Cutting edge innovations are the exclusive domain of the big city and its denizens – or so we like to think. Lately, though, the vanguard has been popping up in some unlikely places, including the reservation lands belonging to the Little Traverse Bay Bands of Odawa Indians. The Odawa tribe, located in the northern part of Michigan’s lower peninsula, has surpassed the entire country in a crucial area of regulation: the Uniform Commercial Code (UCC), the set of laws that govern nearly all business-related transactions. “The Odawa nation currently has the most up-to-date UCC in the US,” says Reade Ryan, of counsel in the finance group in New York. He should know; he wrote it.

The Odawa were historically a migratory people whose indigenous homeland ranged from southern Canada across upper and lower Michigan. During the 19th century, the tribe experienced a loss of political autonomy and nearly complete dispossession of their lands. The Odawa, however, maintained their unique identity despite the enormous pressures on their cultural and linguistic traditions from mainstream America. In 1994, after years of legal battles, President Bill Clinton signed a bill affirming the Odawa’s federal tribal status and granting them sovereignty. Today, a majority of the tribe – there are approximately 4,000 members – lives in Emmet and Charlevoix counties along the Lake Michigan shoreline.

Since 1994, the tribe has experienced rapid growth. In addition to opening a small casino, they have developed a tribal government, a healthcare system, a tribal court and many social service programs. The tribe has also been buying up property that was once part of their ancestral homeland. Along with these advances comes the need for legal counsel, which Shearman & Sterling is providing to the Odawa pro bono through a program developed by Appleseed. A non-profit organization, Appleseed matches Native American tribes with pro bono counsel.

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Carlos is a gay, HIV-positive man from a Latin American country who has been living in the United States since 1995. Carlos created a life for himself despite the fact that he was undocumented. After having been unable to obtain a driver’s license due to his undocumented status, Carlos began to worry that he would not be able to continue living in the United States. With the help of Shearman & Sterling, he can.

Prior to fleeing to America, Carlos suffered persecution in his country due to his homosexuality. He fears further persecution should he return based on his homosexuality and HIV-positive status. Carlos sought help from Immigration Equality, a national organization that works to end discrimination in immigration law, to reduce the negative impact of that law on the lives of lesbian, bisexual, gay, transgender and HIV-positive people and to help obtain political asylum for those persecuted in their home country based on sexual orientation, transgender or HIV status. Through Immigration Equality’s pro bono asylum program, the case was referred to Alexandro M. Padrés (NY-IP) in late 2004.

### Courage and Perseverance:

PADRÉS CONDUCTED EXTENSIVE RESEARCH ON THE CONDITIONS WITHIN CARLOS’ HOME COUNTRY RELATING TO MISTREATMENT OF HOMOSEXUALS AND HIV-POSITIVE PEOPLE.

Carlos’ asylum case was challenging because the laws governing political asylum require that those wishing to apply for political asylum do so within one year of arriving into the United States. Carlos was applying more than 10 years after entry. Padrés had to prove that “exceptional circumstances” prevented him from filing earlier. Only after convincing the Bureau of Citizenship and Immigration Services of “exceptional circumstances” could the focus turn to whether or not Carlos was eligible for political asylum. Padrés prepared a 50-page brief specifically addressing Carlos’ failure to apply for political asylum within the one-year deadline. “Carlos’ HIV status, his efforts to maintain good health, three deaths in the family in two and a half years, AIDS-related illnesses, including mental health issues associated with his HIV status, and his lack of knowledge on political asylum law make for extraordinary circumstances,” Padrés explains.

Preparing the affirmative asylum application was a labor-intensive, document-laden task. Padrés had to prove that Carlos had been persecuted and feared future persecution in his home country. Padrés prepared Carlos’ application for asylum, which was made up of a lengthy affidavit from Carlos, a legal brief and other evidence in support of the asylum claim. Padrés conducted extensive research on the conditions within Carlos’ home country relating to mistreatment of homosexuals and HIV-positive people. Elsa Garagnon (LO-PDF) assisted on research and writing the briefs. Also assisting on the case was associate Jordan Altman (NY-IP). Numerous news reports reflecting abuse, harassment and persecution of such individuals were provided as exhibits. Additionally, an expert on current conditions in the country was engaged to provide a supporting affidavit. A clinical social worker and Carlos’ doctors were also approached and engaged for the rendering of expert reports on Carlos’ mental and physical health. Finally, Padrés met with and interviewed Carlos’ friends in order to further support Carlos’ claims with their affidavits.
After the application was filed, Carlos was called for his asylum interview by the Bureau of Citizenship and Immigration Services. Padrés accompanied Carlos to the interview at the New York Asylum Office in Rosedale, Long Island. Summer associate Kevin Younai served as Carlos’ interpreter. The interviewer questioned Carlos for several hours. Two weeks after his interview, Carlos was granted a Recommendation for Approval on his application for political asylum. Subject to customary background checks and identity verification, he will receive final approval, which means that he will be able to live and work legally and permanently in the United States. Carlos currently works in Westchester County, New York, as an air conditioner repairman.

