

PRO BONO MATTERS

"Today, over 80 percent of poor people nationwide have no access to the legal system. In the District, that number is over 90 percent. Depending on the particular legal need in question, it's as high as 98 percent."

*The Honorable David S. Tatel,
U.S. Court of Appeals for the District
of Columbia Circuit, April 30, 2013*



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PRO BONO 2009–2013

Zuckerman Spaeder LLP Combines Pro Bono, Charitable Giving, and Community Service to Advance Access to Justice for All

Poor people cannot afford lawyers, which too often means that they cannot afford justice. Without lawyers, the poor frequently lack access to courts and to fair treatment when they are in court. Zuckerman Spaeder LLP is committed to doing what it can to help the poor get justice through the courts. While such work typically is referred to as pro bono, it is worth remembering that the full phrase is pro bono publico—for the public good. It serves the public good to make sure that all parts of society have an opportunity for justice in our courts.

Zuckerman Spaeder acted to stem the inequality in access to justice in America before the most recent recession and redoubled its efforts in response to it. We substantially increased our investment in our pro bono legal services, hands-on community service, and financial contributions to legal service providers and other nonprofit organizations that serve people who are poor.

Since the steep economic downturn in 2008, all of our offices have expanded the amount and breadth of pro bono work being handled and the number of attorneys committed to such work. Since January 1, 2009, most of our partners have been engaged in the delivery of pro bono legal services. Each year, pro bono participation among our associates is near universal. Our partners, counsel, and associates in the District of Columbia invested more than 4 percent of their aggregate annual billable hours in pro bono legal representations. This level of investment exceeds the average across all reporting firms nationwide that have committed to the Pro Bono Institute Law Firm Pro Bono Challenge. As the economy improves, we expect to continue our pro bono work at this level or higher, to improve access to justice and fairness in the administration of justice for all in the United States.

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continued from page 1 Given the millions of Americans who are living in or close to poverty and therefore unable to afford legal representation, and given the devastating lack of capacity of legal service providers to represent most of them, we focus our pro bono legal services on direct legal representation of persons who are poor and organizations that are dedicated to serving them. Virtually all of our pro bono time is invested in this way.

In addition to our pro bono work, Zuckerman Spaeder contributes financially to Legal Aid and other nonprofit legal service providers in all cities in which we have offices. Each year our financial contributions in the District of Columbia exceed the highest levels recognized by the D.C. Access to Justice Commission through its Raising the Bar in D.C. Campaign. Moreover, the total amount of our charitable giving in Washington, DC, and firm-wide has increased each year.

Zuckerman Spaeder goes further by targeting certain legal service providers to receive both funding and pro bono legal services. As part of this effort, we partnered with the Legal Aid Society of the District of Columbia to create and administer what is now known as the Barbara B. McDowell Appellate Advocacy Project (Appellate Project). Zuckerman Spaeder supports the Appellate Project with donations of both dollars and in-kind legal services. In its first decade, the Appellate Project has handled hundreds of appeals arising from both Legal Aid cases and cases referred to the Appellate Project from other legal service providers. To protect and advance opportunity for justice for all, the Appellate Project has also filed amicus briefs in important cases in federal and state courts. The National Legal Aid and Defender Association is committed to replicating this civil appellate project in other jurisdictions within the United States.

We have recently embarked on another appellate advocacy project, this time in New York City and involving criminal matters. In February 2013, we began our partnership with the Office of the Appellate Defender to provide indigent individuals in New York City with appellate counsel in cases in which they have been convicted of a felony in state court. We provide financial support for the Office of the Appellate Defender and handle pro bono criminal appeals. This partnership is already bearing fruit: we have discovered evidence that shows our first client to be innocent of the charge for which he was convicted. We are preparing to file motion papers with the trial court to require that his conviction be vacated.

Both the civil and criminal appellate advocacy projects express our intention to maximize our pro bono legal service to make a positive difference in the lives of many people. For this reason as well, we prosecute class actions on behalf of aggrieved people of low income, defend unpopular causes and clients, and give legal ethics counsel to legal aid and defender service providers. We financially support not only legal service providers but also organizations that strengthen them, such as Gideon's Promise, which trains public defenders throughout the South, and the University of the District of Columbia David A. Clarke School of Law Summer Public Interest Fellowships, which enable law students to work over the summer for legal service providers in the Washington, DC, area.

Our pro bono practice responds to and is strengthened by the engagement of our lawyers in leadership positions in the community. As members of governing boards of nonprofit legal service providers and community service organizations, and as volunteers in public school partnerships and community service projects, our lawyers contribute to the success of these public interest organizations. By doing so, our lawyers also bear witness to chronic legal issues that confront people and gain perspectives on how to deal, systemically and otherwise, with their legal problems. From time to time, we also provide pro bono legal services to these organizations and individuals they serve.

Because of the importance of this work as a means for advancing equal justice under law, we highlight in this edition of *Pro Bono Matters* some of the pro bono legal work, charitable giving, and community service undertaken by our firm between January 1, 2009, and December 31, 2013.

Recognition of Zuckerman Spaeder

Zuckerman Spaeder Named D.C. Bar Pro Bono Law Firm of the Year

On June 24, 2010, the District of Columbia Bar selected Zuckerman Spaeder as its Pro Bono Law Firm of the Year in the category for large law firms. D.C. Bar Chief Executive Officer Katherine A. Mazzaferri said at the award ceremony, “At a time when the District’s low-income residents and nonprofit organizations are struggling with the economy, the law firm of Zuckerman Spaeder truly stepped up its pro bono efforts [with] an increase of nearly 60 percent over the prior year.”

“The depth and breadth of representation provided by this firm’s 51 lawyers to a wide range of clients was truly spectacular, touching on issues ranging from securing subsidies for child care providers in Anacostia to attaining political asylum for a Rwandan genocide survivor,” declared Ms. Mazzaferri. She added “Of particular note was the firm’s support for the Legal Aid Society’s Appellate Advocacy Project which litigates cases of importance to persons living in poverty before the District of Columbia Court of Appeals.”

* * *

American Bar Association Honors Zuckerman Spaeder Counsel David A. Reiser with Pro Bono Publico Award

Zuckerman Spaeder counsel David A. Reiser was presented with a 2010 American Bar Association (ABA) Pro Bono Publico Award for his dedicated advancement of “the promise for equal justice, and equal access to justice, for all in our society.” At the organization’s annual meeting in San Francisco, ABA president Carolyn B. Lamm said that the pro bono legal service provided by Mr. Reiser and four other awardees “to the most vulnerable segments of our society represents

the best of our profession [and] inspire[s] all of us to apply our skills as lawyers to serve our communities. Their efforts have replaced despair with hope in the lives of the people they have served.”

Mr. Reiser began volunteering for the Legal Aid Society of the District of Columbia in 2004, during the planning of what came to be known as the Barbara B. McDowell Appellate Advocacy Project. Since then, he has devoted thousands of hours to assisting with more than 50 appeals, mentoring junior lawyers, developing case strategies, and facilitating pro bono appellate assistance from other attorneys at Zuckerman Spaeder and other firms. Upon Mr. Reiser’s receipt of the ABA Pro Bono Publico Award, Jonathan M. Smith, the executive director of the Legal Aid Society of the District of Columbia, told the *Washington Lawyer* that “thousands of District residents and the courts have benefited from his efforts.”

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Zuckerman Spaeder Partners John J. Connolly and William J. Murphy Are Honored in Washington, DC, and Maryland for their Guantanamo Detainee Advocacy

“In recognition of their extraordinary pro bono service, far beyond the call of duty,” the Judicial Conference of the U.S. Court of Appeals for the District of Columbia Circuit’s Standing Committee on Pro Bono Legal Services awarded Zuckerman Spaeder partners William J. Murphy and John J. Connolly the 2011 Daniel M. Gribbon Pro Bono Advocacy Award.

The award, given in December 2011, recognized the attorneys’ nearly five-year advocacy on behalf of a Yemeni national who was released after being held for more than eight years, from about November

2001 through December 2009, in Afghanistan and Guantanamo Bay, Cuba. The Honorable Royce C. Lamberth, then chief judge of the U.S. District Court for the District of Columbia, presented the Gribbon Award to Mr. Murphy and Mr. Connolly before a reception of some of the more than 500 other attorneys who have represented detainees seeking release from Guantanamo.

The Yemeni national, an orthopedic surgeon, was operating a clinic in Afghanistan at the time of the September 11 attacks. Soon after, he sought to flee to Pakistan, where he had received his medical training, but was injured in an air attack and then captured. The Afghans who captured the doctor turned him over to the U.S. military and he eventually was sent to the naval base at Guantanamo Bay.

In 2004, in its decision in the case of *Rasul v. Bush*, the Supreme Court of the United States first ruled that the prisoners held at Guantanamo had a statutory right to file petitions for habeas corpus in federal court, through which they could compel the U.S. government to justify their detention without trial. With that decision, Mr. Connolly, Mr. Murphy, and associate Daniel P. Moylan began representing the doctor in March 2005.

The habeas actions were delayed from 2005 through June 2008 by federal legislation designed to limit the scope of judicial review over the military decisions to hold particular prisoners. This legislation was eventually overturned by the Supreme Court in *Boumediene v. Bush*.

Over more than five years, Mr. Murphy, Mr. Connolly, and Mr. Moylan spent several thousand hours of pro bono time advocating for the doctor's release. That advocacy included representation in the habeas proceedings in the U.S. District Court for the District of Columbia, where counsel obtained favorable rulings on the scope of discovery that the government would be required to provide concerning the grounds for its decision to detain the doctor.

The litigation team's advocacy also included extensive efforts working with officials in President Obama's administration in reviewing the grounds for the doctor's detention, developing evidence about the doctor from witnesses in Pakistan and elsewhere, making appeals to Congress, helping generate publicity on behalf of the doctor's plight, and meeting with representatives of the Yemeni embassy to the United States.

These efforts came to a successful conclusion in December 2009 when the doctor, whom the Obama administration finally determined to be eligible for transfer out of Guantanamo, was placed on a plane to Yemen.

For his advocacy on behalf of the doctor, Mr. Connolly was also awarded the 2011 Legal Excellence Award for the Advancement of Unpopular Causes by the Maryland Bar Foundation.

Zuckerman Spaeder Associate Jo Ann Palchak Earns Three Florida Court and Bar Association Pro Bono Service Awards

For demonstrating a remarkable commitment to serving the community in which she lives and works, Zuckerman Spaeder associate Jo Ann Palchak was recognized in 2013 by three separate Florida legal organizations for her pro bono work. The Florida Association for Women Lawyers honored Ms. Palchak among its 2013 "Leaders in the Law" at the Florida State Bar Association meeting in June 2013. The annual award, which is determined by individual chapters of the Florida Association for Women Lawyers, honors female lawyers who have "earned the respect of others professionally, been involved in activities for the betterment of the local community, exemplified the qualities of a positive role model and advanced the cause of women in the community." Earlier in the year, the Thirteenth Judicial District of Florida honored Ms. Palchak with an award for "Outstanding Pro Bono Service by a Lawyer" for her work on behalf of children in foster care and indigent adults in criminal cases, and other pro bono work in the community. In addition, specifically for her representation of indigent individuals charged or convicted of a crime, Ms. Palchak was named the recipient of the Marcelino "Bubba" Huerta III Award by the Hillsborough County Bar Association, Criminal Law Section. This award is given annually to a member of the criminal defense bar for "tireless commitment to pro bono service and equal justice."

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Bay Area Legal Services Recognizes Zuckerman Spaeder with Justice Advocacy Award

Bay Area Legal Services, the largest legal aid organization in the Tampa Bay area, provides free civil legal services to qualified low-income individuals and nonprofits in Hillsborough, Polk, Pasco, Pinellas, and Manatee Counties in Florida. On October 24, 2013, during National Pro Bono Week, Bay Area Legal Services held its annual gathering, on this occasion to honor Zuckerman Spaeder with its Justice Advocacy Award, which recognizes support, through both financial donations and volunteer service, by a law firm and its members to Bay Area Legal Services, its clients, and other persons of limited means.

Civil Law Pro Bono Matters

CIVIL APPELLATE ADVOCACY PROJECT

Zuckerman Spaeder Nears Decade of Service to Washington, DC, Poor through Legal Aid Society Appellate Advocacy Project Partnership

Since 2004, Zuckerman Spaeder has worked in partnership with the appellate project of the Legal Aid Society of the District of Columbia to advocate on behalf of those in greatest need. Focusing on public benefits, housing, family, and consumer law, the Legal Aid Society Appellate Advocacy Project (Appellate Project) provides high-quality representation to people who cannot afford a lawyer in civil appeals before the District of Columbia Court of Appeals and files amicus briefs in cases of importance to this mission in the Court of Appeals and other courts, including the U.S. Court of Appeals for the District of Columbia Circuit and the Supreme Court of the United States. The Appellate Project was conceived by Legal Aid Society of the District of Columbia executive director Jonathan Smith and Zuckerman Spaeder counsel David A. Reiser, implemented with the support of Zuckerman Spaeder, and renamed in memory of its first director, Barbara B. McDowell. As Mr. Reiser explains, “The idea behind the Appellate Project was that a single victory on an issue before the District of Columbia’s highest court could produce gains for poor people in many future cases, including cases in which they were unrepresented.” Over the course of the past nine years, Zuckerman Spaeder has played a major role in the Appellate Project by regularly reviewing prospective cases, editing briefs, and preparing lawyers for oral argument.

Briefly described below is some of the more recent work of the Appellate Project in the areas of family, consumer, public benefits, and housing law. To learn more about the Appellate Project, visit www.legalaiddc.org/issues/appellate.

Family Law

The Appellate Project often plays a unique role in identifying systemic problems in the administration of justice and in recommending solutions. In one important recent case, the Appellate Project filed and argued an amicus brief on behalf of birth parents and an aunt who challenged an adoption by an unrelated foster parent. In this case, like many others, the child had lived with the foster parent for so long that, by the time of the adoption trial, the court’s principal reason for granting the foster parent’s petition was the fear of disrupting the bond that the child had formed with the foster/adoptive parent.

Under District of Columbia and federal law, when a child welfare agency takes custody of a child, it is supposed to be guided by what is known as the “permanency goal,” in which the agency should use its resources to seek permanent placement for the child. One of the most crucial decisions in a neglect case is whether to shift the permanency goal from reunification with the birth family to finding a new permanent placement—typically a permanent guardianship or adoption. If the court errs in this decision, appellate review may not come until years later—at which point undoing the placement may do the child more harm than good.

In the case taken on by Zuckerman Spaeder, Legal Aid’s amicus brief alerted the court to the unfortunate consequences, in this and many other cases, of delayed appellate review that effectively nullifies the court’s power to remedy errors. In its opinion of August 22, 2013, the court “recognize[d] that there are many strong policy justifications for allowing an appeal” from the order changing the permanency goal from reunification to adoption, which justifications were “raised as part of a compelling case made by the Legal Aid Society in its amicus brief to this court, [and] we agree that in an appropriate case this court should look anew at our policy limiting appeals in neglect cases to only those orders that result in permanent placements of neglected children.”



In another decision issued on September 27, 2013, the District of Columbia Court of Appeals ruled, as requested by the Legal Aid Society, that a parent could not enforce child support payments provided under a custody agreement when the agreement contemplated a physical separation of the parents, and when in fact the other parent was providing direct child support for the child and still living with the child and the parent seeking child support.

