BIA affirmed the Immigration Court decision in its entirety and concluded that J.P.S. was not persecuted, based solely on the fact that J.P.S. himself never suffered “severe” physical harm.

The Simpson Thacher team represented J.P.S. on appeal to the Third Circuit. Though J.P.S.’s case had great merit, it was clear from the start that the case would be challenging because of the extremely unfavorably procedural posture. In fact, BIA determinations are generally upheld “unless the evidence not only supports a contrary conclusion, but compels it.” *Sheriff v. Att’y Gen.*, 587 F.3d 584, 589-90 (3d Cir. 2009). We were therefore bound to the record that was created by predecessor counsel, even as we were required to show that this record should have “compelled” both the Immigration Court and the BIA to reach results contrary to the ones they actually reached. Meanwhile, the BIA was represented vigorously before the Third Circuit by litigators from the Civil Division of the Department of Justice who specialize in defending BIA decisions before Courts of Appeals throughout the United States. Nonetheless, the STB team succeeded in crafting a brief that persuaded the Third Circuit to adopt J.P.S.’s view of the facts almost in its entirety. Concluding that the BIA “fail[ed] to acknowledge significant aspects of J.P.S.’s claim” by focusing solely on the extent of his past physical harm, the Third Circuit vacated the BIA’s decision and remanded the case for further proceedings. We are now hopeful that, in light of the Court of Appeals’ forceful findings of fact, the BIA and the Immigration Courts will acknowledge the merits of J.P.S.’s petition.

### **COURT GRANTS HABEAS CORPUS PETITION OF FIRM’S PRO BONO CLIENT, ENDING TWENTY-YEAR IMPRISONMENT**

Attorneys in the Palo Alto office filed a *habeas corpus* petition on behalf of Barbara Nicole Hammond, a woman from Bakersfield, California, who was convicted in 1990 of killing her abusive partner and sentenced to a prison term of 17 years to life. The Superior Court of Kern County recently granted the habeas petition and ordered her released on time served, ending nearly twenty years of imprisonment. Ms. Hammond’s release culminates a *pro bono* effort on the part of Simpson Thacher that began in 2007.

At the time of Ms. Hammond’s original trial the law did not permit the introduction of evidence concerning intimate partner battering and its effects. An increased awareness and understanding of domestic violence led to the enactment of California Penal Code Section 1473.5 in 2001. Section 1473.5 permits individuals who were convicted of violent felonies against their abusive partners before 1996 to challenge their convictions if they can demonstrate that there is a reasonable probability that, had expert evidence on battering been introduced at the original proceeding, the outcome would have been different. During three days of evidentiary hearings, our attorneys established the seven years of severe emotional, physical, and sexual abuse suffered by Ms. Hammond at the hands of her common law husband. Ms. Hammond’s attempts to escape from her partner were met by further acts of violence against her and her children, culminating in the incident that resulted in Ms. Hammond’s conviction. After seeing her partner injure their infant son, Ms. Hammond struck out against him with a kitchen knife.

In the order reducing Ms. Hammond’s second degree murder conviction to one of voluntary manslaughter and releasing her from prison, Judge Michael Dellostritto pointed to the persuasiveness of the expert witness’s testimony on the “cycle of violence,” a pattern of abuse, apology, and further abuse inflicted by batterers on their victims. In particular, the court pointed to the expert’s testimony that Ms. Hammond had a unique understanding of her partner’s capacity for violence which, in the

moments before he was killed, led Ms. Hammond to honestly fear for her and her child's lives. Because of the weight of this evidence, which by law could not have been introduced at the original trial, the court concluded that Ms. Hammond's case fell within Section 1473.5 and ordered her released on time served.

The attorneys who represented Ms. Hammond are partner **Jeffrey Ostrow** and associate **Amanda Treleaven** of the Palo Alto office, as well as former Palo Alto associates **Gabriel Rubin** and **Christina Hioureas**.

