

KIMBALL ANDERSON

Quietly Changing Lives One Case at a Time

by Mike Bailey

Kimball R. Anderson says he did not go into the field of law to change the world. But that is exactly what he has done.

Anderson, a partner and former general counsel of Winston & Strawn LLP, now in his fifth decade of law, speaks quietly but his words carry a rich history of accomplishment.

He has argued twice before the United States Supreme Court; he helped free two men from prison who were wrongfully convicted of separate heinous crimes; he helped found Winston & Strawn's pro bono program; he is a fellow of the American College of Trial Lawyers, an honor for which only 1 percent of U.S. and Canadian trial lawyers qualify.

Although he is widely respected in his field by peers, opposing counsel and clients, Anderson draws an equal amount of satisfaction from his work helping those who have neither the resources nor the ability to help themselves.

He speaks of his law career and measures his success not just by courtroom victories, but by the people he has aided along the way. Some of his most satisfying achievements came not from jury verdicts, but from groups and organizations he helped found and less fortunate people he has assisted.

Like many successful attorneys, Anderson did not focus on a career in law until he completed his undergraduate work.

"I wasn't sure what I wanted to do," Anderson says of his undergraduate work at the University of Illinois. "I took several accounting classes and passed the CPA (Certified Public Accounting) examination with one of the highest scores in the country. I had taken law classes as part of my undergrad work, so I thought that might be an interesting thing to do."

Anderson and his wife, Karen, breezed through law school, graduating first and ninth respectively.

"I had no plans to change the world," he says, though he admits he was politically active as an undergraduate and founded the Coalition for Voter Rights. At that time, counties did not allow students attending universities there to vote in those counties, asserting that they were not actually residents. Anderson was part of a federal lawsuit that sought and was granted the right for them to vote, forcing counties to recognize such students as legal residents.

He was also active in the Earth Day movement, a precursor to environmental awareness, and was active in protesting the Vietnam War.

"I was very active in change organizations,"



he recalls. "I was interested in affecting politics and social change." That interest sometimes ran to the extreme. While at Urbana High School, he and a fellow student went into a park across the street from the high school and hoisted a very pointed banner denouncing the Vietnam War, an act that was not appreciated by the school administration.

Following graduation from the University of Illinois College of Law, Anderson was hired by Winston & Strawn LLP, where he had worked in the firm's summer associate program during law school.

Vedder Price hired his wife Karen, and she later became the litigation counsel for the Chicago Public School Board. Karen, an outstanding attorney and philanthropist, later co-founded Montessori School of Englewood, a charter school serving some of the most underprivileged children in America.

Anderson quickly found what he enjoyed the most. "I avoided everything but commercial

trial work—like intellectual property, antitrust, product liability, etc."

As his skill and success increased, so did his reputation. Soon, he was in high demand, arguing cases before the Illinois Supreme Court, the Federal Courts of Appeal and, ultimately, the United States Supreme Court.

In his first appearance before the U.S. Supreme Court, Anderson represented Warren Harris who was incarcerated in Illinois after being found guilty in connection with a homicide. "His trial counsel was totally ineffective," Anderson says. "He just phoned it in. His closing argument was incomprehensible, and he basically offered no defense."

HIGH COURT RIGHTS A WRONG

Harris appealed on the basis of ineffective representation, and Anderson represented him pro bono in a federal habeas corpus action filed in a Chicago federal court. The federal

district court ruled that it had no jurisdiction because Harris had failed to timely raise the issue of ineffective assistance of counsel in the lower state courts. The federal appeals court upheld the district court decision, so Anderson filed a petition for writ of certiorari to the U.S. Supreme Court, which agreed to hear the case.

"The Supreme Court reversed in favor of Harris by an 8-1 vote," Anderson says. "They ruled that the district court did have federal jurisdiction because even though Harris had not timely asserted his ineffective assistance of counsel issue (under the 6th Amendment of the U.S. Constitution), the Illinois Supreme Court had ruled on it nonetheless (by issuing an opinion that Harris' trial counsel had been effective). That ruling by the state's highest court conferred federal habeas jurisdiction on the federal district court."