* * *

Consumer Law

The Appellate Project filed an amicus brief in a case decided in 2013 by the District of Columbia Court of Appeals, involving the standard for enforcing contracts by persons who are later found to be incompetent. The Restatement of Contracts rule in the majority of jurisdictions today is that such contracts are voidable, but not void, which means that the representative of an incompetent person can retain the benefits of a desirable contract but can repudiate contracts with parties that have taken advantage of the incapacitated person. The District of Columbia Court of Appeals had been following a century-old decision based on a since-repudiated Supreme Court case. The Appellate Project's brief explained the advantages of the modern Restatement of Contracts majority rule, and the importance of updating District of Columbia law as the population ages and issues about contractual capacity arise with greater frequency. In overturning its 1892 precedent in a decision issued in May 2013, the District of Columbia Court of Appeals held that contracts are enforceable or voidable at the election of the representative of the incapacitated party to the contract.

Thanks to a brief filed by the Appellate Project in a different consumer law case, the highest court of the District of Columbia has recognized that the District of Columbia Council could choose to be less strict than the federal courts about who may seek judicial relief in the District of Columbia courts. In its brief, the Appellate Project explained that the District of Columbia courts are constituted under the power of Congress under Article I of the United States Constitution to govern the District of Columbia rather than Article III, under which the federal courts are constituted, and thus are not bound by the case or controversy requirement of Article III. The issue before the en banc District of Columbia Court of Appeals was whether certain consumer class action plaintiffs had standing to sue under the provisions of the D.C. Consumer Protection Procedures Act (CPPA), which was broadly written. The court ruled that it would

presumptively follow Article III standing requirements, and that the D.C. Council had not clearly required a departure from those standards in the CPPA. That decision leaves the door open to the Council to depart from the increasingly rigid Article III standing doctrine of the Supreme Court of the United States, which may be of importance in future consumer, environmental, and public benefits cases.

The Appellate Project also participates in precedent-setting cases in which a Legal Aid client is not a party. For example, in *Keeton v. Wells Fargo*, the District of Columbia Court of Appeals reversed and remanded an order dismissing a consumer's fraud claim in favor of arbitration and, in doing so, accepted the points made in the Legal Aid Society amicus brief. The court granted Legal Aid argument time, and Zuckerman Spaeder partner Cy Smith argued the case on behalf of Legal Aid.

The District's highest court also requests briefing by the Appellate Project to help it decide cases. For example, in *District Towing v. Johnson*, the court asked the Legal Aid Society, as amicus, to address a towing company's liability for selling a car towed after an accident for salvage after refusing to let the insurance company inspect it. The Appellate Project submitted that holding a business liable for improperly disposing of a person's belongings is appropriate under law and the court affirmed the judgment of liability made by the trial court.

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Public Benefits

Over the past few years, the Appellate Project has represented many clients in cases involving unemployment benefits. In a case briefed and argued in 2013, the Appellate Project represented a woman who was denied unemployment benefits after she was fired from her job as a home health care worker for allegedly violating employer rules by allowing her abusive boyfriend to follow her into her workplace. Like many states, the District of Columbia allows an employee who lost his or her job due to domestic violence to qualify for public benefits, even if the conduct would ordinarily be considered disqualifying. The brief demonstrated that this standard was not properly applied in this case.

The Appellate Project also recently won a series of decisions in cases involving other employment issues, including whether a steep reduction in hours and pay allowed an employee to resign and claim benefits; whether an employee who was told she could apply for a position with reduced hours and pay had quit voluntarily; whether certain grounds for termination are considered misconduct or gross misconduct; and whether an employee who filed her administrative appeal immediately following a notice of an adverse decision was too late to obtain review of an erroneous decision.

Housing Law

The Appellate Project also represents clients in important housing appeals. In a case decided on July 25, 2013, the District of Columbia Court of Appeals reversed a lower court award of \$45,000 in attorneys' fees to be paid by a tenant to his landlord for contesting a suit for unpaid rent. The court held unenforceable any provision in a lease authorizing attorneys' fees to be awarded to the landlord in rent disputes because such provisions are inconsistent with District of Columbia statutory law. The court further held that the tenant was due a trial to determine whether the landlord had breached the lease as counterclaimed by the tenant. Thereafter, to obtain the tenant's agreement to dismiss his counterclaim, the landlord released its claim against the tenant for unpaid rent and fees, including legal fees, and agreed not to report the claim to credit agencies.

In another housing case that was settled before argument, the Appellate Project represented Latino tenants in an interlocutory appeal of an order requiring them to provide Social Security numbers or attest to the lack of a number in discovery, even though the numbers had nothing to do with any issue in the case. The Appellate Project's attorneys argued that such a practice could deter those without legal status from complaining (as these tenants had) about illegal housing conditions.

Another important case concerned the standard for awarding attorney fees to prevailing parties in cases under the District of Columbia Rental Housing Act. Tenants in Washington, DC, can oppose a landlord's request to increase the rent to defray the costs of "substantial rehabilitation" of the building. Before the District of Columbia Rental Housing Commission, Legal Aid's clients successfully defeated a rent increase that would have meant eviction, and the District of Columbia Court of Appeals affirmed that ruling but reversed the commission's decision regarding the rate at which the tenant's legal fees would be paid. The court's decision might reduce the availability of fees in a wide range of areas in which lawyers provide representation to low-income people in the hopes of winning and collecting a fee on behalf of the prevailing party. That case is now headed back to the District of Columbia Court of Appeals after the Rental Housing Commission slashed the requested rates and hours on remand.

The Appellate Project filed a brief at the request of the District of Columbia Court of Appeals in an important case involving the tenant's right to purchase. The case involved the sale of several apartment buildings in which the owners and former owners argued that they should not be required to give tenants the right to bid on their building—contrary to a long line of District of Columbia court

decisions. If accepted, the owners' argument would have deprived tenants of protection in transfers of ownership in most instances. The Appellate Project's brief presented a detailed history of how the statutory text of the Tenant Opportunity to Purchase Act evolved in order to demonstrate that the owners' novel interpretation was implausible. The court rejected the owners' argument.

Sometimes the Appellate Project's goal is to ensure that the usual rules apply to poor people. As examples, in 2009, the Appellate Project convinced the District of Columbia Court of Appeals to reverse a trial court ruling denying a Section 8 tenant attorney fees for recovering thousands of dollars in excess rent on behalf of the Housing Authority, contrary to well-established principles of unjust enrichment, and, in a different case, to recognize a retaliation defense

Sometimes the Appellate Project's goal is to ensure that the usual rules apply to poor people.

to eviction. Then, in 2013, the District of Columbia Court of Appeals ruled in favor of the Appellate Project's tenant-client, who had sought compensation from his landlord for housing code violations. The tenant sought relief in both the District of Columbia Superior Court and before the District of Columbia Rental Housing Commission. The tenant won in both venues, but when he tried to enforce the commission's order, the landlord argued that the order was barred by a prior decision. Applying settled law, the District of Columbia Court of Appeals reversed the decision dismissing the enforcement action. The court ruled that the landlord's defense could not be raised to prevent enforcement, and had to be litigated before the Rental Housing Commission and on appeal from its decision.

CHILDREN

Zuckerman Spaeder Advocacy Helps to Free a Pakistani Child Held by United States without Access to Lawyers

In 2010, Zuckerman Spaeder partners William J. Murphy and John J. Connolly, along with co-counsel, filed a petition for habeas corpus on behalf of a Pakistani child. The client has been incarcerated by the U.S. military at Bagram Air Force Base in Afghanistan since 2008, when he was 14 years old. After proceedings in both trial and appellate courts, including the September 17, 2013, argument by Mr. Connolly before the U.S. Court of Appeals for the District of Columbia Circuit, the United States determined in November 2013 to release our client and repatriate him to Pakistan. The court of appeals then remanded the matter to the district court for a determination of mootness.

The child had been detained all those years without access to counsel or reasonably available evidence that would prove his innocence. On appeal, Zuckerman Spaeder sought a decision that the district court has jurisdiction to hear the child's petition for habeas corpus by focusing special attention on why the court should have jurisdiction to adjudicate habeas petitions by or on behalf of children detained overseas during war. Because habeas courts at common law were particularly careful to ensure that children were not wrongfully detained, courts at the time of the country's founding would have decided a petition for habeas corpus filed on behalf of an alleged "child soldier" detained abroad by U.S. troops. The Suspension Clause of the Constitution thus would establish jurisdiction over the same petition today, notwithstanding intervening legislation intended to extinguish the habeas rights of "enemy combatants" held abroad. In addition, because release and rehabilitation of children detained during wartime has become a worldwide imperative in recent decades, jurisdiction is warranted under the new test established by the Supreme Court in *Boumediene v. Bush*, which turns in part on the "status" of the detainee, the adequacy of the process by which the status is determined, and the practical obstacles to adjudication of a petition filed by an overseas detainee.

Zuckerman Spaeder Works to Improve Access to Quality Early Child Care for Low-Income Washington, DC, Families

Child care tuition reimbursement subsidies in the nation's capital are very low. Consequently, numerous Washington, DC, licensed child care providers serving low-income families have closed their doors and tens of thousands of children living in or near poverty are wait-listed because of an inadequate supply of child care providers. In 2009, Zuckerman Spaeder recognized that these low subsidies are at the heart of a child care crisis in Washington, DC, and began to take action to cause the District to raise them. Zuckerman Spaeder partner Eleanor H. Smith and associate Steven N. Herman brought together the Washington Association of Child Care Centers (a group of child development centers dependent on subsidies to serve children of low-income families), DC Appleseed, and Empower DC to advocate for higher subsidy rates. This campaign was instrumental in thwarting cuts proposed by the District to its child care subsidy program and preserving millions of dollars for child care for low-income working families, and it helped pave the way for the District in 2013 to increase child care subsidy rates for infants and toddlers.

While working to increase child care subsidy rates, Zuckerman Spaeder helped to secure national accreditation of one of the largest providers of early child care devoted to children of low-income families in Washington, DC. St. Philip's Child Development Center is located in the city's most economically challenged community, Anacostia, where it provides all-day, every weekday, year-round child care to some 70 boys and girls aged six months through five years. Virtually all of the children enrolled at St. Philip's receive tuition subsidies from the D.C. government due to the low incomes of their parents. St. Philip's needed national accreditation to secure the highest tuition reimbursement subsidy rates offered by the District under its three-tiered subsidy rate system. With assistance from Ms. Smith, St. Philip's applied in 2011 for national accreditation from the National Association for the Education of Young Children (NAEYC), was awarded a \$25,000 government grant to pursue national accreditation, and for that obtained from the District an interim increase in the subsidy rates that it receives. In 2013, St. Philip's received NAEYC accreditation and now receives the District's highest subsidy rates.

Zuckerman Spaeder Handles Child Custody Cases for Parents and Grandparents

Zuckerman Spaeder has been referred child custody cases by the Children's Law Center, the Legal Aid Society of the District of Columbia, and the District of Columbia Bar Pro Bono Program Advocacy & Justice Clinic. All of these cases originate in the Family Court of the Superior Court of the District of Columbia, but may also involve judicial proceedings outside of Washington, DC, or hearings before administrative agencies.

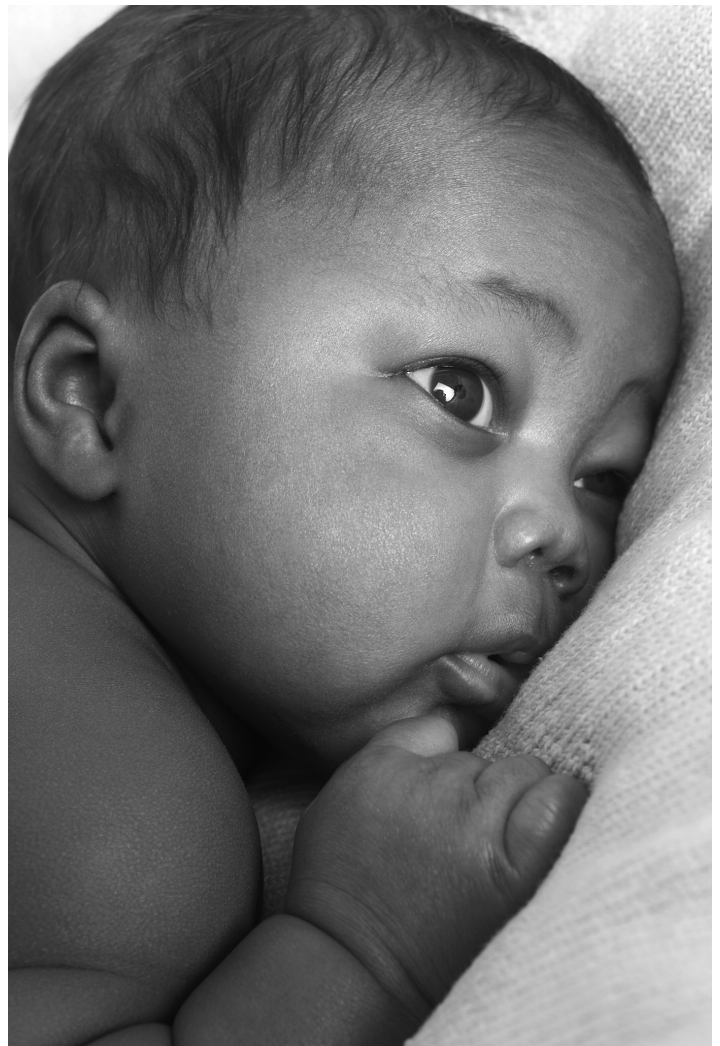
The U.S. Census Bureau estimates that more than 4,746 grandparents are responsible for their grandchildren's care in Washington, DC, with half of these grandparents responsible for children under the age of five. According to AARP, Washington, DC, has twice the percentage of grandparent care providers as the nation as a whole. Zuckerman Spaeder therefore makes a point of representing grandparents as well as parents in resolving custody disputes.

Six custody cases handled by Zuckerman Spaeder are described below.

- ***Mother #1: Wins Permanent Custody at Trial.*** In 2013, Zuckerman Spaeder partner Paula M. Junghans and associate Adam Abelson tried a child custody case for a mother referred to the firm by the D.C. Bar Pro Bono Program Advocacy & Justice Clinic who was a victim of domestic violence during her marriage. The trial took five days between March and October 2013 and involved 13 witnesses, most of whom Mr. Abelson examined. In a 56-page decision, the court granted the mother sole legal custody of her children, primary physical custody of them, child support (both prospective and retroactive), and a portion of the marital assets.
- ***Father: Obtains Permanent Custody of His Son.*** In 2013, Zuckerman Spaeder associate Adam L. Fotiades, under the supervision of chairman and partner Graeme W. Bush, represented a man who was referred to the firm by the Legal Aid Society of the District of Columbia. The court had previously given this man primary physical custody of his biological son on a temporary basis, and the father sought to have this custody arrangement made permanent. In May 2013, Zuckerman Spaeder defeated a motion to award the mother primary physical custody. The motion alleged that the firm's client was not properly treating their son's eczema. After Zuckerman Spaeder submitted an opposition brief that cited medical records, photographs, and other evidence demonstrating that the client

was providing the appropriate medical care, the parties agreed to allow the man to maintain primary physical custody of his son. On the day of trial, the parties reported to the court the terms of their agreement to have the father have permanent primary physical custody of the child. Days later the mother moved to reinstate the trial, which was opposed by the father and which the court swiftly denied, declaring that the oral agreement recited to the court is an enforceable contract.