#### **EAT YOUR VEGGIES! IRS GRANTS TAX EXEMPT STATUS TO HASTINGS FARMERS MARKET INC.**

This spring, Simpson Thacher obtained 501(c)(3) exempt status for *pro bono* client Hastings Farmers Market Inc. from the IRS. This exemption was hard won after 15 months and two rounds of follow-up submissions to the IRS and an initial conclusion from the IRS examiner that the application be denied. This matter was handled by partner **Andrew Smith** and associate **Anna Schwartz**, with invaluable assistance from Senior Counsel **David Shevlin** and associate **Jillian Diamant** from the Exempt Organizations group.

#### **CLIENT'S ORDER ENFORCED BY INCARCERATION**

New York associates **Hayley Urkevich** and **David Tejtel**, under the supervision of **Libby McGarry**, and with the assistance of summer associate **Jennifer McGroaty** and former associate **Amiad Kushner**, represent H.S. in a contested divorce matter referred by inMotion. Over the past two years, the STB team has achieved tremendous results in this ongoing matter, including the procurement of an order of protection and partial payment of child support and spousal maintenance, the invalidation a prenuptial agreement and the temporary incarceration of the defendant-husband for failure to comply with his support obligations.

H.S. is an immigrant from the Dominican Republic, and her husband is a United States citizen who for many years abused H.S. and their child. While the couple was together but before they were married, the husband received a large settlement from a personal injury suit resulting from a serious accident. H.S. spent years caring for and supporting her husband while he recovered. Soon thereafter, her husband began to engage in physical and emotional abuse, including beatings and threats to kill H.S. and their child, as well as her two children from a prior marriage. H.S. filed for divorce in 2007 but dropped the action after she was repeatedly attacked and threatened. In 2008, with the help of the STB team, she again filed for divorce and sought child and spousal support. The husband ignored the divorce papers and failed to disclose any financial information, claiming that he survives solely on disability benefits, and that, in any event, a prenuptial agreement barred our client from any recovery. However, based on information obtained through third-party subpoenas, the STB team discovered assets—including multiple homes and a mechanic's garage—that the husband had disguised through asset transfers involving a network of LLCs. The team used this information to obtain for H.S. a preliminary support order for \$2,000 per month. After the husband refused to pay, the team filed a motion for contempt, and at the subsequent hearing the court granted the motion and sentenced the husband to six months of incarceration unless he paid H.S. the \$13,500 that she was owed. The husband was incarcerated immediately following the hearing, and the ordered sum was paid the next day. The court also granted H.S.'s petition for an order of protection and denied her husband's motion to vacate the temporary support order. Two months later, when the husband again refused to comply with his monthly support obligations, STB filed a second motion for contempt. Following another hearing, the court granted the motion for contempt and also granted H.S.'s motion to invalidate the prenuptial agreement. Currently, the STB team is moving forward with preparation for trial, and is seeking to obtain a permanent support order using the evidence obtained regarding the husband's assets.

### COURT GRANTS RE-SENTENCING PETITION

New York associates **Brittania Stewart** and **Yahonnes Cleary**, supervised by partner **Jamie Gamble**, successfully represented Andre O'Neal in his application for re-sentencing under the Drug Law Reform Act of 2009 (DLRA). The Rockefeller Drug Laws often resulted in long prison terms for relatively minor drug offenses. Recognizing this harsh sentencing regime, the New York Legislature passed DLRA, which allows individuals who are currently serving indeterminate sentences for felony drug offenses to apply for re-sentencing to a lower determinate term. In 2001, Mr. O'Neal was convicted of criminal sale and possession of a controlled substance and sentenced as a predicate felon to 8 to 16 years. In February 2010, after our client had spent over ten years in prison, Simpson Thacher, on behalf of Mr. O'Neal, submitted an application for re-sentencing and a memorandum of law requesting a sentence of time served. In support of his application, Mr. O'Neal described his efforts at rehabilitation, including completion of educational and vocational courses, substance abuse treatment, and anger management training. In its opposition brief, the Bronx District Attorney argued that Mr. O'Neal was ineligible for re-sentencing based on his prior offenses and his disciplinary record while incarcerated. In a hearing in the Bronx County Criminal Court in April, the Honorable Judge Megan Tallmer, who had originally sentenced Mr. O'Neal in 2001, granted the application and re-sentenced our client to a period of eleven years, which allowed for his immediate release, and an eighteen-month period of post-release supervision. Mr. O'Neal was very pleased with this outcome since it ended his term of imprisonment and reduced his period of post-release supervision by several years.