After the U.S. Supreme Court ruled in favor of Harris, the court remanded to the 7th Circuit Court, which ruled Harris did indeed receive ineffective counsel, and he was released. The ruling came 12 years after Harris' imprisonment, Anderson says. The state chose not to retry Harris, and he was released.

Hanging on the wall in Anderson's office high above the Chicago Loop is a framed handwritten letter from Harris, thanking his lawyer for the unrelenting efforts on his behalf.

Anderson has had many successes as a commercial attorney and has taken on patent trolls in national cases for large corporations, including one in which he represented the multinational technology company Dell. Anderson recently was so successful in exposing improper conduct by the plaintiff and its attorneys that the court took the unusual action of awarding sanctions against the plaintiff and its attorneys, and ordered the plaintiff to pay Dell's legal expenses.

Anderson's successes attracted new clients, many of whom have remained with him for decades. Laura Coleman, vice president of litigation with Corning Incorporated, knows Anderson well.

"I've worked extensively with Kimball Anderson for over 20 years while I served as in-house counsel at several telecom and tech companies," she says. "Kimball approaches a case from Day One with the focus of a trial lawyer. He sees many steps down the road and often identifies strategies that others do not. In my experience, Kimball will either win a case outright or have it expertly prepared for trial."

By the late 1990s, Anderson's skill and experience were reaching their zenith, to be tested once again before the nation's highest court, this time on behalf of a trade association of long-term care nursing facilities.

"We challenged the constitutionality of a federal administrative regulation that authorized regulators to shut down facilities



Anderson with wife Karen in Nepal at Mt. Everest base camp in 2014

without any due process or avenue for review in federal court," he recalls.

At that time, long-term care facilities judged by a federal overseer to be deficient could be closed without the ability to appeal in federal court, simply on the recommendation of regulators. "They could ask for an administrative review, but essentially, you were asking them to review their own decision, and it took a year or two," he says.

Although the Supreme Court ultimately ruled 5-4 against his client, Congress then changed the law to afford the due process protections he had sought for his client.

While success is often measured in large settlements or trial victories, Anderson's most satisfying achievement may lie in a relatively small victory that changed a man's life forever.

Wilder Kendric Berry—known as "Ken"—was wrongfully convicted of rape, assault and battery, and served eight years in the Illinois Department of Corrections. Anderson was made aware of his plight, and although he was not convinced of Berry's innocence at first, he agreed to look at the case. What he saw appalled him. "The trial was a complete miscarriage of justice. His attorney basically offered no defense."

Anderson says the attorney basically just took the family's money and did little or no work on the case. His arguments were nonsensical and rambling, and he offered little choice for the jury. In fact, he was so ineffective and incompetent that the Attorney Registration & Disciplinary Commission ultimately disciplined him.

"I wrote to (Anderson) in 1996 while I was incarcerated in Stateville," Berry remembers. "A *Chicago Tribune* reporter contacted him as well. One day (prison personnel) told me my lawyer was on the telephone. I didn't know what they were talking about."

Kimball Anderson had gone to work. He

agreed to represent Berry pro bono in a federal habeas petition.

MAINTAINING HOPE IN PRISON

"All of Ken's appeals in Illinois courts were exhausted, so we went to federal court on a habeas petition and we were successful. He was granted a new trial, and we represented him pro bono in a retrial in Cook County. He was found not guilty by a jury and was released," says Anderson.

"What I learned about Kimball is that he believes in being prepared and has a grasp of the facts. He stayed with me through the federal (proceeding). And while his associates handled the re-trial, he was in touch with them all the time," Berry says.

But the story did not end there, and neither did Anderson's commitment to help a man who lost eight years of his life through a horrible legal error. "I kept in contact with Ken, and he told me that like so many who are released from incarceration, it was difficult to find meaningful work, even though he had been acquitted."

"When I got out, I went to work for Chicago Catholic Charities helping wards of the state who had been sent to alternative high schools," Berry recalls. "That is something I always did and always will do; help people in need."

Anderson discovered Berry had taken paralegal classes while in prison and convinced Winston & Strawn to hire him as a paralegal. Now, 18 years later, Berry is a senior litigation paralegal, working on complex commercial litigation with Anderson.

"He does a fabulous job," Anderson says. "What is more remarkable is that he is not bitter at all. In fact, he recognizes that he is extremely lucky and is always looking to give back to the community."