- ***Mother #2: Wins Battle to Retain Full Custody of Daughters.*** Zuckerman Spaeder partner Andrew N. Goldfarb, associate Jennifer A. Ross, and former associate Kirtan Mehta successfully defended a client, referred to the firm by the D.C. Bar Pro Bono Program Advocacy & Justice Clinic, in her effort to maintain full physical and legal custody over her elementary-school-age biological daughters. The biological father, who had previously chosen not to be a part of his daughters' lives, filed a lawsuit seeking joint custody and a defined visitation schedule. Zuckerman Spaeder marshaled the facts; secured a government-administered home study, which was favorable to the mother; and otherwise prepared to show as a matter of law that the mother deserved to retain full physical and legal custody of the children. After mediation and negotiations failed, in 2012 the Family Court granted a motion to dismiss the complaint of the biological father.



- *Mother #3: Retains Custody and Secures Supervised Paternal Visits with Her Children.* Zuckerman Spaeder associate Adam L. Fotiades, under the supervision of partner Dwight P. Bostwick, represented a woman who was referred to the firm by the D.C. Bar Pro Bono Program Advocacy & Justice Clinic, who had primary physical custody of her two children. Feeling that the father's home was unsafe, the client wanted the children's visits with their father to take place at her home. After an attempt at mediation and extensive settlement discussions, Zuckerman Spaeder was able to obtain in 2012 a permanent custody order in which the father's visits with the children could take place at the father's house, but under the supervision of the mother. As part of its work on behalf of the mother, Zuckerman Spaeder persuaded the court to deny several motions filed by the father, including motions to modify custody and for contempt.

The court granted the mother sole legal custody of her children, primary physical custody of them, child support (both prospective and retroactive), and a portion of the marital assets.

- *Grandmother # 1: Obtains Custody of Grandson Who Calls Her "Mom."* A Washington, DC, grandmother had all but given up on again seeing her 9-year-old grandson, whom she had raised from the time his mother died when he was 3 years old until his father abruptly ended the informal custody arrangement. Left without even a way to get in touch with her grandson, the grandmother was referred to Zuckerman Spaeder by the Children's Law Center.

Zuckerman Spaeder attorneys quickly determined that she would face an uphill battle in challenging the custody of the father. Despite that, partner Mark W. Foster agreed to take on the case in an investigative posture, in hopes of amassing sufficient evidence to persuade a court that the grandson's best interests lay with his maternal grandmother. The strategy changed abruptly when the Prince George's County, MD, Department of Social Services (DSS) removed the grandson from his father's home on suspicion of physical abuse and neglect.

Former Zuckerman Spaeder associate Douglas R. Miller and the grandmother raced to an emergency meeting at DSS and established her history as the grandson's primary caregiver. When DSS returned the grandson to the father's home under a supervision

agreement involving contact and visitation with the grandmother, Mr. Miller assisted the grandmother in documenting the father's noncompliance. Faced with the father's continued neglect, DSS filed a Child in Need of Assistance (CINA) petition in the Prince George's County Circuit Court. Evidence submitted by Zuckerman Spaeder to DSS contributed to the court's finding that the grandson was a CINA. While placement with the grandmother was not an immediate option because of restrictions, the firm did not give up.

After the court placed the grandson in DSS custody and then in the physical care of his aunt, Zuckerman Spaeder secured in 2009 a "No Reasonable Efforts" finding by the Prince George's County Circuit Court against DSS for its failure to expedite the grandmother's referral. The grandmother and her grandson ultimately were reunited in the house that the grandson calls home.

- *Grandmother #2: Obtains Custody of Grandchildren after Daughter's Death.* A grandmother had been caring for her grandchildren since multiple sclerosis left her daughter unable to do so, and their father was absent. Given only a few months to live, the daughter asked her mother, who agreed, to care for her children permanently following her death. The daughter's hospice referred the grandmother to the Children's Law Center, which selected Zuckerman Spaeder to take on this urgent representation.

Former Zuckerman Spaeder associate Allison Baker Shealy, under the supervision of partner Mark W. Foster, determined that the best strategy was for the daughter to designate the grandmother as her children's standby guardian. Under the District of Columbia's standby guardianship statute, the grandmother would become the children's legal guardian immediately upon her daughter's death and would then have 90 days to seek retroactive approval from the court. Because of the daughter's deteriorating condition, it was necessary to obtain a medical opinion certifying that she was competent to execute the designation.

Unfortunately, the daughter died before the children's father could be served with the standby guardianship petition, and the Superior Court initially rejected the filing. Ms. Shealy's research persuaded the court to reconsider this decision, and, in 2009, the court awarded the grandmother permanent custody. Zuckerman Spaeder further assisted the grandmother in qualifying for financial assistance through the District of Columbia Grandparent Caregiver Subsidy.

Zuckerman Spaeder Partner Forms Crossroads for Florida Kids, Inc. to Represent Foster Children in Florida Court Proceedings

In 2012, more than 19,000 children were in out-of-home foster care in the state of Florida. More than 3,000 of these were in out-of-home care in Hillsborough County, which includes the city of Tampa. The difficult reality of foster care for many children is that, rather than being nurtured and protected by their families, these children have been abused, neglected, or abandoned by them.

Florida, unlike most other states, does not provide attorneys to represent children in state care. These children are under the jurisdiction of the dependency court, with their progress monitored at regularly scheduled hearings. Counsel is appointed for the parents and the state, but fewer than 10 percent of children in Florida's foster care system, and fewer than 2 percent in Hillsborough County, are represented by counsel in dependency proceedings. For its failure to provide children counsel, Florida is one of only 10 states to earn an "F" grade by First Star, a national public charity that evaluates state dependency systems.

To help meet the critical need to recruit and train attorneys to represent children in foster care in Hillsborough County, Zuckerman Spaeder partner Morris "Sandy" Weinberg, Jr.; his wife, Rosemary Armstrong; and another Tampa attorney, Allison Singer, formed a nonprofit organization called Crossroads for Florida Kids, Inc. (Crossroads). Since its creation in 2012, Crossroads attorneys have represented children in dependency proceedings and attended to the civil legal needs of children in the Florida criminal justice delinquency system. Children involved in both dependency and delinquency proceedings, which occur before different judges presiding in separate courts, are known as "crossovers." Crossroads attorneys attend delinquency hearings and trials with the "crossover" children and, for some, provide extended representation to ensure their successful reentry back into the community, especially with regard to educational issues.

On October 22, 2012, Crossroads held its first dependency training for approximately 45 prospective pro bono attorneys. Since then, 57 Crossroads pro bono attorneys have represented 35 children referred by dependency judges in Florida.

Through court referrals facilitated by Crossroads, Zuckerman Spaeder's Tampa office has represented, as of December 2013, six children in Hillsborough County's dependency and delinquency courts. The dependency court directly referred a seventh foster child care case to Zuckerman Spaeder associate Jo Ann Palchak. Mr. Weinberg; Ms. Palchak; partner Marcos E. Hasbun; associates Sara L. Alpert and Mamie V. Wise; and staff attorneys Lisa Beggs and Melinda McLane represent youth in foster care.

Below are brief perspectives from Ms. Alpert and Ms. Wise, who, along with Mr. Weinberg, represent a 16-year-old girl who was taken into state care in 2012 when her aunt and uncle, who had been caring for her, refused to pick her up after her arrest for grand theft auto. The girl's parents are deceased; her two brothers are in prison; she struggles with gender identity issues; and she has been diagnosed with special needs.

Perspective from Mamie V. Wise: Representing our client has made me aware of gaps in the foster care system, particularly for "runners," children with a history of running away from their foster care placement. When these children return, their beds at the placement from which they ran often have been given away, and other placements may decline to take them if they have a history of delinquency. Without legal representation, these youth often get placed out-of-county, away from their schools, friends, families, and the service providers that they know. While this might make sense from the perspective of foster care administrators, it certainly does not make sense for individual youth. My involvement with Crossroads has helped me begin to grasp the challenges that youth in the foster care system face and, along with others, to help develop solutions for our clients and foster children generally.

Perspective from Sara L. Alpert: Our client has had three different case managers since she went into foster care in November 2012. Without us, there would have been very little continuity in her care. Not only are we the only stable force in her life, we are able to keep the ball rolling on her care and push for her needs. Our client frequently runs away; she ran away from her aunt and uncle and she runs away from state care. Her running away is worrisome and I asked her to call me if she runs away, and let me know that she is okay. I told her the firm is obligated to keep confidential what she tells me, unless she gives us permission to share the information.

Since this conversation, our client has reached out to me each time she runs to let me know where she is and that she is okay. The last time she ran, her new case worker was very upset and asked if I knew where she was. I explained that I did, and while I could not reveal the location, I could report that she was safe. The case manager sought to have the court compel me to disclose the client's current residence. The client attended the court hearing, at my request, and I argued that she would not have been there that day except for the fact that she could communicate with me in confidence. Further, I argued that our client's ability to confide in me did more to protect her safety than if she did not have an attorney in whom to confide. The scope of the attorney-client privilege when representing a minor client is not yet settled in Florida, but the court agreed that the attorney-client privilege protected the client's communications with me. This exact issue is currently on appeal from another Florida dependency court. Our ability to properly counsel and advocate for clients would be severely limited if confidentiality was removed. I am hopeful that organizations like Crossroads for Florida Kids can improve the foster care system so that it does what it is supposed to do—protect kids and give them the opportunity to grow up in a stable, safe, loving home.

ELDERS

Zuckerman Spaeder Recovers Funds for Elderly Client

In March 2013, Zuckerman Spaeder partner Carlos Angulo and associate John B. Timmer recovered more than \$60,000 that was taken from an 89-year-old woman's bank account by her nieces. The client is a longtime Washington, DC, resident who has been cared for by her friends and neighbors in recent years. In November 2011, her nieces convinced her to give them control of more than \$60,000 in savings. The client, whom Zuckerman Spaeder had earlier helped through a community service project undertaken with Rebuilding Together of Washington, DC, asked Zuckerman Spaeder to help her recover these funds, which had been transferred to an account in Philadelphia held by the nieces.

In April 2012, Mr. Angulo and Mr. Timmer filed a lawsuit in U.S. District Court for the District of Columbia against the nieces, alleging that they wrongfully converted the funds and caused the client to suffer emotional distress. Attempts at mediation were unsuccessful, but in September 2012, the judge ordered the nieces to transfer the funds to the court's registry, to be held pending the outcome of the case.

In January 2013, a longtime friend and caretaker of the elderly woman sought to be appointed as her guardian and asked that the court appoint an independent conservator to take care of her finances. At a February 2013 hearing, a District of Columbia Superior Court

judge granted the caretaker's request and appointed her as guardian. The federal court then ordered the money to be transferred to the control of the conservator, to be used for the benefit of Zuckerman Spaeder's client, and dismissed the case.

* * *

Blind Woman's Home Saved from Mortgage Scam after Intervention by Zuckerman Spaeder

An elderly, legally blind woman was persuaded to transfer the title to her family home to a mortgage scam artist in exchange for unwritten promises that she could remain in the home and that title to the property would "later" be transferred back to her. The scam artist arranged for substantial equity to be withdrawn from the property and then defaulted on the mortgage loan, resulting in foreclosure of the property. Zuckerman Spaeder, through partner Peter R. Kolker and former associate Susan D. Stout, co-counseled with the Legal Counsel for the Elderly on behalf of the woman to sue the scam artist, title company, and the lender who purchased the mortgage from the loan originator. Through this litigation, the current lender agreed to transfer in 2013 the title to the property back to Zuckerman Spaeder's client, enabling the client to remain in her home for many years. A settlement was also arranged with the other parties.

* * *

Zuckerman Spaeder Protects Elderly Woman from Losing Her Home Due to a Real Estate Scam

Zuckerman Spaeder partner Peter R. Kolker and associate Steven N. Herman assisted Legal Counsel for the Elderly in helping an elderly client victimized by a mortgage fraud scheme to regain her home. The scam artist persuaded the elderly woman to sell him her condominium far below its value so that he could refinance it and pay off her loan in exchange for her remaining in the unit for life without rent. After cashing out the equity, the scam artist defaulted on the mortgage and a foreclosure followed. During the foreclosure, the bank's "inspection company" secretly entered the condo, photographed its contents, changed the locks and illegally prevented entry. After aggressive litigation, Zuckerman Spaeder and the Legal Counsel for the Elderly reached a favorable result for the client in 2010. For these efforts, the Legal Counsel for the Elderly awarded Zuckerman Spaeder with an Outstanding Achievement Award.



Letter from Zuckerman Spaeder Keeps Elderly Residents in Their Homes

Elderly residents of a retirement community turned to Zuckerman Spaeder when they were threatened with the loss of their homes. The corporate owners of the retirement community had informed the residents that they would have to vacate their apartments and move to other units to allow it to renovate their apartments for resale to new residents.

Although the owner of the retirement community insisted it could force the residents to move, a review of the relevant contracts led Zuckerman Spaeder partner Aitan D. Goelman and associate Steven N. Herman to believe it had no such right. After Mr. Goelman laid out the law in a letter, the owner relented and further provided written guarantees that it would never again attempt to move the residents against their will. The senior citizens wrote the following thank-you note:

A number of the residents, in whose name you wrote the most excellent letter, have asked me to convey to you their grateful thanks for all that you did on our behalf. You cannot imagine the enormous relief we all feel as a result of the outcome, which would not have happened without your involvement.

HOUSING

Zuckerman Spaeder attorneys have protected tenants from eviction in the three landlord-tenant cases referred to the firm by the D.C. Bar Pro Bono Program Advocacy & Justice Clinic since October 2010. The firm was able to secure further relief for each of the tenant clients, as described below.

- Zuckerman Spaeder associate Paul B. Hynes, Jr., under the supervision of Zuckerman Spaeder partner R. Miles Clark, secured a court-approved settlement of a landlord-tenant case whereby the clients (against whom eviction was sought) could stay in their apartment through the winter. Moreover, the clients would also owe no back rent and be paid \$11,435 by the landlord as long as they vacated the premises on or before March 31, 2012, which they did.
- Zuckerman Spaeder associate John B. Timmer, under the supervision of partners James Sottile and Eleanor H. Smith, represented a disabled tenant whose landlord sought his eviction from the apartment in which he had lived most of his life. Through the firm's efforts, eviction was avoided and, under the court-approved settlement, the tenant does not have to pay rent until: 1) the leaky apartment building roof is professionally fixed and the roof repair approved by an independent, mutually agreed upon third-party roofer; and 2) the tenant's apartment is repaired and other aspects of the apartment building brought to code. Since the settlement two years ago, the tenant has been living in his apartment of more than 30 years, rent-free.
- Former Zuckerman Spaeder associate Semra Mesulam, under the supervision of partners Graeme W. Bush and Eleanor H. Smith, settled a case in which a landlord sought the firm client's eviction. Under the settlement, the landlord agreed that the client would live rent-free in her apartment for the better part of a year, immediate repairs would be made to her apartment, and the client would have returned to her all of the more than \$4,000 in rent she paid into the court since the filing of the eviction case.

