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FALL 2005

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With the arrival of fall, we can hope to avoid the heat and humidity of the last couple of months. We can also reflect on the many pro bono activities of our lawyers and paralegals. It's been a busy time as the several articles in this issue will attest. There is one case, among many, that I'd like to tell you about. It involved several of our colleagues, who performed superbly under great pressure.

Two years ago, Mr. Yirdaw Anteneh, a 51-year-old English teacher at an international school in Ethiopia, was diagnosed with end-stage liver disease. Following this diagnosis, Mr. Anteneh was able to come to the U.S. for medical treatment, on a limited medical visa, through the help and support of his former wife, Senedu Hailemariam, who incidentally had fled to the U.S. seeking political asylum five years earlier. Senedu was able to help Mr. Anteneh get on the waiting list for a liver transplant at a major Washington area hospital. He and Ms. Hailemariam were joined by their children, Mignote (14) and Yoftahe (12) just a few months after he arrived here in Washington in March 2003. With very limited resources, the family was supported by the good-hearted people of the area's Ethiopian community while Mr. Anteneh waited for a suitable transplant. During this tense time, tragedy struck anew last winter when Ms. Hailemariam, the children's mother, died suddenly. Following her death, the Wendt Center for Loss and Healing here in D.C. began to work with the family, especially the children, to help them deal with both the grief associated with their mother's untimely passing and also the worsening condition of their father. In June of this year, Laura Sachs, the grief counselor from the Wendt Center working with the family, asked us to help the Anteneh family during their time of need. **Ubi Akpan**, an associate in the Baltimore office (who recently left to clerk at the D.C. Court of Appeals) and **Adrianna Marks**, a summer associate from George Mason Law, quickly signed up to work with **John Muleta**, one of our new partners, to help the family. Their initial goal was to help Mr. Anteneh to organize and arrange his affairs so that the children would be taken care of regardless of his situation. As a result, John, Ubi, and Adrianna helped organize and prepare a series of documents including a will, a health directive, and a standby guardianship. They also researched into the immigration status of the children to give him peace of mind about the children's situation as he waited for the transplant. To complete these tasks, they were able to enlist the aid of associate **Jeanne Newlon** in drafting the medical directives, power of attorney, and standby guardianship.

A healthy Yirdaw Anteneh, at work prior to arriving in the U.S.

In addition, paralegal **Jana Gibson** helped by researching relevant immigration regulations and helped to start the process of renewing Mr. Anteneh's medical visa as well as starting the process of obtaining permanent legal residence for the children. **Jedie Randiki**, a legal administrative assistant in the D.C. office, was also instrumental in helping prepare all of these documents and in coordinating the activities among the various Venable offices that were involved. Throughout this period, legal administrative assistant **Jackie Bottash** and her sister, **Terri**, as well as Venable partner **Gregg Braker**, worked with a growing number of Ethiopian and American community volunteers, to look after Mignote and Yoftahe and keep up their spirits.

As these issues were being addressed, the family's tragic situation was compounded when Mr. Anteneh was suddenly notified on July 29 by his Dutch insurance carrier, that he did not have sufficient health insurance to cover the transplant and the required post-operative care. Based on the insurance carrier's interpretation of the policy, the hospital regretfully informed Mr. Anteneh that his insurance situation would affect his viability for a transplant (essentially pushing him down to a lower priority on the waiting list).

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Yordaw with his children Mignote and Yoftane a few months before surgery.

Introductory Letter... continued

At this bleak point, Venable was again contacted by Laura Sachs from the Wendt Center. The Venable response was immediate and effective. Within hours, Ubi Akpan and Adrianna Marks met with Ms. Sachs and the client to gather the facts and determine the exact status of his insurance policy. They were also able to identify all of the parties involved including the two different Dutch insurance underwriters and a U.S.-based insurance agent as well as various departments and agencies at the hospital involved in this complicated decision. They then worked tirelessly, under the leadership of John Muleta, to systematically address the issues raised by the insurance situation and resolve them in Mr. Anteneh's favor. Additionally, John Muleta began an intense two-week-long dialogue with both the general counsel of the hospital and the CEO of Mr. Anteneh's Dutch health insurance company in a successful effort to restore him back to the highest priority level on the transplant list. On August 11, the hospital confirmed, in writing, that Mr. Anteneh would be put back up on the priority list and that his insurance situation would not affect his medical viability and priority on the transplant list.

The result of this remarkable combination of ingenuity and hard work occurred at 11:00 a.m. on Monday, August 15 when Mr. Anteneh successfully received a donated liver. He is recovering well and is expected to return to full health in the coming year.

