

2009 – Volume 2



for the public good

The publication highlighting
select pro bono work of
K&L Gates LLP.

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Steadfast Support in Lean Times

By Peter Kalis, Chairman and Global Managing Partner



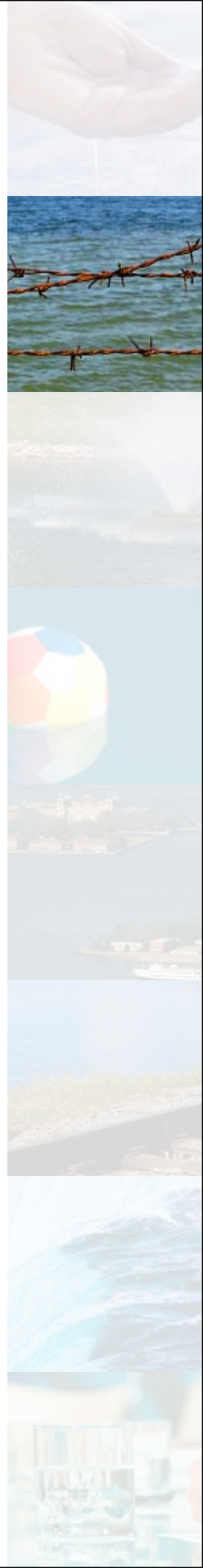
As the recession continues to affect individuals and businesses across the globe, K&L Gates' dedication to pro bono efforts on behalf of civil rights issues, as well as corporate work for nonprofits, is unwavering. Even in tough economic times, pro bono clients require devoted assistance, and the firm's lawyers have answered the call by providing trusted legal counsel in the communities in which we live and work.

In this fall edition of "for the public good," we spotlight our continuing civil rights work, including our ongoing efforts to help ease overcrowding in California's prisons, as well as longstanding work involving the ability of disabled adults to live in an assisted living home suiting their wants and needs. We also take a look at our varied corporate assistance to nonprofit clients, including counseling a veterinary foundation and dog shelter, providing ongoing general legal assistance to a modern art gallery in Berlin, and supporting a technology client in its relief efforts for Typhoon Marakot survivors.

The report also provides a glimpse into our lawyers' family law work, including assisting parents in the recovery of their children under the Hague Convention. A longstanding strength of the firm's pro bono efforts has been our lawyers' commitment to immigration law, and this fall report highlights our work for clients from Eritrea to Palestine.

I hope these stories on the ways in which our lawyers help to improve the communities and individuals around them encourage and inspire you.

Civil Rights



California Prison Overcrowding Case Headed to U.S. Supreme Court



Working with the Prison Law Office and Rosen, Bien & Galvan, a team of the firm's San Francisco and Los Angeles lawyers, paralegals, and staff have devoted many pro bono hours over the last year to relieve overcrowding in California's prisons. The case is now headed to the Supreme Court.

The two consolidated cases challenged the adequacy of medical and mental health care provided to California state prison inmates. The district courts in the cases ruled that the services fell so far below acceptable levels as to constitute cruel and unusual punishment. Both district judges issued numerous orders requiring remedial measures.

When the remedial measures did not alleviate the issues, plaintiffs' counsel in both cases filed motions to appoint a three-judge panel to consider whether any relief short of a prison release order could bring up the level of care. The size of the proceeding caused the plaintiffs' counsel to seek the firm's assistance.

In February, the panel issued a tentative ruling indicating that it would find that overcrowding was the primary cause of the constitutional violations. The court invited the parties to attempt to settle the litigation in light of the tentative ruling.

The court issued a 184-page opinion and order in August 2009 after the defendants declined to resume settlement negotiations. The court held that overcrowding was the primary cause of pervasive constitutional violations and that no relief other than a prisoner release order would remedy the violations. It also held that the state could reduce the population of its prisons without adversely impacting public safety and ordered the defendants to develop a plan to reduce the state's prison population by approximately 46,000 inmates.

