

Lawyers of the Year | 2008

JONATHAN M. ALBANO

Boston

If you buy ink by the barrel, you probably know Jonathan M. Albano. Bingham McCutchen's First Amendment specialist represents newspapers across New England — as well as *The New York Times* and *The Washington Post* — in libel disputes and in efforts to gain access to information.

And he can take personal credit for at least one Pulitzer Prize, journalism's most coveted award. In 2001, he convinced Superior Court Judge Constance M. Sweeney to unseal court records in clergy-abuse cases, which led to a prize-winning "Spotlight" series in *The Boston Globe*.

Celebrities looking to enforce their constitutional legal rights have also turned to Albano. This year, he defended filmmaker-firebrand Michael Moore against a disabled veteran's defamation claim on appeal, and he represented Yoko Ono in a copyright dispute over archival footage of her and her late husband, the Beatles' John Lennon. Past clients have also included pop star Madonna and artist Christopher Buchel.

Despite his brushes with fame, Albano is resolutely humble about his work. He insists that he has labored over more commercial litigation cases than he has high-profile First Amendment issues and that he still cribs phrases from the briefs of his mentors. As for representing Madonna, he says he doesn't do anything differently for her than he does for a client in a small-claims case.

"It's not like you care more about those cases than you care about your other cas-

es," he says. "In all of the cases, you are working with the client who cares deeply about what happens. And in all of the cases, you care about your credibility as a lawyer. You want people to be able to trust what you say if you're talking about a rule of law or facts in the case."

Q. *You defended Michael Moore in a suit brought by a sergeant in the Reserves whose news clip appeared in the film "Fahrenheit 9/11" without his consent. How did you prevail in that case?*

A. The plaintiff's theory was that, by being inserted into the movie, he was falsely aligned with Michael Moore's anti-war views. We made two arguments. We said that it's not a fair take on the movie to say that simply because Mr. Damon [the plaintiff] was in it, he was portrayed as being supportive of Michael Moore. The other argument we made was that it shouldn't be considered defamatory to be called either pro-war or anti-war. That argument was reminiscent of the one we made of the Madonna case. There, the plaintiff said that he was falsely portrayed as being homosexual. The 1st Circuit in both cases went with the most limited rationale, that it just wasn't a reasonable conclusion to draw that the movie in one case and the book in the other portrayed the plaintiff in that particular light.



Q. *You've had a number of big cases over the years. Which one do you consider to be your most important?*

A. I'd have to say that the work that was objectively the most significant would be helping the [Globe] Spotlight Team unseal records of the Boston Diocese. That's a case where if the paper wasn't interested in pursuing it, and if we didn't get judges who were receptive, that information would never have come to light. Lawyers tend to take credit for things, and if we lose, we blame the judges. But really and truly, it was the court that opened up those records.

Q. *How did you get involved in First Amendment law?*

A. There's a long tradition at Bingham of doing this kind of work. When I went to Bingham, I thought, "Maybe if I get one case among 10, that would be great." So I worked for [James F.] McHugh for a few years and got a few cases, and he then went on the bench, and Susan Garsh basically took Jim's spot, and I worked for her for several years, and then she went on the bench, and then they were sort of stuck with me. They are two great First Amendment lawyers. I learned a lot from them, and I still — this is God's honest truth — have briefs that they wrote that I still steal lines from.

Q. You represent a lot of high-profile clients. What is that like?

A. You actually prepare the cases exactly the same way. There really is no difference between working on those cases and working on any other case. You want to do your best in all of them, and you try to bring the same effort and attention to detail to all of the cases.

Q. But those high-profile cases come with intense media scrutiny. How do you handle that as a lawyer?

A. The only really worrisome thing is that I might say something that sounds stupid. I hate reading transcripts of my arguments,

too. I think: "That's not a real sentence; I sound like Sarah Palin." It's an opportunity to say something dumb. But the answer can't be that lawyers don't talk to the press, because in criminal cases and cases of significance to how government operates, it's essential for lawyers to be able to talk to the press so that people know what's going on, to have a sense of fairness and a sense that the system is working fairly. Without that, people would become incredibly distrustful.