EMPLOYMENT

Zuckerman Spaeder Seeks Wages Owed to Tomato Farmworkers

In 2012, on behalf of migrant farmworkers who worked for Florida-based tomato grower East Coast Brokers & Packers (East Coast), Zuckerman Spaeder and the Migrant Farmworkers Justice Project of Florida Legal Services, Inc., filed a lawsuit in federal court in Tampa, FL, alleging that East Coast should have paid the farmworkers the minimum wage for each hour that they spent waiting in the fields for dew to dry on tomatoes before they were permitted by East Coast to begin picking the tomatoes.

As a matter of company policy, East Coast does not permit picking wet tomatoes because they are not commercially viable. East Coast transported the workers to fields early each morning and required them to wait, sometimes for hours, for the dew to dry, at which point East Coast clocked-in the workers and directed them to begin picking. East Coast pays the farmworkers a fixed amount of money per bucket of tomatoes, rather than per hour worked. Federal law permits this type of piece-rate compensation, so long as the employee is paid, on average, the minimum wage each week. If an employee's total piece-rate wages for a week divided by the number of hours worked is less than the minimum wage, then the employer is required to top-off the employee's wages. The law is clear that the number of hours worked includes compensable wait time—that is, time spent waiting at the employer's direction and for the employer's benefit. East Coast disputes that the farmworkers' waiting for the dew to dry was at East Coast's direction and for its benefit, despite the fact that East Coast required the farmworkers to wait as a matter of company policy and, by having the farmworkers at the ready each day for the unpredictable moment that the dew dried, the company maximized its tomato harvest and profits.

Zuckerman Spaeder and the Justice Project contend in the lawsuit that the Florida law provides even more protection for employees

than federal law. Article X, Section 24 of the Florida Constitution – a relatively new provision – provides that “Employers shall pay Employees Wages no less than the Minimum Wage for all hours worked in Florida.” Thus, by its terms, East Coast should pay the farmworkers the minimum wage for all hours worked, including compensable wait-time hours, regardless of how much East Coast pays them that week for each bucket of tomatoes picked. East Coast argued against this interpretation of the Florida Constitution in its motion to dismiss the lawsuit. The court denied East Coast's motion. Discovery followed, during which East Coast admitted its company policy forbidding the picking of wet tomatoes and that it clocks-in workers only moments before they are permitted to begin picking.

At the conclusion of discovery, Zuckerman Spaeder and the Justice Project moved to certify a class of hundreds of farmworkers who worked for East Coast and were not paid in full for their work. While that motion was pending, with a September 2013 trial date in this case looming, East Coast sought bankruptcy protection, leading the federal district court to stay the case. Zuckerman Spaeder has filed a claim on behalf of the farmworkers in the federal bankruptcy court, which has overseen the auction of East Coast's considerable assets.

Zuckerman Spaeder partner Ellen D. Marcus and associate John B. Timmer in Washington, DC, and partner Jack E. Fernandez and counsel Nathan M. Berman in Tampa, are counsel of record on this case, along with Greg Schell and Victoria Mesa-Estrada of the Migrant Farmworkers Justice Project. Assisting them are Zuckerman Spaeder associates Mamie V. Wise and Jo Ann Palchak and partner Eleanor H. Smith.

* * *

Zuckerman Spaeder Obtains Relief for Client Harmed by Family Medical Leave Violation

For our 2012 representation of an employee in a Family and Medical Leave Act (FMLA) case, Zuckerman Spaeder received an Outstanding Achievement Award from the Washington Lawyers' Committee for Civil Rights and Urban Affairs. After filing suit on behalf of the employee, partner Caroline E. Reynolds and associate Steven N. Herman, with counsel from the Washington Lawyers' Committee, negotiated an outcome for our client that advanced the goal of the Washington Lawyers' Committee's Equal Employment Opportunity Project's efforts to eliminate violations of the FMLA and, in turn, to protect the employment rights of members of protected groups.



Husband of Harassed Woman Protected by Zuckerman Spaeder from Retaliation

A doctor pleaded guilty in 2008 to twice assaulting his female assistant, whom he had sponsored to be in this country on a student visa. She then sued him for sexual harassment.

When the woman and her husband, who also worked for the doctor and who witnessed the abuse, threatened to report the doctor to the authorities, the doctor said he would deny that they worked at his clinic. As a result, the husband removed records from the clinic to make sure he had evidence of their employment.

Attorneys for the doctor in the sexual harassment case reported the removal of records, causing the police to issue a warrant for the husband's arrest. Not only did the arrest have the potential to create criminal problems for the husband, it carried the risk of his deportation, the breakup of the family, and the inability of the husband to testify at his wife's trial. And, even if the husband did testify, an arrest for theft of patient records would put his credibility at issue. As the husband also was of limited means, Zuckerman Spaeder volunteered its legal services to assist him.

Zuckerman Spaeder partner Dwight P. Bostwick emphasized to the government that the doctor had failed to provide full information to the authorities regarding the relationship between his assault plea and the "theft" of records when the initial report was made. As a result, the husband was prepared for his deposition and remained in the country and out of jail. He continued to be a witness in his wife's civil case until the matter was settled shortly before trial.

* * *

Zuckerman Spaeder Seeks to Protect Against Discrimination in the Workplace

In fall 2012, Zuckerman Spaeder partner Laura E. Neish and associate Benjamin Voce-Gardner, of the firm's New York office, teamed up with the National Partnership for Women & Families to prepare an amicus curiae brief in *Vance v. Ball State University*, which was being appealed from the U.S. Court of Appeals for the Seventh Circuit to the Supreme Court of the United States.

The question presented in *Vance* was whether the term "supervisor" for purposes of employer liability for discrimination under Title VII (prohibiting workplace discrimination based on race, color, religion, national origin, or sex) applies to individuals who have the power to direct and oversee an employee's daily work activities, or, as concluded by the Seventh Circuit, is limited to those who have the formal power to "hire, fire, demote, promote, transfer, or discipline" their subordinates.

The firm had obtained "the largest monetary recovery from an insurance company on behalf of a client of all the pro bono insurance cases that the City Bar Justice Center has placed."

The amicus brief argued in favor of the broader standard and focused on the real-world impact of supervisor discrimination. The brief used a combination of social science studies and case law examples to argue that the Seventh Circuit's narrow interpretation of supervisor liability was not only at odds with Supreme Court's prior interpretation of the standard, but also ignored the reality of the destructive and long-term social and economic consequences of workplace supervisor discrimination. Ten other similarly interested organizations signed on to the amicus brief.

In June 2013, the Supreme Court upheld the Seventh Circuit's ruling in a 5–4 decision. In a strongly worded dissent, Justice Ruth Bader Ginsburg characterized the majority's decision as "blind to the realities of the workplace."

DISABILITY

Counsel Secured for Social Security Disability Claimant through Appeal Won by Zuckerman Spaeder

When an administrative law court denied a Social Security disability claim while knowing that the District of Columbia Bar Counsel was securing pro bono legal counsel for the claimant, Zuckerman Spaeder was asked to handle the appeal of the judge's decision. The firm appealed the denial of the disability claim before counsel could be engaged to make the disability case for the claimant, and the decision of the administrative law judge was reversed. As a result, the District of Columbia Bar Counsel was able to provide the claimant with pro bono counsel to prosecute his claim for Social Security disability benefits. Zuckerman associate John B. Timmer handled the appeal in 2011 under the supervision of former partner Elizabeth G. Taylor.

CONSUMER PROTECTION

Large Hurricane Sandy Insurance Payout Secured by Zuckerman Spaeder

Zuckerman Spaeder associate Maggie Lynaugh, under the supervision of partner James Sottile, represented a Coney Island, NY, homeowner whose residence sustained extensive flood damage in October 2012, during Hurricane Sandy. The entire first floor of the client's home—including her kitchen, living room, and bathroom—was destroyed. The insurance adjuster grossly underestimated the cost of repairing the damage, resulting in the client's inability to repair her home. The client's living situation presented a particular hardship because it prevented her disabled son from being able to visit. Ms. Lynaugh and Mr. Sottile worked with the adjuster assigned to the case to prepare a supplemental claim to submit to the client's insurance company. The insurance company approved the revised claim, which it paid in July 2013, and the client is rebuilding her home. The New York City Justice Center referred this client to Zuckerman Spaeder and in a September 2013 thank-you letter to Zuckerman Spaeder reported that the firm had obtained "the largest monetary recovery from an insurance company on behalf of a client of all the pro bono insurance cases that the City Bar Justice Center has placed."

Patient Access to Low-Cost Prescription Drugs Protected by Zuckerman Spaeder

Zuckerman Spaeder partner Carlos Angulo prepared and filed an amicus curiae brief in the Supreme Court of the United States on behalf of U.S. Representative Henry Waxman, the co-author of the original Hatch-Waxman Act establishing a system for the approval of generic drugs in the United States. The case in which he filed the amicus brief, *Caraco Pharm. Labs., et al. v. Novo Nordisk A/S, et al.*, involved provisions added in 2003 to the Hatch-Waxman Act that are meant to encourage competition by allowing a generic company to file counterclaims against a brand company that has sued the generic company in patent litigation—specifically, to require the brand company to provide the Food and Drug Administration (FDA) with accurate information related to the drug's use. In his amicus brief, Representative Waxman argued that the clear intent of the counterclaim provisions was to strengthen the Hatch-Waxman Act, by requiring brand companies to submit accurate information to the FDA that distinguishes between patented and unpatented uses. In its decision, the Supreme Court agreed with Representative Waxman, ruling that a generic drug manufacturer may employ the counterclaim provision of the Hatch-Waxman Act to force a brand drug company to correct a use code that inaccurately describes the brand's patent as covering a particular method of using a drug.

* * *

Zuckerman Spaeder Helps Preserve Right of States to Enforce Their Laws against Predatory Lending

In 2009, Zuckerman Spaeder prepared and filed, on behalf of several members of Congress, an amicus brief with the Supreme Court of the United States that sought to ensure that states could continue to enforce their own laws against damaging lending practices. In *Cuomo v. Clearing House Association*, the Supreme Court was considering whether to uphold a federal regulation that had been used to block state enforcement of state fair-lending and consumer protection laws against predatory lending and other business practices—practices that were widely considered to have contributed to the worst economic crisis in the United States since the Great Depression.

Zuckerman Spaeder had been working on subprime lending issues, including with state attorneys general, since early 2007. In 2008, the firm played a major role in brokering a multibillion-dollar settlement of claims brought by a number of states against Countrywide, one of

the nation's largest mortgage lenders, for improper marketing and handling of subprime mortgages. Working on an amicus brief in *Cuomo v. Clearing House Association* was a natural next step given the firm's experience.

The case involved a regulation issued by the Office of the Comptroller of the Currency (OCC), an agency within the U.S. Department of the Treasury, which prohibited states from enforcing their own fair-lending and consumer protection laws against national banks. When New York Attorney General Andrew Cuomo discovered evidence of racial disparity in lending, he requested records from four national banks. Clearing House Association, LLC, a bank trade association, and the OCC sued to block the New York investigation, and the district court issued an injunction against the attorney general's request. The U.S. Court of Appeals for the Second Circuit affirmed this decision, relying upon *Chevron v. NRDC* to extend judicial deference to the federal agency's interpretation of the National Bank Act.

On behalf of members of Congress, Zuckerman Spaeder argued that *Chevron* deference is appropriate only when Congress intentionally gives the agency policymaking discretion in an area. The brief explained that Congress had not given any policymaking discretion to the OCC with regard to preemption of state law.

In a 5–4 decision issued on June 29, 2009, the Supreme Court ruled that Congress indeed did not authorize such preemption—the position advocated in the amicus brief written by Zuckerman Spaeder counsel David A. Reiser and former counsel Linda Singer, with assistance from former partner Elizabeth G. Taylor.

* * *

Zuckerman Spaeder Seeks to Preserve Court Access for Antitrust Class Actions

Zuckerman Spaeder is involved in litigation to protect the rights of consumers and employees to obtain judicial redress, including partner Cy Smith's victories in the U.S. Court of Appeals for the District of Columbia Circuit in *Khan v. Parsons Global Services, Ltd.*, in which the court ruled against arbitration, and a victory in a District of Columbia Court of Appeals case, *Keeton v. Wells Fargo*, in which the firm represented the Legal Aid Society as amicus curiae in support of a consumer challenging an unfair car loan.

With significant experience in this area, Mr. Smith, along with Zuckerman Spaeder counsel David A. Reiser and associates Rachel F. Cotton and Adam Abelson, represented antitrust scholars as amici curiae in the latest in a series of recent decisions by the Supreme Court of the United States addressing whether arbitration agreements can eliminate the possibility of class litigation by consumers or employees.

In *American Express Co. v. Italian Colors Restaurant*, merchants sought to sue American Express for tying its corporate charge cards to other cards the merchants did not want to accept, allegedly in violation of the Sherman Antitrust Act. In the case, Justice Sonia Sotomayor, then a federal appellate judge, joined in a decision of the U.S. Court of Appeals for the Second Circuit reversing a district court order requiring the merchants to arbitrate under an agreement that forbade them from acting as a class. The merchants had submitted an affidavit from an economist showing that the cost of the kind of study that would be required to prove their antitrust case would far exceed any individual merchant's possible recovery. They argued that they were being prevented from effectively vindicating their rights under federal antitrust law because of the restrictions in the arbitration agreement that precluded them from proceeding as a class and thus should receive a case-specific exemption from enforcement of the Federal Arbitration Act.

Before reaching the merits of the case, the Supreme Court of the United States twice remanded the case to the U.S. Court of Appeals for the Second Circuit. On each remand the Second Circuit reached the same result, leading the Supreme Court to take the case.

In the brief prepared by Zuckerman Spaeder, the antitrust scholars addressed the likely impact of a decision precluding class treatment on antitrust enforcement. Contrary to the petitioner's assertions, the antitrust scholars explained that an economic analysis of the type outlined in the merchant's affidavit would be required to litigate the case under current antitrust law. The brief also showed that enforcement by the petitioner's competitors could not make up for an effective prohibition against enforcement by its customers.

The brief also explained that an arbitration agreement that made it economically impossible to present necessary economic evidence was no different in principle from one purporting to make economic analyses inadmissible as an evidentiary matter. The brief further showed that there was no reason to give precedence to the Federal Arbitration Act over the Sherman Antitrust Act, because at the time Congress passed the Federal Arbitration Act, the law was already established that a party could not prospectively waive Sherman Act protection by contract. Arbitration agreements are just a type of contract.

Because of her involvement in the first appellate decision, Justice Sotomayor did not participate in the Supreme Court's decision. A five-justice majority ruled that there is no "effective vindication" requirement and, thus, the contractual waiver of class treatment should be rigorously enforced, even where parties would have no incentive to pursue the claims on an individual basis. If the unavailability of class treatment (or some other arbitration term) prevents a party from pursuing a federal-law claim, that is, as Justice Elena Kagan put it in her blunt dissent: "Too darn bad."

Zuckerman Spaeder Prevails against Creditors Seeking to Maintain an Individual's Indebtedness

Between 2007 and 2010, consumer bankruptcies in the District of Columbia almost doubled, according to the American Bankruptcy Institute. The principal goal of a person who files for bankruptcy is to discharge the debts owed to creditors and get a financial fresh start. In certain instances, however, a creditor will sue a debtor and demand repayment of the debt, despite the bankruptcy filing. If a creditor prevails, the challenged debt must be repaid as if the bankruptcy never occurred. These non-dischargability suits compounded the crisis experienced by many individuals seeking bankruptcy protection during one of the nation's most difficult economic periods.