The experience of representing this client had a tremendously personal impact on Padrés. “It is an amazing feeling to be able to help another human being,” he says.

And Immigration Equality was pleased as well. Victoria Neilson, its legal director, says, “This was such a difficult case. Alex Padrés did a fantastic job and helped this deserving client start a new life here.”

*The client’s name has been changed to guard his privacy.

**THE EXPERIENCE OF REPRESENTING THIS CLIENT HAD A TREMENDOUSLY PERSONAL IMPACT ON PADRÉS.**

“IT IS AN AMAZING FEELING TO BE ABLE TO HELP ANOTHER HUMAN BEING,” HE SAYS.
At the end of January, associates Catherine Ugeux (NY-CM), Justyna Rostocka (SF-CM) and Laurelle Lo (WA-LT) researched and prepared a memorandum to the International Criminal Tribunal for Rwanda (ICTR), Office of the Prosecutor (OTP).

The research was part of a larger project aimed at understanding the extent of OTP’s responsibility to provide statements made by prosecution witnesses to the defense. Faced with a variety of approaches by the courts, the ICTR was looking to develop a well-grounded position to be advanced when faced with arguments from the defense that the ICTR did not fulfill its obligation.

Specifically, the ICTR asked Shearman & Sterling to research the *gacaca* process (“lawn” or “lawn justice”), a system of community-based justice established after the 1994 genocide to deal with the massive caseload resulting from the genocide, which the rebuilt national courts did not have the capacity for. The *gacaca* courts, established in 2002, became fully operational on a national basis in 2005, after a pilot program was completed. The *gacaca* tribunals merge customary practice with a more formal Western court structure. The main principle of the *gacaca* is to bring together all relevant parties at the actual location of the crime.

Ugeux, Rostocka and Lo researched the rules of the *gacaca* courts, how the courts fit in the Rwandan justice system and how they were functioning. Part of the challenge resided in the relatively short history of these tribunals. The *gacaca* courts have been compared to the South African Truth and Reconciliation Commission, that also sought restorative justice, though in a more formal and regulated manner.

However, the most frequent criticism directed toward the *gacaca* tribunals refers to their limitations – more specifically, the absence of safeguards recognized not only by international law but also local law. The associates determined that *gacaca* tribunals are not compatible with minimum standards of fair trials as provided for in the International Covenant on Civil and Political Rights (ICCPR) or the African Charter on Human and People’s Rights, which Rwanda has ratified.

The memorandum written by Ugeux, Rostocka and Lo detailed which categories of crime would fall within the jurisdiction of the *gacaca*, the organization of the tribunals, the procedural safeguards in place and the documents generated by the *gacaca*.
Ugeux coordinated the joint effort and focused her research on the type of crimes over which the gacaca have jurisdiction. Crimes are divided into several categories and the gacaca courts cannot try persons who are accused of rape and torture or of being organizers of the genocide. Ugeux conducted the initial research for the project, assembling legislative text, reports from non-governmental organizations and other articles which were then supplemented by materials found by Lo and Rostocka.

In particular, Rostocka researched the limitations of safeguards recognized by international law, such as *nulla poena sine lege* (which refers to the legal principle that one cannot be penalized for doing something not prohibited by law), double jeopardy, arbitrary detentions, right to fair trial, rights of defense, right to be presumed innocent, in contrast to those recognized and inherent to a “traditional justice system,” such as reduced ability to try crimes or to impose penalty and possibility of appeal from judgments.

Lo researched the jurisdiction of the gacaca in contrast to that of the traditional trial courts. She also researched what kind of official record is created by the gacaca at each phase of the process. After reviewing the various Rwandan organic laws and secondary materials generated by non-governmental organizations and human rights scholars, she learned that the record of the gacaca is very much determined by the role of the gacaca: at all levels, the gacaca generates documents evidencing the body’s fact-finding duties and its guiding principle of confession and judgment.