The defendants appealed directly to the U.S. Supreme Court and requested an immediate stay of enforcement of the order issued by the three-judge panel. The Supreme Court denied the stay, and the parties will now litigate whether the judgment is final for the purposes of Supreme Court review.

The team included San Francisco partners Ed Sangster and Jeff Bornstein, Los Angeles partner Fred Heather, San Francisco associate Rachel Chatman, and paralegals Chanell Yates and Linda Woo.



Injunction Granted against Landlord in Housing Discrimination Case

After two and a half years of litigation, Washington, D.C. associate Jenee Desmond-Harris, with help from former K&L Gates attorneys Tom Reed, Courtney Gregoire, and Jonathan Smith, and the Washington Lawyers' Committee for Civil Rights, secured significant monetary and injunctive relief for an individual client and the Equal Rights Center (ERC) in a housing discrimination case.

The team went up against The Jonathan Woodner Company, a major Washington, D.C. landlord, when the company refused to rent apartments to Section 8 voucher holders.

The Woodner Company initially sought to dismiss the case based on the temporary revocation of the ERC's corporate charter and later sought summary judgment based on the theory that ERC could not establish discrimination after the organization's testing program ceased. K&L Gates worked long hours to dismantle the Woodner Company's novel arguments for dismissing the case. In June 2009, the case was resolved in favor of our clients.

The Equal Rights Center is a nonprofit civil rights organization dedicated to identifying, challenging, and eliminating discrimination in housing, employment, public accommodations, and government services.

Felony Conviction Reduced to Misdemeanor

Washington, D.C. associates Sarah Connolly, Chris Tate, and Brian Stolarz, with oversight by partner Phil Hecht, successfully represented a client in an appeal and a post-conviction hearing in Indiana State Court. The client was convicted of a B felony, the second-highest level felony in Indiana. He had admitted to committing a minor misdemeanor, but not the serious felony for which he was convicted.

The K&L Gates team asserted the client's innocence as well as the trial counsel's ineffectiveness, based upon the fact that the counsel conducted less than two hours of pre-trial preparation and did not interview or call critical witnesses. The team was able to negotiate dismissal of the felony.

Quashed Subpoenas and Narrowed Class Result in Win for Misericordia

Chicago partner Scott Mendel recently assisted Misericordia in responding to a class action law suit involving disabled adults living in Illinois who are in need of care in a residential facility. Misericordia is a nonprofit organization supporting children and adults with mild to profound developmental disabilities through a wide range of programs.

The case began in 2005, and included a class of plaintiffs purported to represent all disabled adults in Illinois who are in need of residential care. The plaintiffs alleged that the state had violated their rights under the Americans with Disabilities Act and the Social Security Act by denying them funding for living in a community-based home, commonly referred to as a CILA (community integrated living arrangement). The plaintiffs lived in large residential facilities similar to Misericordia, which they claimed segregated disabled people from the community, and that the state had failed to provide the least restrictive environment to them.

The class was initially defined as all disabled adults in Illinois in need of residential services who did not oppose living in CILAs. Those living in Misericordia-type homes who wanted to remain were not members of the initial class. However, the plaintiffs issued subpoenas for the medical records of 100 of such individuals, eight of whom resided at Misericordia. The plaintiffs wanted their expert witness to observe these residents and render an opinion as to whether they were capable of living in a CILA, even though they were not members of the defined class. Mendel represented Misericordia, the residents, and their legal guardians and was successful in quashing the subpoenas.

In 2008, the state and the plaintiffs began discussing a settlement, a portion of which expanded the class to include all disabled adults in Illinois, regardless of whether they had an interest in living in CILAs. Under the new definition, 75 percent of Misericordia's 550 residents were now part of the class. Mendel represented Misericordia and all of its residents and guardians who opposed the settlement. In March, the court preliminarily approved the settlement, allowing until June to file objections. In all, more than 2,500 class members objected – an extraordinarily high number. Mendel filed a brief opposing the settlement because its terms favored those class members who wanted to live in CILAs and disfavored class members who wanted to stay in larger facilities. In July, the judge held that the settlement could not be approved and that the class had to be decertified. The plaintiffs are now attempting to proceed on behalf of a narrower class of consisting of those who wish to live in CILAs.