Such was the case in 2009, after a Washington, DC, resident filed for bankruptcy and subsequently was sued by a credit card company demanding repayment. Judge S. Martin Teel Jr. of the U.S. Bankruptcy Court for the District of Columbia requested that Zuckerman Spaeder defend the debtor against the company's lawsuit. Zuckerman Spaeder partner Nelson C. Cohen and bankruptcy counsel Mary Ann Ingberg negotiated a settlement with the credit card company, which the court approved, that ended the lawsuit and requires the debtor to pay, over a two-year period and without interest charges, only a small fraction of the debt claimed by the company.

In 2013, Zuckerman Spaeder obtained a court order dismissing with prejudice a non-dischargability suit brought by a creditor against another debtor client referred by Judge Teel to the firm for pro bono representation.

* * *



Zuckerman Spaeder Participates in Gulf Coast Disaster Preparedness Expo

Zuckerman Spaeder counsel and Louisiana native William A. Schreiner, Jr., participated in the Disaster Preparedness Expos organized by the Mississippi Center for Justice, an affiliate of the Lawyers' Committee for Civil Rights Under Law, held in Jackson, MS. In the wake of Hurricane Katrina, and for two years in a row—in 2010 and 2011—Mr. Schreiner spoke to senior citizens about how to protect insurance policy records and to work with insurance carriers to get disaster claims paid.

FIRST AMENDMENT

Zuckerman Spaeder Helps Media Obtain Access to Trial Materials in Chelsea Manning Court-Martial

In the spring of 2013, Zuckerman Spaeder partners William J. Murphy and John J. Connolly assisted reporters and media organizations that were denied access to trial records while trying to cover the court-martial of Private First Class Chelsea Manning, then known as Bradley Manning. Lawyers from the Center for Constitutional Rights (CCR), including Shayana Kadidal, led the litigation team.

In a case that received worldwide attention, Pvt. Manning was accused of providing large volumes of classified information about the Iraq War and other matters to WikiLeaks. In lengthy pre-trial proceedings, however, the military refused to provide journalists and the public with hundreds of unclassified judicial records, including pleadings, exhibits, and hearing tapes and transcripts.

On behalf of representatives of the media, CCR intervened in the court-martial, arguing that the press and the public had First Amendment and common law rights of access to these materials. The military judge held that the First Amendment did not apply to records of a court-martial, and that public access was instead governed by the Freedom of Information Act. On appeal, the highest court in the military system concluded, just before the trial was set to begin, that it lacked jurisdiction to consider CCR's argument.

CCR and a group of journalists then filed an action in the U.S. District Court for the District of Maryland, with Zuckerman Spaeder acting as co-counsel, seeking emergency relief. After the motion for preliminary injunction accompanying CCR's complaint was filed, the court issued a compressed schedule for the motion. Facing this legal pressure, the U.S. Army took action just before the defendants responded to the preliminary injunction motion, posting hundreds of court-martial records to a public website. The military judge presiding over the court-martial granted the media's request for private stenographers to attend the trial and create unofficial transcripts. Further, a U.S. Army colonel stated that the Army would endeavor to publish trial records within one to two business days as the court-martial proceeded.

In a 42-page opinion issued two days after the hearing on the motion, Judge Ellen L. Hollander concluded that the remaining issues were not significant enough to warrant preliminary relief. "The fact that the government released a huge number of documents after suit was filed, and has committed to the release of documents from the court-martial going forward, and on an expedited basis, seriously diminishes the likelihood of irreparable harm to plaintiffs," wrote Judge Hollander in her decision.

As a result of the efforts by CCR and Zuckerman Spaeder, the public and press have substantially greater understanding of this important case.

* * *

Blogger's Identity Protected by Zuckerman Spaeder

In 2011, a federal grand jury in Washington, DC, subpoenaed a company that owns a popular Internet blog-hosting service to obtain the identity of a blogger who had posted certain comments about several U.S. senators on his or her blog. Zuckerman Spaeder partner Steven Salky, with Arthur B. Spitzer of the American Civil Liberties Union of the Nation's Capital, moved to intervene and quash the subpoena on behalf of the blogger on the grounds that his or her Internet postings were protected by the First Amendment and could not reasonably be construed as threats, making the subpoena improper. The government responded to the motion by withdrawing the subpoena. The court denied the motion as moot, thereby closing the grand jury's investigation of the blogger. Mr. Salky and Mr. Spitzer then relied on the court's grand jury rule to move it to unseal their earlier motion, the government's response, the court's order denying the motion as moot, their subsequent motion to unseal, and the court's order on the motion to unseal. In the motion to unseal, the blogger's attorneys showed under the law that this information should be public and explained the strong public interest in knowing "that federal prosecutors in the nation's capital are seeking to subpoena a blog hosting services for the identity of an anonymous blogger based on opinions expressed on the blog. The unsealing of these papers may educate other anonymous bloggers and Internet speakers about the risks that their own identities may be sought based on what they say or how they say it, and about their own constitutional rights." The government did not oppose this motion either, and the court granted it for the world to see.

VOTING RIGHTS

Zuckerman Spaeder Investigates Risk to Voting Rights

In 2012, Florida Secretary of State Ken Detzner initiated a program to purge alleged noncitizens from state voter registration rolls. After voters sued to stop the purge and Florida represented to a federal court that it had stopped removing people from the voting rolls, Florida sought to resume the purge using information from a federal immigration database known as the Systematic Alien Verification of Entitlements (SAVE) to identify registered voters as potential noncitizens. Advancement Project, a nonprofit voting rights organization, engaged Zuckerman Spaeder to help evaluate the appropriateness of using SAVE for voting purposes. Zuckerman Spaeder partners Eleanor H. Smith, Andrew N. Goldfarb, and Laura E. Neish, with associate Brian K. Mahanna and former associate Megan Quattlebaum, worked with Advancement Project to more fully understand the voting rights implications of state use of SAVE to identify registered voters as potential noncitizens.

On Election Day, Zuckerman Spaeder partners Steven Salky, Robert T. Shaffer, and Carl S. Kravitz led shifts at the Election Protection command centers in Richmond, VA and Baltimore, MD.

Attorneys from Zuckerman Spaeder Help Americans Exercise Right to Vote

In the 2012 presidential election, Zuckerman Spaeder continued its tradition of attorney participation in the nonpartisan Election Protection Program run by the Lawyers' Committee for Civil Rights Under Law. The Election Protection Program seeks to help eligible citizens cast their votes and to have their votes count. On Election Day, Zuckerman Spaeder partners Steven Salky, Robert T. Shaffer, and Carl S. Kravitz led shifts at the Election Protection command centers in Richmond, VA, and Baltimore, MD. Partners Blair G. Brown, Jason M. Knott, Eleanor H. Smith, and Marshall S. Wolff volunteered as Election Day observers at polling places to help resolve problems voters were having with exercising their right to vote.



POLITICAL ASYLUM

Zuckerman Spaeder Protects Rwandan Genocide Survivor from Torture

In September 2009, the U.S. Department of Homeland Security granted asylum to Zuckerman Spaeder's pro bono client, a young man of mixed Hutu-Tutsi heritage who fled Rwanda in 2008. The client was kidnapped, severely beaten, and left for dead at a Rwandan military base just hours after testifying in a government genocide hearing against two soldiers alleged to have killed his family in the early 1990s. Former Zuckerman Spaeder associate Cory Way, under the supervision of partner Eleanor H. Smith, presented novel legal arguments for asylum based upon the client's past persecution and future likelihood of Rwandan government persecution due to his testimony. The Washington Lawyers' Committee for Civil Rights and Urban Affairs honored Zuckerman Spaeder with an Outstanding Achievement Award for its handling of this political asylum case.

ETHICS

Zuckerman Spaeder Helps Legal Service Providers Navigate Ethics Issues

Like law firms, nonprofit legal service providers occasionally need ethics counsel, especially in negotiating an increasingly complex legal regulatory environment. From 2009 through 2013, Zuckerman Spaeder associates Adam L. Fotiades and Rachel F. Cotton, along with former associates Jane M. Ricci, Brynna L. Connolly, and Semra Mesulam, under the supervision of partners Mark W. Foster and Thomas B. Mason, provided general ethics advice to legal service providers in the District of Columbia, in addition to helping those organizations resolve specific ethics matters. Zuckerman Spaeder also represented a supervisory government lawyer in a Bar Counsel investigation concerning whether the lawyer had given erroneous ethics advice to a subordinate line attorney. Bar Counsel dismissed the case against Zuckerman Spaeder's client.

NONPROFITS

Zuckerman Spaeder Helps Establish Nonprofits to Meet Needs of Low-Income Individuals

- *Heart of Virginia Foundation.* Zuckerman Spaeder staff attorney Laura J. Barta, under the supervision of partner Eleanor H. Smith, counseled Heart of Virginia Foundation through the process of becoming a 501(c)(3) tax-exempt organization. Formed in response to the tragic shootings at Virginia Tech on April 16, 2007, Heart of Virginia offers charitable and educational opportunities that promote emotional well-being through the arts and that fight prejudice and discrimination against persons with mental illness. The mission of the Heart of Virginia Foundation is to raise awareness of the desperate need for expanded and accessible mental health and well-being programs for all, while fighting the stigma of mental illness.
- *Community Combined Ministries.* Zuckerman Spaeder associate John B. Timmer and staff attorney Laura J. Barta, under the supervision of partner Blair G. Brown, drafted the articles of incorporation and bylaws, obtained a certificate of incorporation, and secured 501(c)(3) status for Community Combined Ministries, a nonprofit organization that provides bag lunches to children of low-income families in West Virginia.
- *Benjamin Orr Elementary School Parent-Teacher Organization.* Zuckerman Spaeder associate Paul B. Hynes, Jr., and staff attorney Laura J. Barta, under the supervision of partner Eleanor H. Smith, helped incorporate a parent-teacher organization at the firm's partner public school, Benjamin Orr Elementary in Washington, DC. The Orr Parent-Teacher Organization is designed to help parents and teachers engage more fully with the school administration and community to improve educational opportunities for Orr students, 99 percent of whom are reported by the District of Columbia Public Schools as eligible for free school lunch based upon familial poverty.

Criminal Law Pro Bono Matters

CRIMINAL APPELLATE ADVOCACY PROJECT

Zuckerman Spaeder Seeks Actual Innocence Relief for New York Client, in Partnership with the Office of the Appellate Defender

In February 2013, Zuckerman Spaeder's New York office began a new pro bono collaboration with the Office of the Appellate Defender (OAD), a not-for-profit law firm, to provide indigent individuals with legal representation in appealing their convictions of felonies in state court in the New York City boroughs of Manhattan or the Bronx. In Zuckerman Spaeder's first case with OAD, as part of OAD's Volunteer Appellate Defender program, the client had been convicted after trial of possessing a firearm and had received a 12-year sentence of incarceration, followed by five years of post-release supervision. But after significant reinvestigation, Zuckerman Spaeder partner Paul Shechtman, associate Noah Solowiejczyk, former associate Megan Quattlebaum, and OAD attorney Richard Greenberg have discovered new evidence proving that their client is actually innocent. They are now preparing to return to the trial court, where they will move to vacate the client's conviction.

Zuckerman Spaeder's client was convicted after trial of possessing an operable firearm. The charge arose out of a shootout that occurred in upper Manhattan, and the client received a severe sentence of 12 years in prison. From the start, the appellate team was skeptical that the evidence was sufficient to justify the conviction. Witness testimony strained belief and key background information about the criminal history and possible motivation for testifying of one witness was inexplicably not allowed into the trial record. Critically, because the police never recovered a firearm at the scene of the crime or during their subsequent search of the client's apartment, the prosecutor relied heavily on extremely low-quality security camera footage to argue that the client could be seen running away from the scene of the shooting with a firearm in his hand.



The appellate team thus began a process of reinvestigation: interviewing witnesses, visiting the scene of the shooting, and conferring with trial counsel. Realizing that the video surveillance evidence, which had been relied upon heavily by the prosecution, was the key to the case, the appellate team sought out an expert to enhance the videos. They vetted many experts but found only one who possessed the requisite equipment and expertise to handle the job. And the expert's ultimate conclusion was that the client was holding a soda or juice can, *not* a gun. The appellate team will now move the trial court to vacate their client's conviction.

INNOCENCE

After Eyewitness Recants Testimony, Zuckerman Spaeder Seeks New Murder Trial

A man was shot dead near Georgetown Law School in Washington, DC, in 1993. The only eyewitness to the drive-by shooting was the 16-year-old passenger riding next to the man in his car, who told three policemen at the time of the shooting that he did not see the assailants.

Two teenagers were convicted of the man's murder and both sentenced to 36 years to life. The conviction was based in large measure upon court testimony by the eyewitness that he saw these teenagers shoot the man—testimony that is inconsistent with his statements to the police at the time of the man's murder and that he has since recanted. The convicted maintain their innocence and seek a new trial, based upon the eyewitness's recantation and other new evidence, including prior inconsistent testimony of the police officer testifying for the prosecution, which testimony was withheld by the prosecution until years after the conviction.

Zuckerman Spaeder partner Amit P. Mehta represents one of the two petitioners. On January 3, 2011, Mr. Mehta filed a motion for relief on behalf of his client, which the other petitioner joined. The trial court held a three-day evidentiary hearing that spring, following which it denied a new trial. On April 9, 2013, Mr. Mehta and counsel for the other appellant submitted their consolidated opening brief to the District of Columbia Court of Appeals, in which they are seeking a reversal of the trial court's decision to deny their clients a new trial. The court heard oral argument on January 17, 2014.

* * *

New Trial Sought for 22-Year Prisoner after DNA Evidence Obtained by Zuckerman Spaeder Raises Doubts

Zuckerman Spaeder associates Jo Ann Palchak and Mamie V. Wise, under the supervision of partner Morris "Sandy" Weinberg, Jr., and counsel Lee Fugate, continue in their effort to win post-conviction relief for a pro bono client serving a life sentence in Florida State

Prison. This individual has been incarcerated since he was convicted more than 22 years ago for a noncapital murder. The Innocence Project referred him to Zuckerman Spaeder for legal representation in seeking relief from his conviction based upon new evidence available from DNA testing.

Through the efforts of Zuckerman Spaeder attorneys, the court ordered DNA testing to be performed on evidence from the crime scene. Mitochondrial DNA analysis of hair from a key piece of evidence excluded the convicted man. DNA evidence also demonstrated that semen found in vaginal swabs and on the victim's clothing could

Through the efforts of Zuckerman Spaeder attorneys, the court ordered DNA testing to be performed on evidence from the crime scene.

not be from the firm's client. Additionally, the fingernail scrapings from the hand of the victim, which was described at the original trial as having "defensive wounds," were determined not to be from the firm's client.

Zuckerman Spaeder moved for, and was granted, the right to have an evidentiary hearing to put forth this new evidence. At the hearing in April 2013, Ms. Palchak and Ms. Wise argued that this key evidence significantly undermined the prosecution's theory and, were it available at the time, the DNA evidence probably would have led to an acquittal of the firm's client. In June 2013, the court denied a new trial, a decision that the firm is appealing.