The research benefited from the associates’ knowledge of French, given that many – if not most – of the commentaries on the gacaca are written in French. The project was made logistically challenging by the fact that many useful resources were located in Africa and difficult to access in the United States.

The research conducted by the associates is part of a larger, ongoing research project Shearman & Sterling is conducting for the Office of the Prosecutor.
Shearman & Sterling lawyers volunteer for many different clinics, though every volunteer has one thing in common: a desire to serve their local community by providing legal assistance. The firm’s lawyers are able to connect to the communities in which they work through their involvement in clinics.

The Volunteer Lawyers for the Arts (VLA) clinic is one clinic with significant firm participation. In March 2001, VLA launched the VLA Legal Clinic, a program facilitating in-person consultations by volunteer attorneys for members of the arts community. The clinics enable VLA members to receive a free half-hour consultation with a volunteer attorney on any arts-related legal issue. The clinic resolves the matter at hand in about 75% of the cases.

“Clinics are a great way to become involved in pro bono work without taking on time-consuming individual representation,” says Saralyn Cohen, pro bono counsel and director of pro bono. Legal clinics – devoted to specific issues in a community, benefiting clients by offering legal advice on the spot – are popular because the volunteer attorney is able to schedule time at the clinic and can be sure that time will be limited to those hours. The volunteer attorney chooses an organization dedicated to a cause, and the sponsoring organization screens the clients and schedules them for the clinic, knowing that they will benefit from advice.

The Volunteer Lawyers for the Arts (VLA) clinic is one clinic with significant firm participation. In March 2001, VLA launched the VLA Legal Clinic, a program facilitating in-person consultations by volunteer attorneys for members of the arts community. The clinics enable VLA members to receive a free half-hour consultation with a volunteer attorney on any arts-related legal issue. The clinic resolves the matter at hand in about 75% of the cases.

“Shearman & Sterling is one of the most active participants in the VLA Legal Clinic,” VLA Executive Director Elena M. Paul says. “Many members of the arts community have expressed to us how grateful they are to have access to such experienced and generous legal professionals. They also often ask VLA for the firm’s lawyers by name.” The firm was a recipient of VLA’s 2006 Outstanding Volunteer Award, an award given in recognition of exceptional contributions in support of VLA’s mission.

For some, volunteering at clinics has inspired them to step into unfamiliar territory. “I knew I wanted to do pro bono work in family law, but I knew very little about the subject and wouldn’t have had the confidence to take on

“I was able to provide legal assistance to a meaningful number of people in a short time frame and help de-mystify concepts to people who spend their time in the creative world rather than the legal world.”

—Michael Benjamin
an actual case,” says associate Douglas Miller (WA-LT), who has volunteered at the DC Bar Family Court Self-Help Center since November 2005.

The Family Court Self-Help Center provides on-site assistance with family law matters in the District of Columbia to low-income members of the public who do not have attorneys. The center helps unrepresented individuals with DC family law questions or with cases in the Domestic Relations and Paternity and Child Support branches of the DC Family Court. According to Miller, “The clinic allowed me to learn in a supervised, structured setting, to the point that I subsequently took on a custody case independent of the clinic. Working in the clinic exposed me to the law and procedure I needed to understand before I could serve as an effective family law advocate.”

“One example that sticks out in my mind was an Army sergeant on emergency leave from Iraq. His sister, a single mom, had been killed in an accident, and he had come home to take custody of his niece and nephew. The public perception of men’s roles in the lives of DC children is often one of neglect—the uninterested father who rarely shows up and never pays child support. But here was a guy stepping up to the plate for kids that weren’t even his, and I was glad I could help him do that.”

“The clinic allowed me to learn in a supervised, structured setting, to the point that I subsequently took on a custody case independent of the clinic.”

—DOUGLAS MILLER

Like many Shearman & Sterling lawyers who volunteer, Miller says that the personal attorney-client relationship is one of the most rewarding aspects of being involved with a clinic. “The clinic gives me the opportunity to meet fellow DC residents whose paths I might not otherwise cross, and challenges my stereotyped notions of their lives,” Miller says.

Marvin Frankel Award
Shearman & Sterling received the Marvin Frankel Award from Human Rights First (HRF) at a ceremony in New York on June 26. The firm was honored for its work protecting the rights of refugees and asylum seekers.