Montana Supreme Court *Amicus* Brief Argues for Aid in Dying Protection

Seattle partner Paul Lawrence and associate Jessica Skelton filed an *amicus curiae* brief with the Montana Supreme Court in *Baxter v. State*. In *Baxter*, Montana is seeking to overturn a trial court decision that aid in dying does not violate the state's homicide laws. Lawrence and Skelton filed the brief on behalf of three human rights organizations supporting the respondents in the case, including the Billings Association of Humanists, Montana Human Rights Network, and LAMBDA Legal Education and Defense Fund.

The *amicus* brief argued, among other things, that aid in dying is subject to unique protections under the Montana Constitution. The Montana Supreme Court heard oral arguments in early September, and is considering its decision and likely will issue an opinion within the coming year.

First Amendment Success for ACLU of Washington

Seattle partner Paul Lawrence and associate Michelle Jensen recently prevailed in a First Amendment matter for the American Civil Liberties Union (ACLU) of Washington. Working as cooperating attorneys on behalf of Ground Zero Center for Nonviolent Action's "Peace Fleet," Lawrence and Jensen challenged a U.S. Coast Guard rule imposing a 12-hour, 100-yard safety zone around Seattle's Pier 66 during the annual Seafair Parade of Ships.

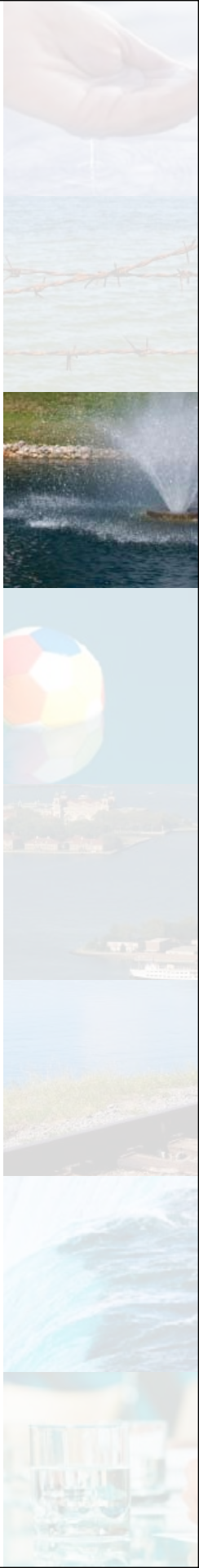
If enforced as originally intended, the safety zone would have functioned as a no-protest zone, preventing protest ships from delivering pro-peace and anti-militarism messages to parade spectators. Lawrence and Jensen asked the Coast Guard to cancel or modify the zone on the grounds it was not narrowly tailored in either size or duration and foreclosed any means of waterborne protest. In response, the Coast Guard agreed, and modified the zone to allow protest ships to move freely up and down the pier throughout the parade, except for a brief period during a helicopter display.

Amicus Brief to Support Colombian Immigrant

Harrisburg partner David Fine, on behalf of the National Network to End Violence Against Immigrant Women, filed an *amicus curiae* brief in support of a woman's petition for review before the Washington Supreme Court.

The petitioner immigrated to Washington, D.C. from Colombia when she was 18 and married a 37-year-old lawyer from Virginia. After allegedly suffering domestic abuse and fleeing to Washington state, she obtained a permanent domestic-violence protection order against her husband. Since her husband had attempted to have her deported in the past, the protection order also restrained him from contacting any agency regarding her immigration status. However, the husband appealed the trial court's order regarding her immigration status, arguing that the portion of the protection order restraining his communication with certain federal agencies was an unconstitutional prior restraint on his First Amendment rights to free speech and to petition the government for redress of grievances. The court of appeals agreed and reversed the protection order. The Washington Supreme Court will likely decide whether to take the case later this fall.