### STB OBTAINS ORDER OF PROTECTION AGAINST ABUSIVE SPOUSE

In a matter referred by inMotion, New York associates **Marsha Yee**, **Shinzong Lee** and **Jeemin Chung**, supervised by partner **Libby McGarry**, represented a Korean-speaking, 51-year old married woman, "Ms. P," in obtaining a full order of protection against her abusive husband.

The husband had subjected Ms. P to years of sexual, psychological and economic abuse, which escalated in February 2010 when he began threatening to kill her. Afraid for her life, Ms. P fled to a domestic violence shelter and filed a *pro se* family offense petition to obtain a temporary order of protection against him. Within hours of service, the husband violated the temporary order of protection by sending threatening text messages to Ms. P. Ms. P filed a police report regarding those text messages, and the Queens District Attorney's Office ultimately initiated a criminal case against the husband. In late March 2010, the STB team began representing Ms. P, which entailed interviewing her to develop the facts for an amended petition, preparing her to testify, negotiating with opposing counsel, providing information to an Assistant District Attorney, and appearing initially before the Queens Family Court and then before the Queens Supreme Court's Integrated Domestic Violence Part. In late June 2010, the husband pled guilty to disorderly conduct, for which he received a one year conditional discharge, and agreed to a two-year full order of protection. To settle the civil matter, the STB team negotiated for and obtained a five-year full order of protection, the maximum duration available under the law.

### NEW YORK LITIGATION ATTORNEYS ASSIST THE NEW YORK CITY LAW DEPARTMENT

Over the past year, Simpson Thacher has provided *pro bono* assistance to the New York City Law Department in its defense of a lawsuit against the City brought by more than 90 plaintiffs. The suit alleges claims including deprivation of civil rights, false arrest, excessive use of force, First Amendment violations, malicious abuse of process, malicious prosecution, denial of constitutional rights to fair trials, and denial of property and due process rights. Twenty litigation associates took 80 plaintiff depositions, defended 65 defendant and non-party police officer depositions, and took depositions of 10 non-party witnesses. Simpson Thacher lawyers also assisted with the preparation of a pending motion to disqualify plaintiffs' counsel. All in all, the Firm has spent over 1600 hours providing assistance to the City while our lawyers

have gained valuable litigation experience. Though our participation in the matter has concluded, the case is ongoing at the Law Department. This matter was overseen by partner **Andy Frankel**. Participating attorneys included: **Robert Annis, Rawia Ashraf, Nicholas Cohen, Ian Dattner, Ted DeBonis, Seth Kruglak, Sabrina Lee, Linton Mann, Brian McCloskey, Sarah Phillips, Shruti Raju, Meryl Rosen, Devin Ryan, Brittanica Stewart, Jason Stone, and Marsha Yee.**

#### **SIMPSON THACHER ASSISTS THE ACLU IN THE DEFENSE OF GLBT RIGHTS TO ADOPT AND SERVE AS FOSTER PARENTS TO CHILDREN IN ARKANSAS**

Simpson Thacher attorneys and paralegals assisted the ACLU and Sullivan & Cromwell in a lawsuit challenging the constitutionality of Act 1, Arkansas's voter-initiated ban on unmarried cohabitants fostering or adopting children, a law that effectively prevented gays and lesbians from becoming foster or adoptive parents in the state. The lawsuit alleged that Act 1 harms children in state custody by reducing the pool of available foster and adoptive parents without any child welfare justification. The lawsuit also asserted claims on behalf of gays and lesbians for violations of their constitutional rights to privacy and equal protection.