The firm has represented over 50 refugees and their families through HRF’s pro bono asylum legal representation program. Of these cases, about 30 were taken on in the last five years. The cases have been pending at all levels of the asylum adjudication system—from asylum offices to immigration courts to US federal courts. Shearman & Sterling has consistently demonstrated its commitment to safeguarding the rights of refugees who do not have the resources to pay for legal counsel.

Human Rights First is a human rights advocacy organization based in New York and Washington. Judge Marvin Frankel was a founding member of HRF and a former chairman of its board of directors. During his lifetime, he dedicated time and energy to making a difference in the human rights movement and understood the significance of pro bono work.

Volunteer Lawyers for the Arts
Volunteer Lawyers for the Arts (VLA) recently honored Shearman & Sterling at its Summer Benefit and Awards Ceremony on June 19 at the Tony Shafrazi Gallery in New York. The firm was chosen as an “Outstanding Volunteer” for 2006.

Partner Jeremy Epstein (NY-LT), who sits on VLA’s board of directors, accepted the award on the firm’s behalf. The award is given in recognition of exceptional contributions in support of VLA’s mission of service to the arts community. Shearman & Sterling was noted for consistently providing enthusiastic, experienced and compassionate attorneys to help staff legal clinics and taking on representation of low income arts or arts-related non-profit organizations.

Based in New York, VLA offers pro bono and low-cost legal services and information to over 10,000 members of the arts community each year.
PROMOTIONS

Saralyn Cohen, Shearman & Sterling’s Pro Bono Attorney, has been promoted to Pro Bono Counsel and Director of Pro Bono. In this newly created position, she continues to oversee all aspects of the firm’s pro bono activities worldwide. Cohen joined the firm in January 1999 as Pro Bono Attorney.

Cohen first began doing pro bono work at the law firm of Brody & Fabiani as a new attorney after graduating from Brooklyn Law School. At Mendes & Mount LLP, she was one of the founders of that firm’s pro bono program and served on the Pro Bono committee as an associate and a partner. Cohen appreciates the opportunity to dedicate all of her time to pro bono work and administration.

The firm’s Pro Bono Group comprises three staff members, including Cohen, who work full-time administering the pro bono program and providing free legal assistance to indigent individuals and qualifying non-profit organizations. The Pro Bono Group operates under the auspices of the firm’s Pro Bono Committee which consists of partners Antonia Stolper (NY-CM), Henry Weisburg (NY-LT), of counsel J.J. Stevenson III (NY-PDF) and Cohen.

HIRING NEWS

In the spring, Denise Karamian made the switch to Pro Bono Administrative Coordinator after more than 10 years in the firm’s litigation department. Karamian, who worked as a senior legal assistant before her move to pro bono, feels very fortunate to have had the chance to work in several capacities in the litigation department and with so many talented people. “I believe that the opportunity to work with the pro bono group has come at the right time,” she said. “I was ready to take on new challenges within Shearman & Sterling and feel very lucky to have this chance to try my hand at something different and yet still be able to stay at the firm.”

Karamian joined the firm in January 1996 as a legal assistant in the firm’s litigation department. As Pro Bono Administrative Coordinator, Denise looks forward to working on various types of pro bono matters. She is currently coordinating the FEMA Appeals Project for Katrina relief, maintaining resource materials for those doing their externships in Arusha, Tanzania, at the International Criminal Tribunal for Rwanda, and handling other firm projects and pro bono events. In addition, she oversees the administrative functions of the firm’s pro bono department and provides support to attorneys assigned to pro bono matters.

“We were so happy that Denise had joined our team,” says Saralyn Cohen, Pro Bono Counsel and Director of Pro Bono. “The skills she acquired in the litigation department will be a valuable asset to our group.”

Karamian, who has always enjoyed contributing to pro bono causes, looks forward to spending more time on these projects. “Giving your time to pro bono causes is an important part of being at Shearman & Sterling. I am very grateful to be able to work with Saralyn and the Pro Bono Group and to focus my energy on some very rewarding and important pro bono projects.”

Sara Padua was recently hired as pro bono specialist, replacing law school-bound Crystal Doyle. Padua is a recent graduate of Harvard. Her non-English language skills in French, Spanish and Arabic will be put to good use in the group.

Newly arrived, Padua has proven to be a wonderful addition to the group. Her language abilities, ability to learn the ropes quickly and her positive attitude will expose her to many exciting and challenging opportunities.

A native Texan, she looks forward to working at the firm and living in New York.

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• HURRICANE KATRINA
• SUMMER ASSOCIATES

PROACTIVE is a review of Pro Bono activities at Shearman & Sterling LLP.

Please contact:
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