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Great sweet rolls

By Arnold B. Kanter

For sweet rolls and library books, its tough to beat the Chicago Bar Association. But when it comes to improving the quality of the judiciary, the CBA is viewed as "highly effective" by fewer than 5 per cent of lawyers responding to a survey conducted by Northwestern University law professor John P. Heinz and University of Chicago sociologist Ed Laumann.

The survey, based on hour-long interviews with almost 800 attorneys, was conducted more than three years ago with American Bar Foundation funding. But the study—aside from two articles in scholarly journals—virtually has escaped public attention.

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Thousands of break-ins by FBI here alleged

By Robin A. Robinson

A retired FBI agent told the Justice Department last year that he has first-hand knowledge of "thousands" of burglaries committed by the FBI in the Chicago area between 1952 and 1963, according to official documents made public this week in U.S. District Court.

The retired agent, M. Wesley Swearingen, relayed his charges through a private attorney directly to Attorney General Griffin Bell. The chief counsel and deputy counsel of the Justice Department's Office of Professional Responsibility then met with Swearingen and found that "he appears reliable."

By memo dated May 19, 1978, the office's chief counsel, Michael E. Shaheen, Jr., informed Assistant FBI Director Lee Colwell: "In April Mr. Richard M. Rogers, deputy counsel, and I met the source and came to the conclusion that he appears to be reliable. Accordingly these allegations should be investigated as thoroughly and quickly as possible."

Colwell, head of the FBI's Planning and Inspection Division, sent a copy of the Shaheen memo to FBI Director William H. Webster on May 22, 1978, with a cover memo saying, "Mr. Shaheen has contacted the source and Mr."

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William T. Kirby, the billionaire's attorney. Chicago Lawyer photo/Phyllane Norman

The big giveaway is about to begin

By Rob Warden

William T. Kirby leaned back in his chair, put his hands behind his head and mused about his long personal and lawyer-client relationship with the late billionaire John D. MacArthur. "I don't want to pretend that he was any gem of charity because he sure as hell was not," Kirby said, "but he thought the money came from the public and ought to go back to the public."

With hardly any guidance beyond that, the 68-year-old senior partner in the firm of Hubachek, Kelly, Rauch & Kirby is now one of five active directors of the John D. and Catherine T. MacArthur Foundation, which inherited Mr.

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Personal view

ACLU revisited

By Edward S. Margolis

I decided not to pay my dues to the American Civil Liberties Union in 1977 when it became obvious that the organization was committed to putting its financial resources and finest talents behind the defense of Nazis. I felt that better uses could have been made of this treasure than the defense of a few lunatics who, at least, could have been put through the expense of hiring their own counsel.

My membership in the ACLU began in the late 1960s. As a recent law school graduate, I looked to the organization as a focal point of resistance to a government which, on every level, was eroding my civil liberties. The issues were big: the Vietnam war, the draft, police spying.

As the years passed, the war ended, the draft ended, Nixon resigned and the big issues seemed to fade. I married, had children and settled in West Rogers Park, also known as Northtown. I became involved in community affairs and joined the Northtown Community Council.

In the spring, 1976, a developer quietly

acquired a building at 6220 N. California Ave. in Northtown and entered into a lucrative lease with the state, which planned to move an unemployment center there.

The residents of the immediate area started a block club known as the Cal-Sac Council and mustered grass-roots opposition to the proposed unemployment center. They turned for support to the Northtown Community Council, which was an umbrella organization of such block clubs.

First, they pointed out that the property was next to a public elementary school. They feared that increased traffic caused by the center would be a danger to children. Second, they were miffed that neither their state representatives nor alderman had been informed of plans for the center. Third, they pointed out, Northtown has little unemployment and that other available buildings would be more accessible to unemployed persons. Finally, they noted that several buildings were available for less than half the rent that was proposed for the California Ave. building.

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Foundation

MacArthur's major asset—100 per cent of the stock of Chicago's huge Bankers Life & Casualty Co. The book value of the stock is \$255.6 million and the market value perhaps three times that.

Federal law will force the foundation to pay out annual grants totalling 5 per cent of the market value, beginning in 1980. A team of accountants from Peat, Marwick, Mitchell & Co. is at work now determining the market value. Assuming it turns out to be three times book value, the foundation would have to give away something on the order of \$37.5 million a year. Even if the value is less—and Bankers Life President Robert P. Ewing, also a foundation director, believes the estimate may be high—the MacArthur Foundation still will be the largest in Illinois and one of the ten largest in the country.

When Mr. MacArthur died on January 6, 1978, at age 80, he intentionally left no instructions about how the foundation was to spend the money. "John didn't want to try to run things from the grave," Kirby said. "He felt that you had to do more than guess. If he wasn't willing to study it and spend time on it, he felt he shouldn't lay down the choices. He told us, 'You guys will have a lot of work when I'm gone. Just wait until everybody starts hounding you.' " As a result of the benefactor's attitude, Kirby added, "You never met people who know less about foundations than we know."