DEATH PENALTY

Death Penalty Challenge by Zuckerman Spaeder Enters 18th Year

In 1995, the Superior Court of Forsyth County, NC, appointed Zuckerman Spaeder partner William W. Taylor, III, to represent a then 64-year-old woman, whose 1990 death sentence for killing her boyfriend had been upheld by the North Carolina Supreme Court. Mr. Taylor sought a new trial based upon evidence that the trial judge had fraternized with the jury outside the presence of defendant's attorneys. Eighteen years later, Mr. Taylor's work is not done and his client remains alive. Working with Mr. Taylor on the case since 1995 is Zuckerman Spaeder partner Blair G. Brown. In 2008, the National Legal Aid and Defender Association recognized Zuckerman Spaeder with its Beacon of Justice Award for its work on this case and several other death penalty cases. Now assisting Mr. Taylor and Mr. Brown on the challenge is associate Steven N. Herman.

If our client, who is almost 80 years old, were executed today, she would be the oldest individual executed in the United States since the death penalty was reinstituted in 1976. Our client relies on a wheelchair or walker to get around, and suffers from other health conditions. In 2011, Zuckerman Spaeder filed a clemency petition, focusing on our client's health, as well as the significant legal issues yet to be litigated in her case, such as the Racial Justice Act claims that Zuckerman Spaeder filed on her behalf and the federal habeas case to be filed if necessary. The petition asked then-Governor Beverly Perdue to commute our client's sentence to life in prison without the possibility of parole. If Governor Perdue granted her request, our client offered to drop the remaining legal challenges to her conviction and sentence, which would have saved North Carolina the time and expense of continuing its attempt to kill an 80-year-old woman. Unfortunately, Governor Perdue left office without acting on any clemency petitions for individuals currently incarcerated. Our client remains undaunted and looks forward to pressing her legal rights, with the assistance of Zuckerman Spaeder, in state court and, if necessary, in federal court.



Zuckerman Spaeder Avoids Capital Murder Charge and Preserves Future for Client

In 2009, Zuckerman Spaeder partners Eric R. Delinsky, Alexandra W. Miller, and R. Miles Clark, defended a young man charged with murder in federal court in Baltimore, MD. The government originally charged him with a murder offense that was eligible for capital prosecution. The court appointed Mr. Delinsky as defense counsel. Together with court-appointed co-counsel Stanley Reed, the Zuckerman Spaeder attorneys avoided the capital murder charge. They spent another year intensely litigating over the prosecution's case, which presented significant evidentiary issues, and preparing for trial in early 2010. On the eve of trial, the client accepted a negotiated resolution.

DIRECT APPEAL

Zuckerman Spaeder Accepts Representation on Appeal from Homicide Conviction in First Major Trial Involving the D.C. Criminal Street Gang Statute

Zuckerman Spaeder partners William W. Taylor, III, and Jason M. Knott, with assistance from counsel David A. Reiser, in 2011 began representing a man who had been convicted of first-degree murder and other crimes after a two-and-a-half-month District of Columbia Superior Court trial. In the case, currently before the District of Columbia Court of Appeals, Zuckerman Spaeder has submitted an opening brief arguing that the client was prejudiced when the court failed to sever his trial from that of his four co-defendants, and when the prosecutors made improper statements in closing arguments. Our client's case was the first major trial involving the D.C. Criminal Street Gang statute. The trial was also unusual in that our client's co-defendant took the stand, accepted full responsibility for the crime of which our client was convicted, and was then acquitted of that crime after he was cross-examined by his own lawyer.

COMMUTATION

Zuckerman Spaeder Petitions the President to Commute a Nonviolent Drug Sentence to Time Served

Zuckerman Spaeder partner Blair G. Brown and former associate Megan Quattlebaum submitted for consideration by the President of the United States a commutation petition for a client serving a more than 11-year sentence for a drug offense he committed in 2006. When he was in his early twenties, the client let another man manufacture methamphetamine in the woods behind his house in exchange for some of the drug. When the client was arrested, police found a bucket of waste water on his property. This waste water is a byproduct of methamphetamine production, and not consumable as a drug. Although the waste water contained less than

one gram of methamphetamine, police counted the entire weight of the water in the bucket, 2,719 grams, as "a substance containing methamphetamine," leading to the harsh sentence.

Before the client was incarcerated, he completed an intensive drug treatment program. He proudly remains "drug, alcohol, and tobacco free" in prison. He is dedicated to furthering his education and has never had a disciplinary write-up in prison. He has also taken many vocational classes, including carpentry, masonry, real estate, and business management. Mr. Brown and Ms. Quattlebaum seek to have the client's sentence commuted so that he may return home to his family. Families Against Mandatory Minimums referred this matter to Zuckerman Spaeder.

SENTENCING

Zuckerman Spaeder Attorney Cuts Prison Time of Inmates by Half

Zuckerman Spaeder partner Marcos E. Hasbun has represented inmates seeking to reduce the length of their sentence in accordance with the law. In one such case, an inmate was convicted of unrelated offenses under federal and state laws. At the time the federal court imposed its 53-month sentence, the inmate had been held by, and was under the jurisdiction of, state authorities on a state charge for which he had not yet been convicted. The inmate was later convicted of the state charge and sentenced to a 20-month sentence. Even though the federal sentence had been imposed first, it would not commence until such time as the inmate was placed under the jurisdiction of federal authorities, which in turn would not occur until the conclusion of the 20-month state sentence. This effectively resulted in the state and federal sentences running consecutive to one another for a total aggregate sentence of 73 months.

Mr. Hasbun restructured the sentences so that they ran concurrent to one another. To accomplish this, Mr. Hasbun first requested that the federal Bureau of Prisons (BOP) retroactively designate the state correctional facility where the client was serving his state sentence as the institution where his federal sentence would begin. After the BOP denied this request, Mr. Hasbun filed a motion with the federal court requesting that the judge advise the BOP that he did not object to retroactively designating the state correctional facility as the institution where the inmate's federal sentence would begin. The federal court granted the motion, and advised the BOP that the court did not object to the retroactive designation. Thereafter, the BOP changed course and granted the retroactive designation,

which significantly reduced the client's total prison time. This change offered the client the prospect of re-entering the community in less than three years rather than more than six years.

In another case, Mr. Hasbun served as local counsel for a resentencing hearing involving an individual previously sentenced to 17 years in prison as an armed career criminal. Because the original sentence erroneously relied upon a prior conviction that could not serve as a predicate to qualify someone as an armed career criminal, the individual was resentenced to approximately nine years, which amounted to time served.

PAROLE

D.C. Prisoners Represented by Zuckerman Spaeder in Parole Hearings Secure Release

Zuckerman Spaeder partner Caroline E. Reynolds and former associate Matthew G. Kaiser, under the supervision of former partner Francis D. Carter, represented three District of Columbia prisoners in their parole hearings in February 2009. These inmates, like hundreds of others incarcerated in federal prisons, were at risk of serving elongated sentences because the parole guidelines that were to be applied by the U.S. Parole Commission at their hearings were more severe than those in effect at the time they were sentenced.

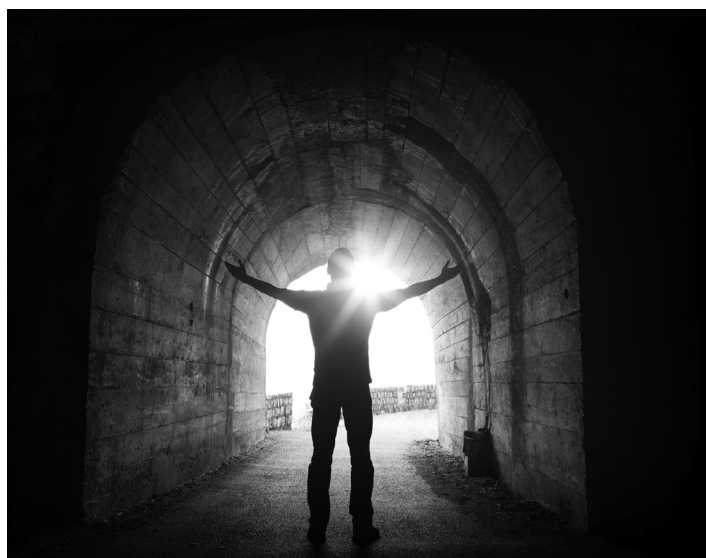
Individuals convicted of felonies under District of Columbia law serve their sentences in federal prisons. Until 1998, the D.C. Parole Board conducted parole hearings for these individuals pursuant to guidelines it formally adopted in 1985 and published in 1987. Judges were well aware of the 1987 guidelines and took them into account in sentencing offenders under the D.C. Code.

In 1998, Congress abolished the D.C. Parole Board and made the U.S. Parole Commission responsible for deciding requests for parole made by offenders in Washington, DC. In 2000, the commission scrapped the 1987 guidelines and adopted new parole regulations and guidelines, which it began applying to all inmates—even those sentenced when the 1987 guidelines were still in effect.

The 2000 guidelines were more severe than the previous rules in a number of respects. For example, under the new guidelines an inmate would get no credit for having a clean drug history, whereas the 1987 guidelines would take that factor into account. The 2000 guidelines also added time to an inmate's sentence for minor disciplinary infractions that would not have been considered under the older

rules. As a result of the commission's action, hundreds of prisoners found their release dates receding into the future.

In 2008, the U.S. District Court for the District of Columbia gave these prisoners new hope. In *Sellmon v. Reilly*, the district court held that applying the 2000 guidelines in parole hearings would violate the Ex Post Facto Clause of the Constitution if the “practical effect of the new policies [was] to substantially increase the risk that [inmates] would serve lengthier terms of incarceration.” The court held that this was exactly the case for four inmates who were sentenced under the prior guidelines but whose parole determinations were made under the 2000 guidelines. In spite of the court's ruling, however, the commission continued to apply the 2000 guidelines in all parole hearings.



Following the *Sellmon* decision, the Washington Lawyers' Committee for Civil Rights and Urban Affairs received a flood of requests from inmates seeking assistance in their upcoming parole hearings. The Washington Lawyers' Committee began an urgent search for attorneys who could handle one or more cases, often with very little time to prepare before the hearing.

Zuckerman Spaeder initially took one such case. At the request of the Washington Lawyers' Committee, however, Zuckerman Spaeder agreed to handle two additional clients whose parole hearings were on the same day. With about one month to prepare the three cases, the Zuckerman Spaeder attorneys sprinted to compile the necessary information—filing Freedom of Information Act requests for prison records, visiting a state jail to obtain the records of one client's exemplary institutional history, interviewing family members and prison officials, and conferring with the clients.

In advance of the hearing, Zuckerman Spaeder submitted briefs to the hearing examiner on behalf of each client. Ms. Reynolds and Mr. Kaiser then traveled to the U.S. Penitentiary, Lee County, in Jonesville, VA, to represent the clients at their parole hearings.

In one case, Ms. Reynolds and Mr. Kaiser established that the client had in fact served more than his full sentence. He was eligible for release, not parole, but prison officials had apparently misinterpreted his prison records. Based on the state prison records that Zuckerman Spaeder had compiled, the hearing examiner recommended that this client be released. The commission affirmed the recommendation, and the client was released in July 2009.

In the second case, a parole rehearing, Ms. Reynolds and Mr. Kaiser argued the client was eligible for release under either the 2000 or the 1987 guidelines. The attorneys demonstrated that, after the client's previous parole hearing, the commission had inappropriately departed upward from the 2000 guidelines based on facts that were contradicted in the record. Zuckerman Spaeder further argued that no upward departure would be warranted under the 1987 guidelines. Agreeing with the presentation of the facts, the hearing examiner also recommended that this client be released. The commission again affirmed the recommendation, and this client was also released in July 2009.

In the third case, Ms. Reynolds and Mr. Kaiser argued under *Sellmon* that applying the 2000 guidelines would violate the Ex Post Facto Clause of the Constitution because, while the client would be eligible for parole immediately under the 1987 guidelines, under the 2000 guidelines, he would have to serve substantially more time before he could be granted parole. Although he did not disagree with our interpretation of the guidelines, the hearing examiner recommended that parole be denied because of the commission's policy of applying the 2000 guidelines in all cases.

After the commission affirmed the hearing examiner's recommendation denying parole to this client, Zuckerman Spaeder learned that another inmate had been granted a new hearing under the 1987 guidelines. The firm therefore petitioned the chairman of the commission seeking the same relief. Ms. Reynolds and Mr. Kaiser reiterated their arguments that the decision violated the Ex Post Facto Clause, and also argued that the commission had treated our client differently than another, similarly situated inmate. In response to their letter, the commission granted our client a rehearing in June 2009. In June 2009 the hearing examiner recommended that this client be released, and once the commission affirmed that decision, he was released in February 2010.

PUBLIC POLICY

Zuckerman Spaeder Acts to End Racial Disparities in Criminal Justice

During the summer of 2013, the Washington Lawyers' Committee for Civil Rights and Urban Affairs issued a report entitled *Racial Disparities in Arrests in the District of Columbia 2009–2011: Implications for Civil Rights and Criminal Justice in the Nation's Capital*. In its fall 2013 update, the committee highlighted as key findings of the report that “despite relatively equal numbers of white and black adults in the city, well over 80 percent of those arrested were African American. Over 90 percent of drug arrests were of African Americans, despite the fact that drug use was virtually identical across racial lines throughout the city, and 90 percent of all arrests were for non-violent offenses.” Zuckerman Spaeder partner and Washington Lawyers' Committee director William W. Taylor, III, is serving on a subcommittee of the board responsible to pursue the reasons for the disparities with the Metropolitan Police and other agencies and to provide leadership on necessary reforms.

Pro Bono Honor Roll

The following is a list of Zuckerman Spaeder attorneys who devoted their time to work on pro bono matters during one or more of the last five years. Seventeen Zuckerman Spaeder attorneys recorded 100 hours or more of pro bono service in 2013, and another nine attorneys recorded between 50 and 100 hours.

Abelson, Adam++	Hasbun, Marcos E.+++*	Reich, Elena
Acton, Jason B.	Herman, Steven N.+++*	Reiser, David A.+++++
Alpert, Sara L.+	Himeles, Martin S., Jr.*++	Reynolds, Caroline E.**
Angulo, Carlos+*	Hynes, Paul B., Jr.	Ricci, Jane*
Barclay, Lisa	Ingberg, Mary Ann	Ross, Jennifer A.*
Barta, Laura Jo	Junghans, Paula M.+*+	Salky, Steven
Beggs, Lisa	Kaiser, Matthew+	Schmid, Stephanie
Berman, Nathan M.*	Kapp, Amy	Schreiner, William A., Jr.
Bernstein, Gregg	Kiernan, Leslie B.	Schultz, William B.*
Better, Herbert*	Knott, Jason M.+*	Shaffer, Robert T.+
Bostwick, Dwight P.	Kolker, Peter R.**	Shealy, Alison*
Brown, Blair G.+	Kravitz, Carl S.	Shechtman, Paul
Bush, Graeme W.	Krein, Benjamin	Shepard, Carmen
Caridas, Andrew*++	Luka, Meagen	Singer, Linda
Carter, Francis D.	Lynaugh, Maggie	Skinner, Christina P.
Clark, R. Miles+*	Mahanna, Brian K.+*	Smith, Cy+
Cohen, Jay T.	Marcus, Ellen D.++*	Smith, Eleanor H.+++++
Cohen, Nelson C.	Mason, Thomas B.	Smith, Logan
Cohen, Steven M.	McLane, Melinda A.	Smith, Meghan
Connolly, Brynna+	Mehta, Amit P.*++	Smith, Michael R.
Connolly, John J.+++	Mehta, Caroline Judge*	Solowiejczyk, Noah+
Cossette, Lani	Mehta, Kirtan*	Sottile, James
Cotton, Rachel F.*	Mesulam, Semra*+*	Stanford, Keisha N.
Davis, Geoffrey	Meyer, William K.	Stevenson, Lisa
Delinsky, Eric R.+*	Miller, Alexandra W.**	Stout, Susan**++
Dotzel, Margaret	Miller, Douglas++*	Sturc, Susan
Fernandez, Jack E.*	Moylan, Daniel	Taylor, Elizabeth G.
Foster, Mark W.	Murphy, William J.*	Taylor, William W., III *
Fotiades, Adam L.*++	Naunton, Shawn P.	Timmer, John B.*++
Fugate, Lee	Neish, Laura E.+	Voce-Gardner, Benjamin J.*
Gainey, Kimberly	Nothstein, Peter	Way, Cory++
Ginsberg, Robyn	O'Croinin, Conor B.	Wise, Mamie V.++
Goelman, Aitan	Palchak, Jo Ann*+++	Wolff, Marshall S.
Goldfarb, Andrew N.**	Pineau, A. Paul*+	Zuckerman, Roger E.
Guldi, Virginia Whitehill	Quattlebaum, Megan+	
Harness, Melody L.	Rao, Vivek*	

* Between 50 and 100 pro bono hours invested in a single calendar year.