It is not an overstatement to say that, without the resourcefulness and dedication of the Venable team, two youngsters, far from home, would have been left without parents. We can all be proud of our colleagues.

Gerry Treanor
Pro Bono Coordinator

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Rewards of Pro Bono from a Lobbyist's Perspective

by Robert Harmala, *Of Counsel, Legislative Group*

As a member of the Legislative Group it is sometimes easy to let your legal skills get rusty. Too much time is spent walking the halls of Congress and working the political angles. This is a reason so many members of our group take on pro bono matters. It keeps up the legal skills and it gives you a chance to see some of these government programs in action.

I took on the case of Rita Green as a referral from the Legal Aid Society as forwarded in one of the many Gerry Treanor calls to action that we see everyday. Rita was described as a 32-year-old woman who been diagnosed with cancer in December of 2003 and had become disabled due to the removal of her stomach and the resulting inability to eat. She had weighed 180 pounds prior to surgery, she was now down in the low 90's.

She had been denied Social Security Disability benefits and was awaiting her appeal hearing before the Administrative Law Judge. Rita was a very nice woman who had a solid work history in a number of service jobs and seemed overwhelmed by the combination of medical and financial pressures she was facing. The depression that this caused in her was clear – she was a strong person faced with a situation entirely out of her control. It was less that she felt sorry for herself, although she certainly had that right, than it was as if the treatment and the financial insecurity had somehow convinced her that she was less of a person than she had been before. Thankfully she had a good family support network to keep her going, although she clearly felt bad about her dependency on them.

Over the course of several weeks, Legal Administrative Assistant **Emily Gnadt** and myself worked to develop the record for her appeal hearing, contacting reluctant doctors, gathering her medical history and preparing Rita for the difficult task of testifying at the hearing. I say this task was the most difficult because it is difficult to imagine being in her situation – a young woman facing cancer without the most basic of financial resources and then being dependant on a system of humanitarian relief that resembles more a department-of-motor-vehicles style bureaucracy than a social safety net. The lack of resources for people in this position was clear; every visit to the SSA was an occasion for someone in the waiting room to ask a question of the guy who looked like a lawyer, just moments before their own appeals hearings.

Our hearing date came, and after some reluctance by Rita to attend – she didn't feel ready – we went together to go before the Administrative Law Judge. As a lobbyist your job is to persuade and so you throw yourself in there and make your case. We had a difficult hearing, with Rita freezing up at times before the ALJ and facing some tough questions about the exact criteria under which she was disabled. We made our case through the documents describing her medical condition. We both had our doubts about the outcome and returned to the office to prepare for eventual appeal in the District Court.

On June 6, 2005 the decision came back fully favorable. Rita was granted Supplemental Security Income payments retroactive to the date of her cancer surgery. Her reaction to Emily when informed of this was "now I can start to live my life again."

Mitch Mirviss Continues the Fight for Baltimore's Foster Children

There have been several significant developments this year in connection with Venable partner **Mitch Mirviss**'s longstanding representation of the class of children living in Baltimore's foster care system (which comprises more than 7,000 children on any given day).

As co-counsel for the class of Baltimore's foster children in the federal case of *L.J. v. Massinga*, Mitch successfully petitioned for attorney's fees and expenses incurred in monitoring compliance with a 17-year old federal consent decree governing services and conditions in foster care. The class of children received a settlement of $367,000 from the State of Maryland, which will be donated to the Public Justice Center, Inc., a non-profit legal advocacy organization, to establish a Fellowship in child welfare to monitor consent decree compliance full-time.

Mitch drafted reform legislation and led the advocacy effort leading to enactment of a new statute, effective Oct. 1, 2005, requiring Maryland juvenile courts to monitor the efforts by state caseworkers to prevent unnecessary placements of children into foster care; promptly reunite them with their families when possible; secure permanent placements for them when reunification is not possible; ensure that their health and safety are protected; prepare adolescents living in foster care for independence; and to comply with various laws and regulations regarding the provision of services to the children. [See article at right for a summary of the legislation.]

Also in the *L.J.* case, Mitch and his co-counsel at another firm discovered in the spring of 2005 that the State was using an office building as an illegal, unlicensed overnight shelter for children who lacked placements. The offices lacked beds, showers, blankets, pillows, toiletries, etc. Apart from four floor mattresses, no sleeping facilities existed for the children, many of whom had to spend their nights in chairs (or sleeping on a hard linoleum tile floor) and their days with no school. Through counsel's advocacy, the facility has been shut down except for rare one-night emergencies, and placements found for the children.