Corporate





Girl Scouts Susitna Council

Anchorage partners Jennifer Coughlin and Joan Travostino recently assisted the Girl Scouts Susitna Council in various matters, including a merger of three councils as part of a nationwide council reorganization to form the Girl Scouts of Alaska; employment-related issues including handbooks, personnel policies, and wage and hour questions; and questions regarding their annual summer camp.

Canine Comfort and Pennsylvania Veterinary Foundation

Anchorage partner Louann Cutler is assisting Canine Comfort, a nonprofit shelter caring for abandoned dogs in rural Alaska, with their incorporation process.

In the Harrisburg office, partner Patricia Shea regularly works with the Pennsylvania Veterinary Foundation (PVF), an organization whose mission is to ensure the availability of qualified veterinarians to care for animals in Pennsylvania. PVF funds various scholarships and programs to assist veterinary students in financing their education. Shea assists the organization with general operational issues, such as insurance and corporate matters.

PVF also sponsors programs to assist in the care of animals that may not otherwise have care available. Shea has been assisting PVF with one of these programs, called the "Last Chance Fund," which helps pay for the care of homeless animals.

Fractured Atlas

Lawyers in the firm's New York office, with assistance from lawyers in the Harrisburg, Pittsburgh, and Portland offices, are assisting Fractured Atlas, a nonprofit organization that provides services and support to artists and arts organizations, with various corporate matters. The firm has been working with the nonprofit since February 2008.

New York partner Whitney Smith, who acts as the point person for the group, along with associate Calvina Bostick, recently assisted Fractured Atlas with a merger with another arts-focused nonprofit. K&L Gates lawyers have also assisted the organization with other discrete issues, from drafting terms related to content and subscription for online courses offered by Fractured Atlas to advising on lobbying regulations applicable to nonprofits, to counseling the group on charity filing obligations in multiple states and fundraising issues.



Multiple Sclerosis Organization Merger

Seattle partner Gary Kocher and associate Greg Luloff assisted in the merger of the two leading multiple sclerosis support entities in the Pacific Northwest.

The Multiple Sclerosis Association of King County (MSA) and the National Multiple Sclerosis Society—Washington Chapter (NMSS-GWC) both endeavor to empower people with MS to live independently, enhance their health, and improve their knowledge. Due to the similarity of the common purposes of the two entities, the two organizations decided they could more efficiently serve the MS community by merging, and approached Gary to assist them in the process. Seattle associate Robert Seale assisted Kocher and Luloff in drafting transaction documents and coordinated the due diligence of both agencies. Seattle partner Stephanie Wright Pickett and of counsel Deirdre Thomas helped with employment and benefits issues.

Getty House Foundation

The Los Angeles office has been working with the Getty House Foundation (GHF), a nonprofit organization that is responsible for maintaining the official residence of the Mayor of the City of Los Angeles, the Getty House. GHF also develops and executes tours and civics programs for youth in Los Angeles. The firm has helped GHF with a number of projects including revising its by-laws and drafting and advising on contracts for employees and third-party consultants.

Technology Assistance to Typhoon Morakot Survivors

Lawyers in the firm's Taipei office recently assisted in efforts to help victims of Typhoon Morakot. On August 6, 2009, Typhoon Morakot, the deadliest typhoon in the area's recorded history, hit Taiwan. The catastrophic harm included 461 people dead, 192 missing, and more than \$3.3 billion in damages.

Firm client Microsoft decided to participate in the relief efforts by offering free software licenses to victims and assisting the Red Cross and China Chunghwa Telecom in developing information reporting platforms. The efforts also include helping social service workers collect data from households for government follow-up, building a recording system for the data and a central database for the information, and equipping field workers with notebook computers and wireless access cards. Lawyers in the Taipei office, including Jacqueline Fu, Alex Hung, Jamie Lin, Kim Hung, and Cherry Huang, assisted in the preparation of the necessary consulting service agreement and license agreements.