Q. What's it like being a First Amendment lawyer at a time when newspapers are in financial trouble?

A. Of course, it doesn't change at all my interest or what I believe is the significance of the area of law. But it does give you kind of a front-row seat in seeing how the economics have truly changed the ability of the press to do some of the things they used to be able to do when there were more economic resources. Things like pursuing the public's right of access to certain materials is, in tough economic times, much more difficult for news organizations to do. And so they really have to make very tough decisions about where to devote their resources. In cases where papers are self-insured, the costs of a libel case actually translate into, at the end of the year, a certain number of reporter spots that can no longer be afforded.

Q. What will your role look like in newspapers' post-crisis incarnation?

A. I'm tempted to say that we're about to see, over the next few years, all kinds of changes in every industry because of the economic crisis. And lawyers are going to have to adjust to that in every situation, to figure out how to more efficiently help our clients, how to do it better, meaner, leaner — that's the cliché. And I think those principles have to apply to the lawyer who represents the press as well. I don't mean to imply that it's all altruistic. If you don't efficiently handle a case, you don't get anybody coming back to you. On the other hand, if you efficiently handle a case and are sensitive to a client's needs, you get more work.

— JULIA REISCHEL

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Jonathan Albano on ...

His most memorable moment at law school: "My first year at BC Law, my property professor was Mary Ann Glendon. I got called on in property class, and I was supposed to state the facts of the case, an old property trespass case from the 1600s. I described the parties who had trespassed as 'duck hunters.' A year later, I walked by her office in the hall and I said hello. As I went past her, I heard her say, 'We did the duck hunters in class today.'"

Highlight of his legal career: "Helping The Boston Globe Spotlight Team unseal court records of the Boston Diocese"

One thing about him that might surprise other people: "Most of the cases I've worked on in my career are commercial cases. I'm quite sure that if I added them all up, there's more commercial litigation than constitutional litigation."

Favorite book or film: "To Kill a Mockingbird"

What has kept him in the practice of law: "A combination of the cases I've worked on and the people who I've worked with and for"



PHOTOS BY MERRILL SHEA

Age: 51

Education: Boston College Law School (1982); Boston College (1979)

Bar admission: 1982

Professional experience: Partner, Bingham McCutchen, Boston (1982-present)

P. SABIN WILLETT

Boston



worth millions of dollars in an attempt to secure the release of several of the detainees. WilmerHale's clients were from Algeria; Bingham's were from China.

Earlier this year, the lawyers finally prevailed at the U.S. Supreme Court. In June, the court ruled that the detainees have the right to appeal to civilian courts to challenge their imprisonment.

Last month, two lower federal court judges ordered the release of several of the clients whom Oleskey, Kirsch and Willett have been representing and signaled the beginning

of the end of their internment.

With relief clearly audible in their voices, the three local lawyers recently spoke with Lawyers Weekly about their long, labor-intensive advocacy. Asked why a lawyer would take on such a daunting challenge, in no uncertain terms Willett answered: "Because they run my flag up over a place where they were torturing people."

Q. *Your résumé indicates that your practice is focused on commercial litigation and bankruptcy. How did you come to be interested in detainees at Guantanamo Bay?*

A. I went to a Boston Bar Association seminar, and it alarmed me when an Army captain implied that our country was in violation of the Geneva Conventions at Guantanamo. I started poking around — it was 2005 — and decided our firm should put a stop to it.

Q. *Is there anything in your education and training as a lawyer and, for that*

matter, as a commercial litigator that prepared you for this kind of pro bono work? Or is it an area of law unto itself?

A. There is nothing about the substantive law that I do that prepared me. But the training we get as trial lawyers helped prepare me to try to persuade [a court] why we should prevail.

Q. *What kind of time commitment has this required? Do you work on these cases in your off hours?*

A. It has been truly time-consuming. I think I spent 500 hours last year. There were a lot of briefings, many hearings — it just took a lot of time.