Summary of Maryland Foster Care Oversight Legislation

The Problem: Maryland's child welfare system continues to fail to meet federal standards in numerous respects, including requirements for the length of time children spend in the foster care system and requirements regarding health and safety of children in State care. Juvenile courts have failed to hold agencies accountable for their failures to serve families and children, or to press for expeditious resolution of these cases. The statistics are shocking, and they cross the spectrum of child welfare issues:

- Prevention of removal of children from families: *Maryland (including Baltimore) has the worst rate in the country of providing services to families in cases of abuse and neglect.* In Baltimore, intensive services to prevent removal of children from their families now serve a small fraction of the families and children that were served five years ago (only 47 families and 164 children in the first half of 2004, compared to 129 families and 378 children in the first half of 1999), *drops of 64% and 57%*, respectively.
- Once placed in care, children stay far too long (poor permanency planning): The recent federal Child and Family Services Review (CFSR) of three Maryland jurisdictions found that "Permanency Goal" was a strength in only 23% of Baltimore City cases compared to 56% of Anne Arundel County cases. *All* of the Baltimore City Department of Social Services (BCDSS) adoption cases were non-compliant, compared to 40% of Anne Arundel County and 50% of Allegany County adoption cases. Efforts to find relatives as placement options were deficient in 38% of Baltimore City cases. Baltimore children in pre-adopt foster care have been in care for a median of 67 months and a mean of 70.4 months, compared to 33 months and 39.4 months, respectively, for the rest of the state.
- Quality of care problems remain acute: The CFSR found that the needs of children, parents and foster parents had been adequately assessed and met in only *52%* of BCDSS cases and only *57%* of Anne Arundel County cases. Last year, an audit by the Department of Legislative Services found that *48% of BCDSS children in care did not receive recommended therapy* for mental health issues. According to BCDSS's own data, caseworkers *fail to make mandatory monthly visits to see children in foster care in nearly a quarter of all cases (24%).*
- The placement crisis is getting worse: BCDSS lost a net of nearly 1,000 foster homes in just an 18 month period. The number of children placed in expensive and often inappropriate group and institutional care placements has risen by *more than 50%* during the last three years. Many of those group homes are substandard.
- Juvenile courts are overburdened and failing to meet their mandate: In Baltimore City, just five to six judges and masters conduct more than 25,000 Children in Need of Aid (CINA) hearings per year. As a result, juvenile courts are not able to devote individualized attention to cases and make federally required findings of "reasonable efforts" to prevent placement, reunite families, or implement a permanency plan consistent with the health and safety of a child in *99%* of all cases – the problems of the case notwithstanding.

Current Law and Federal Standards: Since 1980, and as amended in 1997, federal law (Title IV-E of the Social Security Act) has required juvenile courts in CINA and guardianship cases to determine whether local departments have made reasonable efforts to prevent children from entering care, to reunite them with their parents after they have been removed, to implement a permanency plan (e.g., adoption, independent living, or adoption and guardianship) when reunification is no longer the plan for the child, and to protect the child's well-being. See 42 U.S.C. § 672(a)(15). Juvenile courts must determine that such reasonable efforts have been made in order for the state to receive federal Title IV-E funding for that child's foster care placement. This is the principal federal requirement designed to ensure that agencies provide appropriate and timely services to address the needs of the children and their families. Congress enacted this requirement as a safeguard to

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Maryland Foster Care Legislation *continued from page 3*

ensure that children were not removed from homes unnecessarily, received appropriate services to enable them to return home quickly, and received appropriate quality of care to protect their welfare while they are in care. In its legislative history, Congress explained that it was confident that juvenile courts would not shirk their duties and turn this requirement into a pro forma, rubber-stamping exercise. Unfortunately, in a number of Maryland jurisdictions, especially Baltimore City, this critical requirement has indeed become the "pro forma exercise" that Congress had explicitly warned against when it added this requirement to Title IV-E. The state's Department of Human Resources estimates that reasonable efforts are not made in *20%* of all cases — which translates to more than 2,000 abused and neglected children per year for whom federal law is being violated, by the State's own conservative estimate. To address this problem, the federal Administration for Children and Families has called upon states to impose reasonable efforts standards in state law.

The Maryland judiciary staunchly opposed S.B. 696, citing the judicial philosophy of many juvenile courts that they should not interfere with the internal workings and operations of the agencies and therefore should not be responsible for monitoring social work.