Charlotte Habitat for Humanity

In Charlotte, real estate partners and associates have been assisting Habitat for Humanity of Charlotte with the closing of their residential home sales since 2002. To ensure that every real estate lawyer has an opportunity to participate in the closing process, partners and associates take turns assisting Habitat during six-month rotations. The Charlotte team has helped more than 150 families become new homeowners over the past seven years, with 35 families acquiring new homes in 2009 alone. Charlotte real estate attorneys look forward to continuing their relationship with Habitat and helping them to provide affordable housing to those in need.

Investigate West

Spokane partner P.J. Carstens and associate Jenae Ball represent Investigate West, a nonprofit corporation made up of former editors and reporters of the *Seattle Post-Intelligencer*. Investigate West writes and publishes investigative journalism in the environmental, social justice, and health categories. It is also involved in providing educational services to Seattle University.

The firm helped Investigate West launch by forming the corporation and continues to supply general legal services. Currently, the firm is applying for tax-exempt status for the corporation. In the future, Carstens and Ball plan to continue the pro bono relationship and assist with grant writing as well as general corporate services.

Temporäre Kunsthalle Berlin

Lawyers in the Berlin office have been providing comprehensive legal assistance on an ongoing basis to the Temporäre Kunsthalle Berlin since fall 2008. Located at the Schlossplatz in the center of capital, the art project promotes contemporary modern art and gives artists living in Berlin a prominent place to present their work. The project was sparked by the fact that Berlin did not have an exhibition hall dedicated solely to contemporary art. Since opening in 2008, the Temporäre Kunsthalle has showcased four different exhibitions, including two changes of its outer shell designed by well-known international artists.

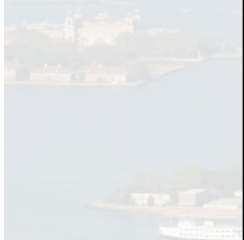
K&L Gates provides ongoing legal support, including general terms and conditions for sponsor contracts, corporate issues including refinancing, merchandise and trademark issues, contracts with artists and publishers, labor agreements, and lease agreements with the city, restaurant operators, and book shop. The team includes Rüdiger von Hülst, Manfred Hack, Christoph Mank, Oliver Kern, Friederike Gräfin von Brühl, and Uwe Dathe.

Independence Conservancy

Pittsburgh partner Ted McConnell provides ongoing counseling to the Independence Conservancy on issues relating to the acceptance of conservation easements. He is currently advising the group on its proposed role as the holder of environmentally sensitive land that would be conveyed to the organization as a third party in a lawsuit settlement.

The Independence Conservancy preserves land by acquisition, easement, or deed restriction to protect open space, wildlife habitat, natural and cultural resources, scenic views, and quality of life in Southwestern Pennsylvania.

Family Law





Child Recovered Under Hague Convention

Dallas associates Jenny Landry and Courtney Perez successfully represented a client in a proceeding under the Hague Convention on the Civil Aspects of International Child Abduction. The client's daughter had been taken by her mother to the United States, and he sought to obtain the return of his daughter to Mexico.

As a result of the filing of the proceeding, the mother voluntarily returned to Mexico with the child and agreed to participate in custody proceedings in Mexico.

Child Returned to Client

Miami partner Jonathan Morton and associate Stephanie Moot joined forces with Pittsburgh associate Natasha Self in a matter involving the Hague Convention on the Civil Aspects of International Child Abduction. On behalf of a Chilean citizen, the team filed a petition under the Hague Convention to recover the client's three-year-old daughter, who had been kidnapped and brought to the United States by her mother.

In coordination with the Department of State and the U.S. Marshal's Office, the team located the child and served the mother with papers. In a one-day trial, conducted without the benefit of discovery and with a key piece of evidence coming in at one in the morning the night before, the team persuaded the court to return the child to Chile with her father.