"They called me to fill out an application, and I started in September of 2000," Berry

remembers. “I do legal research and was promoted to a senior level position in 2006. Kimball and I have worked on some cases together, both pro bono and for corporate clients.”

Berry pauses to reflect on how much his life has changed and expresses gratitude for his release. “I always had to maintain hope while I was in prison. I had to keep telling myself that I was going home. I said it 1,000 times.

“But I never expected Kimball would embrace me the way he did, both before and after I was released. He changed my life. I have two kids now who never would have been born if it weren’t for him because I would have still been in prison when they were born. Kimball is a great example of how important it is to help others.”

“There is nothing more professionally or emotionally satisfying than freeing someone from prison who was wrongfully convicted,” Anderson says.

His pro bono work has earned him many awards, including from the ABA, *Chicago Lawyer*, the Chicago Legal Clinic, the Legal Assistance Foundation of Chicago, Association of Fundraising Professionals, Business Professional People for the Public Interest, Cabrini Green Legal Aid, the U.S. District Court for the Northern District of Illinois, the Chicago Chapter of the Federal Bar Association and Lawyers Lend-A-Hand to Youth.

The willingness to attack accepted social convention and work tirelessly on behalf of those who cannot always defend themselves runs strongly through Anderson’s career, extending into high profile cases and even the political arena. He currently represents a group of inmates in the custody of the Illinois Department of Corrections in a class action lawsuit concerning their imprisonment in extreme isolation conditions.

“Some of these inmates have been in isolation seven days a week for years,” he says. The lawsuit challenges the constitutionality of the Illinois Department of Corrections’ policies and procedures for placing inmates in various forms of extreme isolation.

Anderson also defended Illinois Governor George Ryan. Near the end of the former governor’s term, he granted mass clemency to prisoners on Illinois’ death row and, as a result, was sued by his own attorney general, seeking to nullify the action.

“Governor George Ryan was confronted with several death sentences in which people were actually innocent,” Anderson recalls. “Several people on death row were exonerated by DNA evidence, and the more Governor Ryan studied the matter, the more he was concerned about the danger of executing innocent people.”

As a result, Governor Ryan issued an executive order, essentially commuting all



death sentences to life imprisonment.

The Illinois Attorney General filed suit, arguing the governor did not have the constitutional authority to grant clemency on a mass basis. Governor Ryan turned to Anderson to defend him before the Illinois Supreme Court. Anderson and Governor Ryan prevailed.

COMPARED TO LEGENDARY DARROW

His commitment to overturning the death penalty in Illinois did not stop there, however. Anderson worked with the legal community to present then-governor Pat Quinn with a

measure to abolish the death penalty in Illinois, an act signed a short time later. The *Chicago Tribune* cited Anderson as among those who “volunteered their time and efforts or otherwise picked up the mantle of Chicago’s legendary abolitionist Clarence Darrow” in successfully abolishing the death penalty in Illinois.

Public success is well documented, but Anderson’s internal role at Winston & Strawn is just as impressive, made more so by the reputation and gravitas of the firm. Winston & Strawn LLP is an international firm with more than 975 attorneys in 16 offices in the United States, Europe, Asia and the Middle East.



Anderson advertises high above Machu Picchu in Peru in 2015.

Founded in 1853, it is the oldest law firm in Chicago and one of the largest law firms in the United States. Known for its bet-the-company trial practice, the firm also is recognized for its work in the areas of intellectual property, financial services and transactions.

Anderson served on the firm's executive committee (the senior governing committee) and as the firm's general counsel for many years. As general counsel, Anderson advised the firm's partners regarding professional responsibility issues.

But his personal satisfaction comes from his work as founder and chairman of the firm's pro bono committee that he started in 1984. Prior to that, the firm did not have an organized pro bono effort, something he helped assemble and then chair for the next 30 years.

"I oversaw the development and growth of our pro bono work which is now one of the

trial in Minneapolis, an environmental lawsuit in North Carolina, and a breach of contract matter set in San Francisco, and many other commercial and pro bono matters.

Monday afternoons are reserved for the class he teaches on advanced trial advocacy as part of a program for third-year law students offered by the University of Illinois College of Law. Anderson teaches the course in the Winston & Strawn LLP courtroom with his wife Karen and other adjunct professors.