The Solution: S.B. 696 establishes clear standards and accountability for juvenile court proceedings. First, it significantly expands the powers of juvenile courts in Maryland. Under current law, juvenile courts are considered courts of limited jurisdiction, without statutory power to order agencies to provide services. The new law will provide juvenile courts with full equity power over agencies, subject to constitutional limitations regarding separation of powers. In other words, the legislation empowers and directs the courts to act proactively, by granting them full power, consistent with the Maryland Constitution, to order that services be provided as needed and in the child's best interest. Second, the law will dramatically alter the balance with regard to "reasonable efforts" made by local departments of social services by determining whether the local DSS has complied with court orders, stipulated agreements, regulations, and other laws in providing services to children and their families. If a court were to conclude that reasonable efforts were made, even though violations occurred, it must justify that finding in a written decision. Courts could no longer look to services provided years in the past as an excuse for finding reasonable efforts since the prior court hearing. Nor could they find other excuses for whitewashing cases where required services were not provided. Finally, to ensure accountability and enforcement, negative findings must be reported to appropriate officials. It is, of course, impossible to tell if the judges will heed this direction from the General Assembly, but the lawyers in the trenches representing the children believe that the law will significantly improve accountability and thus view it as a major reform.

The Maryland Judicial Conference has asked Mitch Mirviss to train Maryland judges on the new statute. In October, Mitch will conduct several training sessions on the new legislation for all Maryland juvenile court judges and masters at the 8th Annual Child Abuse, Neglect and Delinquency Options Conference. He will also conduct similar training of Maryland attorneys representing abused and neglected children in juvenile court proceedings at a statewide conference sponsored by the Administrative Office of the Courts, Foster Children in the Courts Court Improvement Project, which is an administrative arm of the Maryland Court of Appeals.

Pro Bono Committee Members

Gerry Treanor – *Chair*, Lars Anderson, Jackie Bottash, Jana Gibson, Sarah Gudsnuk, Rick Joyce, Amy McMaster, Patricia McGowan, Tamara McNulty, Mitch Mirviss, Vasilios Peros, Michael Robinson, Otho Thompson, Dan Toomey, Brian Zemil

Venable Partners, Associates, and Summer Associates, from all offices, enjoy the annual reception.

Attorneys Committed to Pro Bono Service Recognized at Venable LLP Reception

Venable LLP hosted its third annual Pro Bono Recognition Reception on June 6, 2005 to recognize the Venable legal personnel who have devoted their time and energy to pro bono service in the community, with special recognition given to those who donated 50 or more hours over the past year.

In addition, the Benjamin R. Civiletti Pro Bono Lawyer of the Year awards were presented to those persons who demonstrated a lasting commitment to pro bono. This award was established in recognition of the spirit of public service that has been a hallmark of Mr. Civiletti's career.

"This year's recipients of the Civiletti Award distinguished themselves and our firm through their diligent and creative representation of disadvantaged clients," said partner Gerard Treanor, who chairs Venable's Pro Bono committee. "Their commitment to pro bono services in the community is absolutely invaluable."

This year's recipients included:

Jana Gibson, Paralegal, Litigation Division, Rockville, MD. Ms. Gibson provided sustained and successful support of firm attorneys working on pro bono cases for clients ranging from the Episcopal Diocese of Maryland to political asylum seekers.

Modupe Ladeji, Associate, Litigation Division, Washington, D.C. Ms. Ladeji volunteered more than 300 hours of pro bono service in the last year for several clients involving the Transafrica Forum, the defense of Title IX before the U.S. Supreme Court, and the establishment of the Frederick Douglass Memorial Gardens.

Vasilios Peros, Associate, Business Division, Baltimore, MD. Mr. Peros represented pro bono clients in several matters involving corporate, tax, and intellectual property law. He also organized Venable's first two Baltimore Pro Bono Fairs.

Brian Zemil, Partner, Litigation Division, Towson, MD. Mr. Zemil effectively represented a pro bono client in a prisoner abuse case which resulted in the award of compensatory and punitive damages.

Venable has been performing pro bono services in the community for more than a century. Those services include, but are not limited to, representing the disadvantaged in a wide range of poverty law issues, death penalty and civil rights cases.

Last year, Venable attorneys devoted more than 18,000 hours to pro bono services in the community, or the equivalent of $5.6 million, including out-of-pocket fees for its pro bono clients.

Ben Civiletti presents the award named in his honor to Jana Gibson, Bisi Ladeji, Vasilios Peros, and Brian Zemil.