Permanent Injunction Granted to Client

After relocating to Miami and ending her relationship with the father of her three children in an effort to make a new life for the family, associate Rebecca Kibbe's client turned to K&L Gates for assistance in procuring a permanent injunction against her former partner. The case arose from two instances of domestic violence against the client. The testimony of the client, the father, and the client's 16-year-old niece, who was a witness, proved persuasive. Following the hearing, the court granted the request for a permanent injunction.

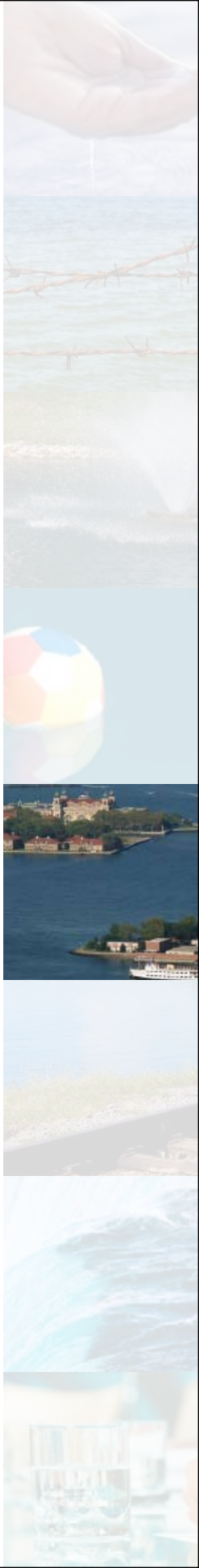
Guardianship Assistance through Catholic Social Services

Anchorage partner Jennifer Coughlin has partnered with Catholic Social Services, Refugee Assistance, and Immigration Services to assist two refugee families with guardianship matters. The team also assisted another refugee in connection with a domestic violence protection motion.

CASA Representation for Termination of Parental Rights

Seattle associate Ramie O'Neill and partner Athan Tramountanas successfully represented a court appointed special advocate (CASA) at a trial involving termination of parental rights. The termination was consistent with the CASA's testimony regarding the best interests of the child.

Immigration





Eritrea

Los Angeles partner Ron Stevens is representing an Eritrean national in a political asylum trial. The client was imprisoned for converting to the Pentecostal faith, which is not one of only four faiths recognized by the Eritrean government. The client was kept in an underground cell at an army prison with 15 other prisoners and one bucket of drinking water and one bucket for a toilet that was emptied once every 24 hours. After 27 months, during which he was beaten and subjected to other forms of torture, the client eventually escaped from prison and traveled to the United States via an “underground railroad” from Eritrea to South Africa to South America, Central America, Mexico, and finally into the United States, where he was arrested when he crossed the border. The final day of trial is scheduled for late 2009.

Palestine – West Bank

Los Angeles partner Paul Sweeney and associates Eric Bevan, Stephen Farkas, and Ayla Nazli have been representing a political asylum applicant fleeing persecution in the Middle East.

The asylum case was referred to the firm from the Los Angeles office of Public Counsel, a pro bono public interest law firm. The team assisted the client in preparing an asylum application, represented him at his asylum interview, assisted him in obtaining employment authorization, and continues to represent him in proceedings before the immigration court.