The directors Mr. MacArthur chose were people who were very close to him—business associates he knew and trusted," Ewing said. In addition to Kirby and Ewing, 53, the active board members are J. Roderick MacArthur, 58, the billionaire's only son; radio commentator Paul Harvey, 60, whose broadcast was sponsored by Bankers Life for 27 years; and Paul D. Dowlen, 73, now vice chairman of Bankers and probably Mr. MacArthur's closest friend. Mr. MacArthur's widow, Catherine, is a member but will not take an active role.

The board has agreed unanimously that a "major" area of its endeavor will be funding "MacArthur Researchers." Under this program, grants are to be given for periods of several years, with no conditions attached, to brilliant persons in all fields; in Roderick MacArthur's words, "the people we believe have the best chance of making the great discoveries of tomorrow."

The unanimity, however, apparently was possible only because "major" is a very vague word. "There is a profound difference of opinion about this on the board," said MacArthur, who wants to devote "80 per cent or more" of the foundation's resources to the no-strings grants to individuals.

"If there is any dissension," Ewing said, "I'll tell you what it is: All of us feel the MacArthur Researchers is a major part of our anticipated grant-making. I think we disagree on the amount."

MacArthur responded, "It's easy for him to say he's for the basic idea, but it takes a hell of a lot more guts than my colleagues have realized. There is a general aversion to the notion that people would not be answerable to the authority that gives them their money. One might turn out to be an Einstein, but another might turn out to be a Timothy Leary. If you're president of an insurance company, that kind of risk naturally frightens you."

"Rod likes to portray himself as the maverick," Kirby said, "but the fact is, he didn't even originate this idea. I brought it to the board." Kirby said he picked up the idea from a speech by Dr. George E. Burch of the Tulane University School of Medicine, who suggested that geniuses "should receive minimal support and be left alone without the annoyances and distractions imposed by grant applications, reviewing committees and pressure to publish." Dr. Burch asked, "How would Roentgen have written his grant application to discover X-ray, or Nicolle to discover polarized light, or the Curies to discover natural radiation,



J. Roderick MacArthur, the billionaire's son.

or Fleming to discover penicillin?"

Unfortunately, Dr. Burch had nothing to say about how you find tomorrow's geniuses, except that "there is a need to 'gamble' with some funds." And, as willing as MacArthur is to gamble, his dream for the foundation remains mostly romantic. "Like the Renaissance princes, we'll fund Michelangelo," he said. At another point in an interview, he commented, "If you want to change the world, you've got to change the way you go about changing it."

The more conservative Kirby commented, "I can say this: It's going to be based on the most careful search for brilliant and promising people. We're not just going to throw money at people." And Ewing observed, "Rod is only one of the directors. The majority rules—at least, I think that's the way this country operates."

MacArthur said he would like for the foundation to set up a "sort of honor roll of the foremost people in the country, in every field from physics to poets" to scout out potential grant recipients. "I would like to see every Nobel laureate a member of our scout team," he said.

As for the grants, he said, "We were thinking of a junior program to fund people for 6-year periods, a senior program to fund people up to age 45 and an emeritus program for the rest of your life." Asked what size grants he had in mind, he replied, "what a pretty good, scientific researcher gets—\$25,000 to \$45,000 a year, with an amount equal to half the grant going to any university where the researcher works—to fend off any resentment."

He said the final review of any potential recipient would be made by persons not in the recipient's field, and that approval of the MacArthur Foundation directors then would be unperfected. And he emphasized that, once approved, the recipient would be accountable to no one. "Field-switching," he said, "is not only permissible, but it is encouraged."

MacArthur added that no conclusion should be drawn about the direction of the foundation from its initial grants. Only two have been made since the Bankers Life stock was transferred to the foundation in December, 1978, and neither went to individuals. They were \$50,000 each—a straight-out gift to Amnesty International and a grant to the California League of Cities to study government efficiency in view of Proposition 13.

Efficiency in government, animal welfare and journalism were among John D. MacArthur's major interests, and the directors agree that the foundation will be active in those areas. Among other possible areas of activity mentioned are mental health, criminal justice and the arts in the Chicago area.

The scope of the MacArthur Researchers program is not the only source of dispute between MacArthur and the other directors. All except MacArthur agreed that Mark W. Cannon, 50, administrative assistant to U.S. Chief Justice Warren E. Burger, should be hired as president of the foundation.

Last March, Kirby met Cannon in Palm Springs, Calif., at a conference on admission to federal

practice. When Kirby learned that Cannon had worked for the Institute of Public Administration in New York for 8 years before becoming Justice Burger's assistant in 1972, he arranged, with board approval, to have Cannon "put together some ideas."

The result was a 654-page report that cost the foundation \$21,000 in staff expenses, although Cannon himself received nothing. Later, according to Kirby, "Cannon indicated to Doolen that he would like to be considered for president, and everyone but Rod thought he was a capable, intelligent fellow and wanted to hire him."

Said MacArthur, "I didn't think his report was much of a contribution. It was basically a collection of magazine articles and excerpts from books. I think I'm probably the only one who read it carefully, and I don't think it was worth the money."