BELIEVER IN HEALTH JUSTICE

He was also former president of what is now known as the Legal Counsel for Health Justice, a group that was originally founded to help clients affected by HIV to receive proper legal counsel. Anderson's work on behalf of clients affected by HIV grew out of a case in which he represented Abbott Laboratories, which had

James Monroe Smith approached Anderson. He represented people with AIDS and was running a legal clinic out of the kitchen in his apartment. "He said he needed office space, a staff, and lawyers and asked me to chair a board of directors to get this going." So, Anderson served as the founding president and board chair of the AIDS Legal Council.

Anderson approached his partners at Winston & Strawn LLP in the late 1980s about a contribution to the fledgling AIDS Legal Council, and he personally matched the firm's \$5,000 donation, allowing the organization to get underway.

Now, 30 years later, the AIDS Legal Council is known as the Legal Council for Health Justice, and it represents people in disputes with insurance companies, landlords and employers.

"Prior to the Legal Council, people were dying before they could get legal relief," he says. Anderson has been asked to chair the organization's upcoming 30th anniversary gala dinner due to his dedication to the cause.

"Kimball is well known as an outstanding lawyer with a world class firm, and he is a leader at that firm," says Wayne Andersen, a former federal judge who now conducts arbitrations and mediations.

Andersen says he presided over trials in which Anderson was involved and has also taught some of the University of Illinois College of Law extension classes with him. "But more importantly to me, he and his wife are very generous and have made substantial contributions to pro bono work in the Chicago area (and) have become a model for what lawyers ought to do to try to help."

He does not waste the time he has outside of legal and charitable work. Anderson and his wife enjoy skiing and hiking and time with their three daughters, Alexis, 35, Melissa, 30, and Sophia, 25, as well as grandsons Raymond, 5, and Theo, 18 months.

He also has served on the Chicago Bar Association Board of Managers and received the CBA's highest honor, the Justice John Paul Stevens award for exemplifying the integrity represented by the Chicago native and former U.S. Supreme Court Justice.

The couple owns property in Beaver Creek, Colorado, where they hike and ski. They have climbed "14ers" in Colorado as well as Mt. Whitney, the highest mountain in the lower 48 states. Anderson also has climbed Mount Kilimanjaro, the highest peak in Africa, twice, saying there will not be a third. "The second time nearly killed me."

The Illinois Jurist perhaps summed up Anderson's career best, reporting that he has had "an extraordinary and all-encompassing legal career, steeped in humanity, modesty, and selflessness." ■



Grandson "RayRay" and Anderson in 2017

premier large law firm pro bono programs in the world. We now have a nationally known director of pro bono (Greg McConnell) and a pro bono committee comprised of lawyers from all of our offices."

His work for the public interest legal community is also impressive. As part of a fundraising effort for the Cabrini Green Legal Aid organization, Anderson and his wife trekked to the base camp of Mt. Everest, eventually raising \$1 million for the organization.

Anderson also served for two years as the president of the Chicago Bar Foundation, the charitable arm of the Chicago Bar Association, whose mission is to ensure access to justice for everyone. Anderson and Executive Director Bob Glaves initiated the annual Investing in Justice Campaign. To date, the campaign has raised over \$11 million used exclusively for grants to public interest organizations for legal services for the less fortunate.

Anderson's days are filled with a balance between complex commercial litigation and social causes in which he deeply believes. He is currently preparing for a theft of trade secrets

been sued by a hospital patient who received an HIV-infected blood transfusion and later developed AIDS.

When the HIV virus moved into the mainstream population in the 1980s, it threatened the blood supply used by hospitals for patients needing transfusions. At the request of the United States government, Abbott developed one of the first tests for screening donated blood for the presence of the antibodies to the HIV virus.

Blood drawn from someone who contracted the virus within four to six weeks of testing, however, could test negative because the virus had not had an opportunity to present antibodies in the blood. Thus, a few tests in the 1980s produced false negatives, and some people were infected as a result.

Anderson won the case, establishing that Abbott's test represented the state of the art and that the potential for a false negative was known among the medical community. Doctors and hospitals, therefore, had an obligation to so inform patients of the risk.

After that case, a young lawyer named