Q. *It's known that the pro bono services of experienced attorneys are in great demand in many areas of society. Why was it important for you to take on this particular cause?*

A. Because they run my flag up over a place where they were torturing people.

Q. *In a recent op-ed you wrote in The Boston Globe, you identified yourself as a partner at Bingham and then described the firm as representing Guantanamo prisoners. Is this a firm-wide effort, and are you leading it?*

A. Certainly there is a large group of us in this firm working on the effort; it's a team of eight. And I've led that effort. When you're fighting the government, the amount of resources they can bring to bear is just huge. You need a big team to keep up with them.

Q. *On your résumé, you describe the firm's role as "attempting to restore the rule of law at Guantanamo Bay." Are you finding that to be within the realm of possibility, or do you anticipate something else there in the foreseeable future?*

In the emotionally and politically charged atmosphere that hung over this country in the years after the terrorist attacks of Sept. 11, 2001, the world's attention was drawn to the U.S. military prison in Guantanamo Bay, Cuba.

Terrorist suspects — or "enemy combatants," as they have been classified — were being rounded up in countries far removed from this one and taken to the naval base that the United States established in 1898 on the shores of Guantanamo Bay.

The detention of the suspects and the conditions of their confinement became the targets of human rights activists here and abroad, and by the mid-2000s several U.S. attorneys had taken on the cause of freeing the detainees.

Prominent among those lawyers were three from two major Boston law firms: Stephen H. Oleskey and Robert C. Kirsch at WilmerHale and P. Sabin Willett at Bingham McCutchen. They logged thousands of pro bono hours

A. There's a lot of speculation about what President-elect Obama has said he will do. The U.S. military admits that our clients are not enemy combatants, and yet they remain there. The courts have not addressed conditions of confinement.

Q. *If you and the firm do help to achieve that goal, do you have another pro bono project in mind?*

A. No, no, no. I've been so long at the wheel at this one that I long for the day it's over. I'm very fortunate to be at a firm where I have so many colleagues to help on both sides. Partners and associates

have been wonderful [assisting] in the bankruptcy arena and on pro bono.

— BARBARA RABINOVITZ
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Sabin Willett on ...

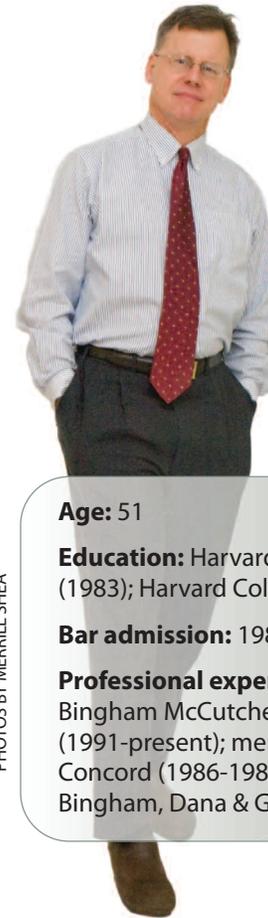
His most memorable moment at law school: "There were two, and both involve Larry Tribe, my con law professor [at Harvard]. I actually stumped him once and got a round of applause. [The second occurred] when I got my con law grade, and it was so low I thought it was a mistake. Tribe had written in 'very low' in the blue book. I regard that as significant since I've spent the past three years litigating constitutional law in this Gitmo case."

Highlight of his legal career: "It was a pretty great moment when [U.S. District Court] Judge [Ricardo] Urbina in October ordered our Uighur [Chinese Muslim] clients be brought to the United States and freed."

One thing about him that might surprise other people: "I actually completed the Boston Marathon in 2004."

Favorite book or film: "I have many favorites."

What has kept him in the practice of law: "My complete failure as a novelist"



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Age: 51

Education: Harvard Law School (1983); Harvard College (1979)

Bar admission: 1983

Professional experience: Partner, Bingham McCutchen, Boston (1991-present); member, Orr & Reno, Concord (1986-1989); associate, Bingham, Dana & Gould (1983-1986)

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