+100 or more pro bono hours invested in a single calendar year.

OUR COMMITMENT TO THE COMMUNITY BEYOND PRO BONO LEGAL SERVICES

In addition to handling pro bono legal representations, Zuckerman Spaeder, its lawyers, and other firm professionals support a variety of local legal service providers, institutions that support legal service providers, and charitable community service organizations. We do this through charitable giving and in-kind services, which may involve fiduciary duties on the part of a volunteer professional to the organization receiving his or her services, but do not involve an attorney-client relationship between the recipient organization and the firm absent a specific engagement agreement. We address each in turn.

Charitable Giving

Zuckerman Spaeder has given charitable contributions to organizations that may be categorized as legal service providers and organizations that support them or other community service organizations.

Legal Service Providers and Organizations that Support Them

- Bay Area Legal Services
- Children's Law Center
- D.C. Bar Foundation
- D.C. Bar Pro Bono Program
- D.C. Law Students in Court
- Francis D. Murnaghan, Jr. Appellate Advocacy Fellowship
- Gideon's Promise (formerly Southern Public Defender Training Center)
- Lawyers' Alliance for New York
- Lawyers' Committee for Civil Rights Under Law
- Legal Aid Society of the District of Columbia
- Legal Aid Society of New York
- Legal Counsel for the Elderly
- Maryland Legal Aid
- Maryland Volunteer Lawyers Service
- Mid-Atlantic Innocence Project
- National Legal Aid and Defender Association
- Office of the Appellate Defender
- Pro Bono Resources Center of Maryland
- Public Justice Center
- Southern Center for Human Rights
- Southern Poverty Law Center
- University of the District of Columbia Law Summer Public Interest Fellowships
- Washington Lawyers' Committee for Civil Rights and Urban Affairs
- Washington Legal Clinic for the Homeless

For our support of local legal service providers, Zuckerman Spaeder is designated as a Platinum Tier Supporter of Raising the Bar in D.C., a fundraising campaign of the District of Columbia Access to Justice Commission. The Platinum Tier, which requires a law firm to contribute 0.11 percent of its revenues to eligible legal service providers in the District of Columbia, represents the highest level of support offered for the Raising the Bar in D.C. Campaign, which is intended to increase law firm giving to local legal service providers. While the other cities in which Zuckerman Spaeder has offices do not have campaigns similar to Raising the Bar in D.C., all Zuckerman Spaeder offices give generously in their communities.

Other Community Service Organizations

- American Red Cross (Haiti Fund)
- Angel Tree Program of the Salvation Army
- Baltimore Urban Debate League
- College Bound Foundation
- Community Mediation Program
- DC Appleseed
- DC SCORES
- Feeding America
- Homeless Person Project
- Lawyers Campaign against Hunger
- Maryland Food Bank
- Mentoring Today
- National Organization of Women, New York Chapter
- National Partnership for Women and Families
- PARC
- Perry Center
- Rebuilding Together of Washington, DC
- See Forever Foundation

In-Kind Volunteer Services

Zuckerman Spaeder professionals choose to serve their communities by volunteering as court-appointed committee members, court mediators, members of governmental public policy committees, board members, and helping hands for legal service providers and other community organizations. Below are listed many of the public interest organizations we served as volunteers from 2009 to 2013 and the names of Zuckerman Spaeder professionals who volunteered their time to help those organizations succeed in their mission.

COURT-APPOINTED COMMITTEE MEMBERS

District of Columbia Court of Appeals Committee on Unauthorized Practice of Law: *Caroline Judge Mehta*

Zuckerman Spaeder partner Caroline Judge Mehta has served on the District of Columbia Court of Appeals Committee on Unauthorized Practice of Law since 2006.

New York State Permanent Sentencing Review Commission: *Paul Shechtman*

In 2010, Chief Judge Jonathan Lippman of the New York Court of Appeals appointed Zuckerman Spaeder partner Paul Shechtman to the New York State Permanent Sentencing Review Commission. The mission of this advisory committee is to make sense of the state's complex and sometimes contradictory sentencing statutes by recommending reforms to state sentencing laws and practice.

U.S. Court of Appeals for Veteran Claims Disciplinary Rules Committee: *Mark W. Foster*

Zuckerman Spaeder partner Mark W. Foster serves as a member of the Disciplinary Committee of the U.S. Court of Appeals for Veteran Claims.

COURT MEDIATORS

Superior Court of the District of Columbia: *Nina Falvello*

Zuckerman Spaeder staff attorney Nina Falvello serves as a mediator for Family and Civil Branches of the District of Columbia Superior Court's Multi-Door Dispute Resolution Division.

STATE GOVERNMENT COMMITTEE MEMBERS

New York State Joint Commission on Public Ethics: *Mitra Hormozi*

Zuckerman Spaeder partner Mitra Hormozi serves on the New York State Joint Commission on Public Ethics, which was created by state law in June 2011 to ensure compliance with the state's ethics and lobbying laws. The commission has oversight of the both the executive and legislative branches of state government.

New York State White Collar Task Force: *Mitra Hormozi*

In a report issued in September 2013, the New York State White Collar Task Force recommended reforms to the laws of the State of New York to better prosecute fraud, corruption, and other white collar crime. Zuckerman Spaeder partner Mitra Hormozi served on this special task force, which was convened by the District Attorneys Association of New York State.

ROLE IN GOVERNANCE OF LEGAL SERVICES PROVIDERS AND ORGANIZATIONS THAT SUPPORT THEM

Baltimore Neighborhoods, Inc., Legal Advisory Board: *Robert T. Shaffer*

Zuckerman Spaeder partner Robert T. Shaffer serves on the legal advisory board of Baltimore Neighborhoods, Inc., which each year serves upwards of 20,000 residents of Baltimore to obtain or keep housing for themselves and their families.

Bay Area Legal Services: *Sara L. Alpert*

Zuckerman Spaeder associate Sara L. Alpert serves on the board of directors of Bay Area Legal Services and as president of The Pearl Society, a women's philanthropic society that is dedicated to supporting Bay Area Legal Services.

Crossroads for Florida Kids, Inc.: *Morris "Sandy" Weinberg, Jr.*

Zuckerman Spaeder partner Morris "Sandy" Weinberg, Jr., and his wife, Rosemary Armstrong, helped found Crossroads for Florida Kids, Inc. (Crossroads), which arranges for pro bono legal representation for children in foster care in Florida. The pro bono attorney represents the child with respect to judicial proceedings regarding the child's dependency on state foster care and any involvement in the juvenile justice system. Mr. Weinberg serves on, and Ms. Armstrong is the president of, the board of directors of Crossroads.

D.C. Bar Pro Bono Partnership Advisory Committee: *Eleanor H. Smith*

Zuckerman Spaeder partner Eleanor H. Smith serves as a member of the inaugural D.C. Bar Pro Bono Partnership Advisory Committee, established by the D.C. Bar to assist in supporting and growing pro bono service by District of Columbia lawyers.

Equal Justice Council: *Martin S. Himeles, Jr.*

The Equal Justice Council, led by a board of directors on which Zuckerman Spaeder partner Martin S. Himeles, Jr., serves, was established to raise funds for Maryland Legal Aid.

Gideon's Promise: *Blair G. Brown*

Gideon's Promise partners with public defender offices to build a community of committed and passionate advocates to drive indigent defense reform across the South. The organization trains, supports, and develops public defenders at every level from new lawyers to established leaders. Formerly known as the Southern Public Defender Training Center, Gideon's Promise is named for the petitioner in the Supreme Court case that recognized the constitutional right of indigent defendants to counsel in criminal cases. Zuckerman Spaeder partner Blair G. Brown helped found this organization and has served on its board of directors from its inception.

Lawyers' Committee for Civil Rights Under Law: *Eleanor H. Smith*

In 1963, President John F. Kennedy requested the formation of the Lawyers' Committee for Civil Rights Under Law to involve lawyers in private practice and their law firms in providing legal services to address racial discrimination and to secure, through the rule of law, equal justice under the law. Zuckerman Spaeder partner Eleanor H. Smith serves as secretary of the committee's board of directors.

Legal Aid Society of the District of Columbia: *Graeme W. Bush*

Zuckerman Spaeder chairman and partner Graeme W. Bush is a member of the Legal Aid Society board of trustees. The Legal Aid Society of the District of Columbia provides civil legal aid to individuals of limited means and advances the law and its administration in ways that better serve the needs of those living in poverty.

Legal Counsel for the Elderly, Advisory Committee: *Peter R. Kolker*

Zuckerman Spaeder partner Peter R. Kolker serves on the advisory committee of the Legal Counsel for the Elderly, which for 35 years has provided free legal representation and advice to older people, many of whom confront geriatric-related legal issues and are at greater risk than other adults of being the victim of fraud and abuse.

Mid-Atlantic Innocence Project: *Amit P. Mehta and Blair G. Brown*

Zuckerman Spaeder partner Amit P. Mehta serves on the board of directors of the Mid-Atlantic Innocence Project, a nonprofit organization dedicated to correcting and preventing the conviction of innocent people in the District of Columbia, Maryland, and Virginia. Partner Blair G. Brown helped to found the Mid-Atlantic Innocence Project and is a former chairman of its board of directors.

Murnaghan Appellate Advocacy Fellowship: *Martin S. Himeles, Jr.*

Zuckerman Spaeder partner Martin S. Himeles, Jr., is a member of the board of the Francis D. Murnaghan, Jr., Appellate Advocacy Fellowship. The fellowship was founded in memory of Francis Murnaghan, a judge in the U.S. Court of Appeals for the Fourth Circuit (for whom Mr. Himeles clerked), who was a leading voice in support of civil rights and the rights of the poor and disenfranchised, among other causes. Each year the Murnaghan Fellowship selects a recent law school graduate who has completed a judicial clerkship to spend a year engaged in appellate advocacy in civil rights and poverty law. The fellow works in the Appellate Advocacy Project of the Public Justice Center in Baltimore. Past fellows have worked closely with leaders of the Maryland Bar and have authored briefs in the Supreme Court of the United States, the U.S. Court of Appeals for the Fourth Circuit, and the Court of Appeals of Maryland, among other courts.

Public Justice Center: *P. Andrew Torrez*

Zuckerman Spaeder partner P. Andrew Torrez is a board member and former vice president of the Public Justice Center, which pursues impact litigation in a variety of areas. One important effort for the group is to extend the constitutional right to counsel recognized by the Supreme Court of the United States in *Gideon v. Wainwright* to civil proceedings in which a fundamental right is at stake, such as child custody.

Senior Attorney Initiative for Legal Services (SAILS): *Roger E. Zuckerman*

In 2010, at the instigation of Roger E. Zuckerman, Zuckerman Spaeder became a founding member of the Senior Attorney Initiative for Legal Services (SAILS), a joint initiative of the D.C. Bar Pro Bono Program and the D.C. Access to Justice Commission. SAILS is aimed at encouraging law firms to support their senior lawyers in the provision of pro bono services to persons of limited means.

Washington Lawyers' Committee for Civil Rights and Urban Affairs: *William W. Taylor, III, Eleanor H. Smith, and Adam Abelson*

Zuckerman Spaeder partner William W. Taylor, III, serves on the board of directors of the Washington Lawyers' Committee for Civil Rights and Urban Affairs. Partner Eleanor H. Smith and associate Adam Abelson are committee trustees. The committee mobilizes law firms and lawyers in private practice to protect the rights of individuals to employment, housing, and access to public accommodations, education, and other aspects of urban life in metropolitan Washington, DC.

LEADERSHIP IN BAR AND OTHER ORGANIZATIONS PROMOTING THE FAIRNESS AND RULE OF LAW

Baltimore City Bar Professional Ethics Committee: *William J. Murphy*

Zuckerman Spaeder partner William J. Murphy serves as chairperson of the Baltimore City Bar Professional Ethics Committee.

District of Columbia Bar Legal Ethics Committee: *Thomas B. Mason and Alexandra W. Miller*

Zuckerman Spaeder partner Alexandra W. Miller serves on the D.C. Bar Legal Ethics Committee and partner Thomas B. Mason completed his service and third term as chair of the D.C. Bar Legal Ethics Committee in June 2012.

Council for Court Excellence: *Peter R. Kolker*

Zuckerman Spaeder partner Peter R. Kolker serves as the firm's representative to the Council for Court Excellence (CCE), a nonprofit organization that works to improve the administration of justice in the District of Columbia. Mr. Kolker is a member of the CCE's executive council.

The Fund for Modern Courts: *Steven M. Cohen*

The Fund for Modern Courts, on whose board of directors Steven M. Cohen serves, seeks to improve the court system in New York State by making it more efficient, fair, accessible, and user-friendly.

Hillsborough Association of Women Lawyers: *Mamie V. Wise*

Zuckerman Spaeder associate Mamie V. Wise is on the board of directors for the Hillsborough Association of Women Lawyers (HAWL) and serves as the organization's community outreach chair. The mission of HAWL is to promote gender equality in the legal profession and under the law.

Baltimore Bar Library: *John J. Connolly*

Zuckerman Spaeder partner John J. Connolly serves on the board of directors of the Baltimore Bar Library, formally known as the Library Company of the Baltimore Bar.

Ms. JD: *Keisha N. Stanford*

Ms. JD is a nonprofit organization dedicated to the success of women in the legal profession. Zuckerman Spaeder associate Keisha Stanford served on the board of directors of Ms. JD from 2008 to 2012, in addition to serving as the organization's vice president from 2010 to 2012.

New York Bar Association Task Force on Government Ethics: *Paul Shechtman*

Zuckerman Spaeder partner Paul Shechtman served on a special task force on government ethics established by the New York Bar Association. The task force issued its final report in January 2011, recommending 22 reforms to the state ethics laws.

The Historical Society of the U.S. District Court for the District of Maryland: *Herbert Better*

In 2010, Zuckerman Spaeder partner Herbert Better was named the first president of the Historical Society of the U.S. District Court for the District of Maryland, a position he continues to hold following his re-election in 2013. The Historical Society conducts projects designed to heighten public awareness of the court's function and role in society and its impact on history, and to enhance the administration of justice.