Although Kirby said that Justice Burger "had absolutely nothing" to do with Cannon's candidacy for the job, MacArthur contends that "Burger was pushing him—and certainly approved of the whole idea."

Kirby accused MacArthur of telling "gratuitous lies." "I suppose he's got a license to lie," Kirby said. "I read the report and Doolen read it. I don't think he (MacArthur) read it. And he's never seen Burger. If he (Burger) were pushing Cannon, how would he (MacArthur) know? It simply isn't true."

MacArthur said that his opposition to hiring Cannon had nothing to do with Cannon's capabilities or, for that matter, whether the Chief Justice was pushing him for the job. "I was just opposed to the principle of hiring a top boss before the foundation defined its character," he said.

This month, the board announced it had hired Joseph A. Diana Jr. as vice president and treasurer of the foundation. Diana was associate vice president for business affairs at the University of Illinois, Champaign-Urbana. The plans for hiring a president, who presumably would be a member of the board, are in abeyance.

Meanwhile, the accountants continue analyzing the assets of Bankers Life and are expected to complete the monumental computation during this calendar year. The assets include thousands of acres of unimproved Florida real estate, carried at acquisition cost in the 1950s; several New York City buildings, also carried at acquisition cost, and fixed-income bonds bearing low interest rates. Presumably, the Florida land has increased greatly in value, while the bonds have been severely discounted. The New York buildings are an unknown factor.

But even if its assets were no more than the Bankers Life book value, the MacArthur Foundation would be twice as large as the Joyce Foundation, previously the largest in Illinois, with assets of \$126 million.

If the market value of Bankers Life turns out to be \$750 million, the MacArthur Foundation's required disbursement for charity in 1980 would increase total Illinois foundation giving by about 40 per cent. In 1976, the latest year for which

figures are available, 1,020 Illinois foundations gave away \$9.4 million.

As mind-boggling as it all seems, Mr. MacArthur's fortune is no more enormous than the career of the Renaissance-baron tycoon who, with only a grammar school education, built one of America's largest fortunes from scratch.

He began as an insurance salesman in Chicago in 1917. Twice in the early years he interrupted his insurance career—first to join a Royal Air Force combat pilot in World War I and then to work briefly as a cub reporter on Chicago's old Herald and Examiner, where his brother, Charles, worked and later co-authored with Ben Hecht the Pulitzer Prize play, "The Front Page."

In the 1920s, Mr. MacArthur lived with his first wife, Louise, and their two children, Rod and Virginia, in River Forest. Mr. MacArthur bought Bankers Life for \$2,500 when it was in receivership in 1935. With marketing innovations, he built its assets into more than \$1 billion at the time of his death.

Despite success, his life style remained simple. In later years, after his divorce and marriage to Catherine, he ran his affairs from a table in the rear of a coffee shop in a Florida resort he owned. He executed his will in 1963, and by a codicil in 1965, instructed that he was to have no funeral service "to spare my friends and relatives the inconveniences involving attending a funeral, such as the canceling of appointments and flying all night to arrive on time."

Leo K. Wyckel, a long-time Chicago lawyer now with the firm of Reuben & Proctor, recalls meeting MacArthur several years ago. "He had six cars and two airplanes at the time," Wyckel said, "and none of them was insured. I asked him why and he said, 'Because the insurance companies are thieves.'"

Kirby met MacArthur in 1960. The billionaire was being sued by the divorced wife of MacArthur's late brother, Teller, who built Chicago's Pioneer Publishing Co. She was attempting to void certain financial transactions between the wealthy brothers.

The Bankers Life legal department recommended Kirby to represent John MacArthur in the several cases stemming from the transactions because Kirby had just won an Illinois Supreme Court decision (Shlensky v. South Parkway Building Corp.) that supported John MacArthur's position. Kirby won the cases in Circuit Court.

Shortly after that, MacArthur's personal attorney, Charles (Bud) Short, died. Kirby became his lawyer and drafted the trust agreement setting up the MacArthur Foundation and other trusts to benefit Rod and Virginia MacArthur.

Rod MacArthur, a reporter for United Press International after World War II, went to work in 1959 at the Park Ridge Citizens Bank & Trust Co., which his father owned. The young MacArthur later worked for Bankers Life but, when his father refused to give him a raise, decided to start his own business.

In 1973, with his father's companies paying for the initial advertising, he started the Bradford Exchange, which sells commemorative plates to collectors. The business, which now operates from the Bradford Museum in Niles, was extremely profitable.

In 1975, the father claimed that Rod was using Bradford's facilities for other ventures and demanded a share of the. The son refused, and the father seized several thousand dollars worth of plates. The son then hired seven semi-trailers and, with the help of 40 former employees of his father, "raided" the building in Northbrook where the plates were stored.

Later, the younger MacArthur paid his father \$175,000 for his interest in the business and they patched up their differences.

Kirby says the amount the son paid was "very little" but that he advised the elder MacArthur to accept it. "I told John he could get more money but that he would just wind up paying tax to give it to Rod later," he said.

With business acumen that evidently runs in the family, Rod MacArthur became a self-made millionaire.

Rod Warden is the editor of Chicago Lawyer.