

# Inside Counsel

February 2009

BUSINESS INSIG

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BRAD SMITH  
GC of Microsoft

Microsoft

## Leading the Way

It certainly wasn't the best time for Horacio Gutierrez to take on more responsibility. The Microsoft deputy general counsel, who leads the intellectual property group, was up to his neck in work. At home, he and his three school-age children were coping with his wife's breast cancer diagnosis and treatment.

But when Gutierrez read the story of Lupa, a 16-year-old girl from Mexico who fled to the U.S. alone after being raped by her mother's boyfriend, he felt compelled to help. Lupa, who was pregnant, had been detained by U.S. authorities and faced deportation. Volunteer Advocates for Immigrant Justice (VAIJ), Microsoft's "signature" pro bono program, was looking for pro bono attorneys to handle her asylum request.

"Somehow I felt this is what I needed to do," Gutierrez says.

That response was exactly what Microsoft General Counsel Brad Smith had in mind in 2001 when he decided to create a pro bono program that would entice Microsoft lawyers to donate their time. Assisting immigrants seeking asylum was a good fit for the company: With one-third of its workforce coming from 140 foreign countries, Microsoft had an in-house team of immigration lawyers. And the ABA's Commission on Immigration Policy, Practice and Pro Bono was seeking Microsoft's help in addressing the issue of unrepresented detainees.

"All of these things made this the right issue for us," Smith says.

The result was VAIJ, launched in 2003 in Seattle with the support of the ABA and several law firms. Since then, more than 100 volunteers, including 40 attorneys and 40 paralegals and nonlegal professionals from Microsoft's legal department, have represented more than 250 detainees, including more than 20 children. Statistics show that the success rate of a detained asylum seeker who has legal assistance is up to eight times greater than that of an immigrant without representation. Yet in Washington, only 20 percent have lawyers.

In 2006, at a recognition program for VAIJ volunteers, a representative of a non-profit agency from Southern California mentioned that as a result of VAIJ, Washington was the only



Horacio Gutierrez

state in which every immigrant child was represented in the immigration process.

"I started to think about what it would take to make this program national," Smith says. "I saw an opportunity to take pro bono to a higher level and think about it in a much different way."

Two years later, Smith was at a press conference in Washington, D.C., launching Kids in Need of Defense (KIND). Starting this year in seven cities with the backing of 37 law firms, two other corporations and actress Angelina Jolie, KIND's long-term goal is to assure counsel for all 8,000 unaccompanied children who go through the immigration process in the U.S. annually—only about 50 percent have lawyers now.

Lupa was one of the lucky 50 percent. Gutierrez recruited two other Microsoft lawyers and an administrative assistant to work on her case. They met with VAIJ staff members who walked them through

the process. Gutierrez made several trips to see Lupa, using his Spanish language skills to interview her. He recruited a colleague from Microsoft's Mexico City office to track down police records from Lupa's hometown. His 10- and 13-year-old daughters got involved too, collecting their toys and dolls for the baby and closely following the case. "In a sense they became part of the team," he says.

Gutierrez thought Lupa had a strong case. But he admits being frightened about presenting it to an administrative law judge—something far outside his comfort zone of IP.

"To stand up before a judge and be the difference between a kid being able to live her dream or going back to a place hostile for her is a daunting responsibility," he says.

At first, it seemed that Gutierrez's worst fears might be realized: After a hearing, the judge denied Lupa's asylum request, allowing the deportation process to proceed. The team didn't give up, however, and with the help of one of VAIJ's law firm partners they filed an appeal. Eventually they prevailed, and Lupa is now in the process of getting a green card.

"For someone who is not a litigator, whose failures and successes are hard to prove, to say my work contributed to this person having a bright future in a much safer environment than if she had gone back to Mexico gives me a great sense of pride,"

PHOTOS COURTESY OF MICROSOFT

Gutierrez says. He is volunteering for another pro bono case this year.

That doesn't surprise Lydia Tamez, Microsoft associate general counsel, who leads the U.S. immigration group and heads the company's pro bono initiatives.

"I hear over and over again that attorneys who volunteer want to do it again," she says.

Tamez says it's critical to VAIJ's success that every volunteer has a great experience. Doing that requires careful training and mentoring for the attorneys, giving them confidence to take on an unaccustomed role, and creating project teams with varying roles that suit varying skill sets and time availability. Those kinds of lessons will shape KIND as it gets off the ground this year in New York; Boston; Philadelphia; Washington, D.C.; Los Angeles; Houston; and Seattle.

"We will take the best practices from VAIJ and replicate them on a national level," Tamez says.



David Heiner, Microsoft deputy general counsel (left) and Greg McCurdy, Microsoft senior policy counsel (right) helped Basilios (center), an Eritrean refugee, win asylum in the U.S.

## Pro Bono Champion

Microsoft's commitment to detained immigrant children has its roots in General Counsel Brad Smith's early professional experience. As an associate at Covington & Burling in Washington, D.C., Smith participated in several pro bono projects involving refugee matters.

At Microsoft, he saw championing pro bono as an important part of professional responsibility, and he soon became an advocate for corporate pro bono nationwide.

"As inside counsel became a larger part of the profession, we had to recognize that with larger stature came larger responsibilities," he says.

Smith, who has been a leader in Corporate Pro Bono (see "Overcoming Obstacles," p. 61), has witnessed rapid growth since he helped launch the Corporate Pro Bono Challenge three years ago.

"GCs are recognizing that this is something lawyers like to do," he says. "It's positive for morale, it's positive for team building, it promotes collabora-



tion, and it's good for recruiting and retention. They also recognize that it fits in well with their company's corporate social responsibility agenda."

GCs look to Smith for help in convincing their CEOs that pro bono is an appropriate use of corporate resources. He advises explaining the legal profession's pro bono tradition and the fact that every state's rules of professional conduct include the expectation of pro bono service.

"It's important to comply with our professional responsibilities," he says. "Think of it as compliance for lawyers."

Smith advises other companies to start much as Microsoft did: by picking a project that is a good fit. Then he recommends looking for partners.

"The model that is emerging is a three-sided triangle—the company, law

firms and a non-profit," he says. Case in point: Microsoft's KIND (Kids in Need of Defense) project uniting in-house lawyers, law firms and non-profit organizations to represent unaccompanied immigrant children.

"We've scaled the program so smaller companies can get involved easily," he says. "That creates new opportunities for other companies to get involved."

While most legal departments don't have Microsoft's resources, Smith thinks his department is showing the way for others.

"People at a small company can look at Microsoft doing something with three dozen law firms and Angelina Jolie and it may not seem relevant," he says. "But I remind people that five years ago we were just starting out. Even three years ago we couldn't imagine doing what we are doing today. The most important thing is to take the first step. Then it's important to keep taking additional steps."