United States Holocaust Museum Washington Lawyers' Committee: *Graeme W. Bush*

Zuckerman Spaeder chairman and partner Graeme W. Bush serves on the board of directors of the Washington Lawyers' Committee of the United States Holocaust Museum. The committee seeks to alert lawyers, judges, and law students to the continuing relevance of the legal and moral dimensions of the Holocaust on contemporary law.

COMMUNITY SERVICE ORGANIZATION BOARD MEMBERS

American Jewish Committee (Baltimore Chapter): *Martin S. Himeles, Jr.*

Zuckerman Spaeder partner Martin S. Himeles, Jr., is a past president of the Baltimore chapter of the American Jewish Committee (AJC)—an international think tank and advocacy organization committed to combating anti-Semitism and all forms of bigotry, as well as promoting pluralism and shared democratic values. He continues to serve on the AJC's Baltimore Steering Committee.

Baltimore Urban Debate League: *Cy Smith*

Zuckerman Spaeder partner Cy Smith serves on the board of the Baltimore Urban Debate League (BUDL), most recently as vice chair. Founded in 1999, BUDL provides policy debate coaching and competition to more than 1,000 Baltimore public high school and middle school students every year, working with students and teachers at more than 50 schools throughout the city.

Citizens Budget Commission: *Steven M. Cohen and Brian K. Mahanna*

Zuckerman Spaeder partner Steven M. Cohen serves as a trustee and as co-chairperson of the committee regarding the Port Authority of the Citizen Budget Commission, a nonprofit organization established in 1932 to promote fiscal restraint and progressive reforms in New York City government. Associate Brian K. Mahanna serves as trustee under 40 of the Citizens Budget Commission.

Citizens Union: *Steven M. Cohen*

Citizens Union is dedicated to transparent, accountable, and democratic government in New York City. Zuckerman Spaeder partner Steven M. Cohen serves on the board of directors of Citizens Union.

DC Appleseed: *Eleanor H. Smith*

Zuckerman Spaeder partner Eleanor H. Smith serves on the board of DC Appleseed, which brings together policy leaders and experts to solve problems afflicting the nation's capital. DC Appleseed is one of a network of 17 public interest justice centers in the United States and Mexico that are dedicated to public policy solutions and advocacy to advance equal opportunity and justice under the law.

DC SCORES: *Carl S. Kravitz*

DC SCORES provides afterschool and summer camp programs for more than 1,450 low-income Washington, DC, students between the ages of 8 and 15, instilling in each youth self-expression, physical fitness, and a sense of community. DC SCORES operates at 42 public or public charter schools throughout the area, including Orr Elementary School. Zuckerman Spaeder introduced DC SCORES to Orr Elementary School as part of the firm's public school partnership with Orr Elementary School.

Everybody Grows: *Steven M. Salky*

To help Washington, DC, residents establish food gardens in their yards, Zuckerman Spaeder partner Steven M. Salky started a nonprofit organization called Everybody Grows. In 2013, Everybody Grows teamed with the District of Columbia Fire and Emergency Medical Service Department to install demonstration gardens in the yards of fire stations, which could facilitate the firefighters getting to know the communities that they serve while sharing produce with neighbors and showing them how easy growing your own food can be.

PARC: *Marcos E. Hasbun*

Zuckerman Spaeder partner Marcos E. Hasbun serves on the board of directors of PARC, a Tampa organization whose mission is to enhance the dignity and independence of persons who are developmentally challenged. PARC serves more than 800 children and adults with developmental disabilities. For his service, PARC awarded Mr. Hasbun with its 2012 Community Volunteer of the Year Award.

Roger E. Zuckerman Foundation for Educational Excellence at Stanton Elementary School: *Roger E. Zuckerman, Jeffrey Morson, and Eleanor H. Smith*

In 2011, Zuckerman Spaeder partner Roger E. Zuckerman caused to be established a nonprofit organization dedicated to improving educational opportunities for students at the elementary school that he attended in the Anacostia community of Washington, DC. Mr. Zuckerman is president of the board of directors of the Roger E. Zuckerman Foundation for Educational Excellence at Stanton Elementary School; partner Eleanor H. Smith is a board member; and from the inception of the foundation through 2013 its treasurer was the firm's chief financial officer, Jeffrey Morson.

PUBLIC SCHOOL PARTNERSHIPS

The inequality in educational opportunity is great in the District of Columbia, with a large percentage of Washington, DC, public school students performing several years below their grade level. Almost all of these students are from low-income families, of color, and born in the District. Zuckerman Spaeder and founding partner Roger E. Zuckerman have partnered with two District of Columbia public elementary schools to provide additional resources and opportunities to their students. Both schools are located in the severely economically challenged neighborhood of Anacostia, southeast of the Anacostia River.

Benjamin Orr Elementary School Partnership

Through the Washington Lawyers' Committee for Civil Rights Under Law School Partnership Program, Zuckerman Spaeder partners with Benjamin Orr Elementary School, which is located in the Anacostia neighborhood of Washington, DC. The partnership began in 2010 with attorneys coaching Orr students for a city-wide tournament in Geoplunge, a set of U.S. geography games. With the assistance of firm coaches, namely Zuckerman Spaeder counsel William A. Schreiner, Jr.; library director Jeanne Trahan Faubell; user support analyst James Cooke; and partner Eleanor H. Smith, the Orr team won the best sportsmanship award in 2011. Orr now is experiencing a Geoplunge craze, with scores of students playing the games after school year-round. In 2012, Orr proudly sponsored the first-ever East of the River Geoplunge Tournament at the Anacostia Public Library.

In 2011, Zuckerman Spaeder started coaching Orr students for the Frederick Douglass Oratory Contest, which draws student contestants from around the country and is held in Douglass' home in Anacostia. Between 2011 and 2013, Orr student participation grew from two to 15 students. Ms. Faubell and Ms. Smith lead this oratory program, which draws speech coaches from the firm, including Mr. Schreiner, partner Jason M. Knott, associate Vivek Rao, staff attorney Laura Eller, recruitment coordinator Mary McCabe, and secretary Karen Jenkins, and from local high schools, including Dunbar High School debate coach Julian Dotson and students from Maret, Dunbar,

and Walt Whitman High Schools. At the 2013 Frederick Douglass Oratory Contest, a third-grade student from Orr won third place in her age group.

Zuckerman Spaeder led successful book drives for Orr Elementary School in 2011, in connection with its library renovation, and, in 2013, to supply classrooms with more than 200 books specifically requested by Orr teachers.

Zuckerman Spaeder participates in the Cooking for Kids Bake Sale to raise funds to enhance the educational experience of Orr students. Celebrity judges for the Zuckerman Spaeder bake sales have included Aviva Goldfarb, author of *The Six O'Clock Scramble*; Rachael Harriman, chef de cuisine at Sou'Wester; and Art Carlson, proprietor of C.F. Folks restaurant. In 2011, Zuckerman Spaeder used the bake sale proceeds to purchase gym equipment needed by Orr Elementary School. In 2012, Zuckerman Spaeder used bake sale proceeds to sponsor two Orr students to attend a week-long summer camp on the Chesapeake Bay and to purchase needed equipment and instructional books for teachers. In 2013, bake sale proceeds were used for awards presented at graduation and to purchase books for students. Zuckerman Spaeder donated the unsold baked goods from these bake sales to Thrive DC, a nonprofit provider of meals, jobs, and other social services to people who are homeless in the nation's capital.

In 2012, the Washington Lawyers' Committee presented Zuckerman Spaeder with an Outstanding Achievement Award for its Orr Elementary partnership.

Roger E. Zuckerman Foundation for Educational Excellence at Stanton Elementary School

Like Orr Elementary, Stanton Elementary School serves about 350 children in pre-kindergarten through fifth grade, virtually all of whom are eligible for the free lunch program because of their families' very low income. In 2010, the District of Columbia identified Stanton, which Roger E. Zuckerman attended as a child, as having become one of its worst-performing public elementary schools.

Mr. Zuckerman responded to the news about Stanton's condition by establishing the Roger E. Zuckerman Foundation for Educational Excellence at Stanton Elementary School. In 2011, the foundation provided funding for end-of-school-year programs at Stanton. In 2012, Mr. Zuckerman was the school's commencement speaker and the Zuckerman Foundation provided the funding necessary for a graduating Stanton student to visit Canada as a private ambassador through the People to People program. In 2013, the Zuckerman Foundation helped sponsor summer school for about 100 students who transferred to Stanton from another school at the end of the 2012–2013 school year.

COMMUNITY SERVICE SPECIAL EVENTS

Throughout the year, Zuckerman Spaeder attorneys and staff participate in a variety of additional service projects in their communities. The following are some of the service projects in which the firm has engaged since the beginning of 2009.

Rebuilding Together

Through Rebuilding Together of Washington, DC, Zuckerman Spaeder has, for each of the past six years, sponsored the rehabilitation of one or two homes in the nation's capital for residents who are either in low-income situations, disabled, and/or military veterans. Rebuilding Together of Washington, DC has been providing home improvement services for 30 years for qualifying residents. As volunteers, Zuckerman Spaeder employees usually spend one day a year making repairs and improvements in these homes and/or other facilities for those in need.

On April 27, 2013, Zuckerman Spaeder volunteers and Rebuilding Together of Washington, DC, along with family and friends, made a difference for some very appreciative people. Our firm was assigned to the Southeast Veterans Service Center, a 98-bed facility that serves as a transitional housing facility for male and female veterans. The veteran residents at this location are, or have been, homeless for one reason or another. Veterans may reside at this facility anywhere from six months to two years as they get back on their feet. During their residency they receive case management services, mental health treatment, addiction treatment, job training/placement, two meals a day, and other services.

April 27 brought out 94 volunteers; the weather was fantastic and the enthusiasm was overwhelming. The services provided to the men and women at the Veterans Service Center by these volunteers included painting, laying tile floors, installing light fixtures, installing light sensors, replacing kitchen cabinets, repairing broken bathroom facilities, and building garden beds. On June 20, 2013, at the Southeast Veterans Center, some volunteers returned to paint, install thermostat covers and protective corner guards, add door kick-plates, plant vegetable gardens, and work on other needed projects.

Spearheading Zuckerman Spaeder's relationship with Rebuilding Together are Zuckerman Spaeder partner Mark W. Foster and former partners William B. Schultz and Elizabeth G. Taylor. Event organizers include staff attorney Nina Falvello and human resource assistant Alverta Hickerson.

D.C. Pro Bono Week

Each year Zuckerman Spaeder goes "Casual for Justice" for D.C. Pro Bono Week to support our local legal service providers. Attorneys and staff in the firm's Washington, DC, office are encouraged to donate \$5 per day for the privilege of wearing jeans to work for one week. Each year the firm has raised about \$1,000 during Pro Bono Week to donate to local nonprofit legal services providers and the D.C. Bar Foundation's Loan Repayment Assistance Program, which supports grants to lawyers of limited means who work on behalf of the city's low-income residents.

Salvation Army Angel Tree

Every holiday season, Zuckerman Spaeder attorneys and staff participate in the Salvation Army's Angel Tree holiday gifts program for children of low-income families from the Washington, DC, area. In 2009–2012, Zuckerman Spaeder sponsored between 75 and 100 children, each of whom received a variety of gifts appropriate for their size and age. More than 50 attorneys and staff members annually donate money or gifts.

Mock Oral Argument Program of the Historical Society of the District of Columbia Circuit

Zuckerman Spaeder counsel William A. Schreiner, Jr., organizes, along with help from former partners Francis D. Carter and William B. Schultz, the annual Mock Oral Argument Program of the Historical Society of the District of Columbia Circuit. Each year, about 80 District of Columbia high school students, with assistance from volunteer attorneys from local law firms, prepare and present arguments before judges from the U.S. Court of Appeals or the U.S. District Court at the federal courthouse in Washington, DC. Mr. Schreiner is the current, and Mr. Schultz the former, treasurer of the Historical Society, and Mr. Carter is a longtime member of its board of directors.

Florida Association of Women Lawyers' Youth Mock Trial Program

Through the Hillsborough Association of Women Lawyers, Zuckerman Spaeder associates Mamie V. Wise and Sara L. Alpert helped to organize a mock trial team of seventh-grade girls from Academy Prep Center of Tampa for the Florida Association of Women Lawyers inaugural middle school mock trial competition in 2013. Their team won the competition.

Legal Leaders of the Future

Zuckerman Spaeder associate Jo Ann Palchak works with members of the Tampa bench and bar to mentor youths through various programs. One such program that ran from 2009 to 2012 was called “Legal Leaders of the Future.” Through class instruction and mock hearings, volunteer judges and lawyers taught young people about possible careers in the law. Participants in this Tampa program have matriculated to college, with some of them enrolled as criminal justice majors.

Election Officers

Zuckerman Spaeder library director Jeanne Trahan Faubell, staff attorney Laura Eller, and assistant library director Monica Welham served, respectively, as assistant chief election officer in Fairfax County, VA, and election officers in Montgomery County, MD, and Loudoun County, VA, in the 2012 general election. Ms. Faubell and Ms. Welham also served as Virginia county election officers in the 2010 general election, and, in 2013, Ms. Faubell served as the Fairfax County chief election officer for the Democratic primary and Ms. Welham served as a Loudoun County election officer in the general election.

National MS Walk

In 2009, Zuckerman Spaeder sponsored Team Hartzler East in the National MS Walk. The sponsorship was in honor of Joe Hartzler, a federal prosecutor with multiple sclerosis who was instrumental in seeking justice in the Oklahoma City bombing case.

Lawyers Have Heart

Zuckerman Spaeder attorneys and staff annually participate in the Lawyers Have Heart 10K race and fun walk, which benefits the American Heart Association. The Zuckerman Spaeder team and various individuals from the firm have placed as top finishers in their respective categories in the race year after year. Individual top finishers include Zuckerman Spaeder partner Andrew N. Goldfarb and paralegal Janet Braunstein (the team captain). The Zuckerman Spaeder team placed second in the Lawyers Have Heart 10K race in 2013.

DC SCORES Soccer Tournament

Zuckerman Spaeder attorneys and staff compete annually in the DC SCORES fundraising soccer tournament, Sharks v. Suits. In 2009, the Zuckerman Spaeder team advanced to the quarterfinals.

What Is Pro Bono?

Zuckerman Spaeder applies the definition of pro bono legal services provided by the Pro Bono Institute. According to the Pro Bono Institute, “pro bono” for law firms means “activities of the firm undertaken normally without expectation of fee and not in the course of ordinary commercial practice and consisting of: a) the delivery of legal services to persons of limited means or to charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; b) the provision of legal assistance to individuals, groups, or organizations seeking to secure or protect civil rights, civil liberties or public rights; and, c) the provision of legal assistance to charitable, religious, civic, community, governmental or educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization’s economic resources or would be otherwise inappropriate.”

Pro Bono Matters

Pro Bono Matters is a publication focusing on the commitment of Zuckerman Spaeder LLP to pro bono service. To contribute to the next edition of *Pro Bono Matters* or to recommend a pro bono project, please contact Eleanor H. Smith at esmith@zuckerman.com, 202-778-1838, or Zuckerman Spaeder LLP, 1800 M Street, NW, Suite 1000, Washington, DC 20036.

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Eleanor H. Smith, Coordinator

Amit P. Mehta*

William W. Taylor, III

Laura E. Neish*

Marshall S. Wolff

Steven N. Herman*

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