Simpson Thacher lawyers and paralegals acted as independent reviewers of more than half a million emails from the Department of Human Services in Arkansas for relevance and confidential information. More than sixty associates and paralegals spent in excess of 2000 hours reviewing documents. Earlier this spring, thanks in large part to the Firm's efforts, the Court, recognized that Act 1 is unconstitutional in its ruling on a summary judgment motion.

#### **PALO ALTO LAWYERS PREVENT LOW-INCOME CLIENT'S EVICTION**

In March, 2010, East Palo Alto resident Ronald Hughes was a few days late in paying his rent because of a temporary interruption in his unemployment benefits. Despite Mr. Hughes' record of two plus years of on-time payments, the landlord immediately commenced eviction proceedings. Facing the prospect of homelessness, Mr. Hughes consulted with East Palo Alto Community Legal Services, which then referred the matter to Simpson Thacher's Palo Alto Office. When Firm attorneys uncovered procedural and substantive defects in the landlord's unlawful detainer filing and pointed them out to opposing counsel, the landlord voluntarily dismissed the action. Through negotiations, the team obtained over \$5000 in compensation for Mr. Hughes, including \$3500 in cash for relocation expenses and retroactive rent abatement, and also 3.5 months of free rent. The Simpson Thacher team consisting of Palo Alto associates **Chad Pehrson, Dan Foster** and **Michael Lizano** was supervised by Counsel **Simona Strauss**.

#### **2010 PUBLIC SERVICE FELLOWSHIP PROGRAM**

Now in its second year, the Simpson Thacher & Bartlett Public Service Fellowship Program continues to be a success with eight new fellowships awarded to current associates in 2010. These associates were selected to spend one year working on a public service project of their choice, with a stipend and benefits provided by the Firm, and the ability to return to the Firm at the Fellowship's conclusion.

The Public Service Fellowship Program was launched in 2009 as a way for Simpson Thacher lawyers to make a sustained commitment to public interest work. The fellowships cover a wide range of public interest issues all over the world, as far away as prosecuting former leaders of the Khmer Rouge in Cambodia and as close to home as expanding health care services to low-income communities of color in New York City. We are very proud of the continued contribution the Firm makes to the public interest community through the excellent work of our lawyers.

The work our 2010 Fellows will be doing includes:

- **Ning Liu** will act as internal legal counsel to the Little Fir Foundation, providing financial assistance to schools and children throughout rural China;
- **Shena Elrington** will work with New York Lawyers for the Public Interest on projects related to the rights of the uninsured, race discrimination in hospitals, and the expansion of health care services in low-income communities of color in New York City;
- **Erica Fung** will develop guidelines and models for the Kerry Kuok Foundation's projects to combat poverty and water contamination and promote economic self-sufficiency among rural Chinese villages;
- **Jennifer Gomez** will participate in litigation and legislative advocacy with the Institute for Policy Integrity at NYU Law School on issues concerning the environment, public health, and consumer protection;
- **Colleen Gilg** will prosecute senior leaders of the Khmer Rouge with the Extraordinary Chambers in the Courts of Cambodia;
- **Ann Marie Rosas** will work with the Legal Assistance Foundation of Metropolitan Chicago to represent veterans in connection with their claims for benefits;
- **Mark Maher** will act as associate general counsel at WNYC, New York Public Radio; and
- **Christine Chang** will work on policy issues concerning climate change and energy efficiency initiatives for the Natural Resources Defense Council.