Venable Team Represents Guantanamo Detainees

Venable has organized a team of six attorneys, including partners **Carol Elder Bruce**, **Michael Robinson**, **Paul Kemp**, **David Dickman** and associates **Randy Sergent** and **Varda Hussain**, to litigate habeas corpus petitions on behalf of Egyptian nationals currently detained by the United States government at Guantanamo Bay. These habeas corpus petitions exercise the right of detainees to challenge the legality of their detention pursuant to the Supreme Court's historic 2004 ruling in *Rasul v. Bush*. The petitions argue that the United States' prolonged incarceration of the Egyptian detainees at Guantanamo Bay without an adequate hearing to determine their status and rights violates the United States Constitution and international law.

The detainees represented by Venable face a heightened risk of "extraordinary rendition," a term used to describe the documented practice of the United States government of transferring detainees into the custody of foreign governments that engage in torturous interrogation methods. In this regard, Venable vigorously fought for and won an order that prevents the United States government from transferring the Egyptian nationals outside of Guantanamo Bay absent court permission. In litigating these petitions, Venable works with the Center for Constitutional Rights in New York City and with the Human Rights Center for the Assistance of Prisoners, an Egyptian human rights organization currently litigating similar issues in Egyptian courts.

The federal district court in the District of Columbia currently has stayed proceedings pending a final resolution of the merits of the habeas petitions. Consistent with and in aid of the litigation goals in these cases, Venable also is taking a leading role in bringing concerns about U.S. government policy toward and treatment of detainees to the attention of the United States Congress and in supporting calls for an independent commission to investigate these concerns.

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With Help from Venable, Tenant Receives More Favorable Settlement in Eviction Case

Our client was sued for eviction in the fall of 2003 for the nonpayment of rent, and although she had done a good job of defending herself since being sued, the Superior Court of the District of Columbia had eventually decided that she needed legal representation, and granted a continuance to allow her time to obtain counsel. After being asked to take on the case by Bread for the City, Venable responded in force. Supervised by Venable Partner **Wallace Christner,** associates **Amy McMaster**, **Ben Winter**, and **Erin Galper** led the charge, with strong support from summer associate **Mark Hayes** and paralegal **Mari Kaluza**.

As the facts unfolded, it soon became clear that our client's landlord had illegally increased her rent in November of 2003. When our client refused to include this increase in her November rent check, the landlord returned the check to her, and promptly sued her for eviction. Fortunately, our client fought back. She filed a tenant petition with the Rental Accommodations and Conversion Division, alleging numerous and substantial housing code violations, and secured a fairly substantial judgment against her landlord. Shortly thereafter, the landlord offered her $4,000 to settle the RACD judgment, if she would agree to move out.

After Venable entered the scene, the landlord's offer was rejected, and a far more aggressive settlement agreement was put on the table. The landlord responded by rejecting our offer, and filing a second complaint alleging our client's dogs were in violation of her lease agreement. Our client insisted she had never signed a lease, and counsel for the landlord refused to produce a copy of the alleged lease. Thus, with settlement negotiations at an apparent deadlock, Ben, Mark and Amy arrived in court prepared for trial. Ben was, in fact, downright giddy at the thought of cross-examining the landlord. At the behest of the Court, however, we agreed to meet with a mediator prior to putting on our case. Given the strength of our position, Venable was willing to cede little ground. Eventually, after five hours of grueling mediation, it was agreed that our client would receive all the money she had paid into the Court registry (approximately $11,000), would live for six months rent-free (a $3,600 savings), and would agree to vacate at the end of that time. Numerous other conditions and contingencies were also hammered out.

The hugs and high-fives that we exchanged after the judge approved the settlement agreement were the truest testimony of our client's happiness with Venable's representation.

Colleen Mallon Successfully Sues the United States in Slip and Fall Case for Pro Bono Client

Venable associate **Colleen Mallon** represented plaintiff Frank D. Chesley, Ph.D. in his negligence suit against the United States of America, for injuries he sustained primarily to his lower back from a slip and fall in a United States Post Office. At the time of the fall, Dr. Chesley was 69 years old. Dr. Chesley sued the United States under the Federal Tort Claims Act, and his primary theory of liability was failure to warn about the dangerous and wet condition of the floor. Ms. Mallon represented Dr. Chesley from the administrative phase of the case through and including the trial. At the close of discovery, the United States, represented by two Assistant United States Attorneys, moved for summary judgment claiming that it did not owe any duty to Dr. Chesley because the condition of the floor was open and obvious. Dr. Chesley opposed the United States's motion, which was ultimately denied. A three-day bench trial before the Honorable Catherine C. Blake ensued during which expert testimony was elicited. At the close of trial, the Court ruled in Dr. Chesley's favor, finding the Defendant liable and awarding Dr. Chesley $60,116.83 in damages. The judgment was entered on May 5, 2005. The United States did not appeal the Court's decision.