### **STB THROWS INAUGURAL PRO BONO RECOGNITION PARTY!**

On January 27, 2010, Simpson Thacher held its first annual Pro Bono Recognition Awards and Reception in the New York Office. This reception celebrated the Firm's 2009 *pro bono* accomplishments and honored those who devoted 100 hours or more to *pro bono* service in 2009.

Receptions were also held in the Los Angeles, Palo Alto, Washington and London Offices. The Firm congratulates the 165 lawyers who were honored and looks forward to continuing this tradition. Fishbowl raffle prize winners of gift certificates to Paragon Sports were **Brandon Neal, Ana Navia, Jennifer Maimone-Medwick** and **Jodie Sopher Pimentel**.



*Pete Ruegger, Harlene Katzman, Bill Russell*



*Jennifer Franklin, David Sheolin, Victoria Bjorklund*



*Former associate  
Ingrid  
Seradarian,  
Susan Cordaro,  
Amy Claydon*



Alan Klein, Roy Reardon, Alvin Brown (behind Harlene Katzman), Steve Todrys, James Cross, Pete Ruegger



Public Service Fellow Jonathan Leiberman, Fernandez, Jose Grajales, Juan Naveria



Grenfel Calheiros, Gustavo Benchimol, Jaime Mercado



Bryan Tollin, Juan Arteaga, Alex Simkin

**AWARDS**

Simpson Thacher & Bartlett LLP was honored at the Pro Bono Panel Luncheon of the United States District Court, Central District of California. The luncheon took place on June 18, 2010 in Los Angeles and featured remarks by LA partner **Chet Kronenberg**. The Firm was honored for the work of Public Service Fellow **Sarah Luppen** at the Federal Pro Se Clinic, a walk-in clinic on the fifth floor of the federal courthouse in Los Angeles that assists civil litigants who do not have legal representation. The Clinic, run by LA-based nonprofit Public Counsel, provides procedural as well as substantive assistance to litigants. The LA Office welcomes Sarah back this summer.



Hema Sheno, Taamiti Bankole, Kate Renaud, Alicia Washington



Ana Navia, Maria Rocha Barros



Bryan Tollin, Rafael Vasquez



## **SPRING 2010 PRO BONO TRAININGS/CLE**

### **U-Visa Cases**

STB represents women applying for U-visa status through a partnership with Sanctuary for Families. A U-visa gives temporary legal status and work eligibility in the United States to individuals who have been the victim of certain violent crimes, including domestic violence, and who have cooperated with the government's prosecution of the crime. Sanctuary for Families provides training and mentoring.

### **Housing Court Project**

STB partners with Manhattan Legal Services ("MLS"), a branch of Legal Services NYC dedicated to helping low-income residents of New York County with their civil legal problems. MLS refers cases to STB involving the legal representation of indigent tenants facing eviction. These cases typically include holdover evictions on various theories such as nuisance and roommate overcharges; non-payment cases; and actions for repairs. MLS provides training, resources, and assistance to lawyers in these matters.

### **Seedco Small Business Clinic and Representation**

Seedco is a national community development organization which assists small businesses and promotes asset building in economically distressed communities. In partnership with Seedco, STB lawyers provide free transactional legal advice to micro-entrepreneurs in New York. Through the staffing of weekly clinics, STB lawyers identify fledgling small businesses in need of legal advice and representation ranging from contract and lease negotiations to non-profit incorporations to formulation of employment and personnel policies to general brainstorming about their business development. A Spanish-speaking clinic also operates monthly. This CLE workshop provided an overview of the types of business structures available to entrepreneurs, as well as a discussion of tax and intellectual property issues commonly faced by entrepreneurs.

### **Nonprofit Board Service for Lawyers**

Various issues can arise when law-related matters are considered by a nonprofit board with one or more attorney members, even if no board member attorney has agreed to provide legal services. Additional issues can arise when a nonprofit on whose board a lawyer sits asks for legal services from either that lawyer or the lawyer's law firm.

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