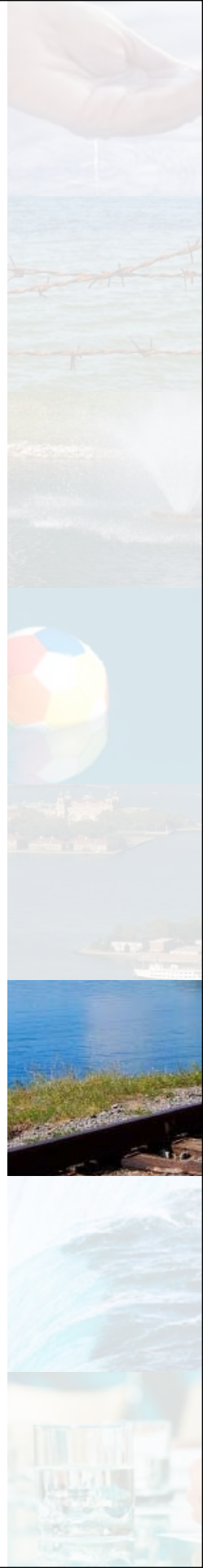
Moldova

In partnership with Volunteer Advocates for Immigrant Justice (VAIJ), Seattle associate Greg Luloff represented a client who fled Moldova at age 16. The client and his family had been persecuted due to their religion, and the client had been beaten severely on two occasions.

When the client was 21, he was arrested in the United States on misdemeanor charges and pled guilty on the advice of his counsel. When he turned himself in for a three-month sentence, he had in his possession Tylenol pills with codeine that he had obtained in Moldova, where the medication is sold over-the-counter. While possession of this medication in the United States is a misdemeanor, under immigration laws, possession of any controlled substance is grounds for automatic deportation.

Luloff and associate Ramie O’Neill submitted a brief to the immigration court detailing the client’s history in Moldova and the current state of religious tolerance in the country. Based on this and the client’s testimony, the immigration judge granted asylum, and the client is now living at home with his parents.

General



Rails to Trails Conservancy Preserves Railroad Right-of-Way



Pittsburgh lawyers Neal Brendel, Bill Semins, and Jeff Meagher recently partnered with the Rails-to-Trails Conservancy (RTC) to preserve a former railroad right-of-way in Pennsylvania for use as a recreational trail in a case that was battled all the way to the Pennsylvania Supreme Court.

K&L Gates became involved in the case after a trial court decision held that the railroad had abandoned the right-of-way before transferring it to a rails-to-trails organization for use as a recreational trail. The firm appeared on behalf of RTC as *amicus curiae* and helped convince the Pennsylvania Superior Court to reverse the trial court's decision. The case then went to the Pennsylvania Supreme Court where K&L Gates filed an *amicus* brief on behalf of RTC that was joined by the Pennsylvania Department of Conservation and Natural Resources.

In a precedent-setting victory for rails-to-trails organizations and trail users, the Pennsylvania Supreme Court held that the right-of-way had been properly "railbanked" under the National Trails System Act and that no Fifth Amendment "taking" had occurred. Railbanking allows a railroad to transfer an easement previously used for rail service to any qualified private organization or public agency that has agreed to maintain it as an interim trail, preserving the right of way for future rail use. In reaching this decision, the court gave great weight to public policy arguments advanced by K&L Gates and explicitly relied on the *amicus* brief in its opinion.

Water Advocates Helps Secure Funding

For several years, the firm's lawyers have worked with Water Advocates, a privately funded nonprofit organization working to increase American support for safe, clean drinking water and sanitation in the developing world. Last year, the firm's public policy and law team helped secure \$300 million in development assistance funding—a total increase of \$200 million over 2005. This year, the team is working with Water Advocates to pass the Senator Paul Simon Water for the World Act, which would provide safe water and sanitation to 100 million people around the world by 2015. The team has also worked to ensure that Congress is on track to increase funding again this year.

Strategic Planning Assistance for LA Shakespeare Festival

Los Angeles associate Shoshannah Katz has been assisting the Los Angeles Shakespeare Festival in its ongoing strategic planning efforts. The efforts focus on developing new revenue streams to support the organization's arts and education initiatives and, with assistance from San Francisco partner Kate Wheble and the San Francisco intellectual property team, protection of the nonprofit's trademarks.

Homeowners Dispute Inadequate Construction

Los Angeles associates Hector Espinosa, R. Michael Viayra, and Eric Bevan are assisting a local family in a dispute regarding an inadequate and incomplete construction renovation project on their home. Via a referral from Public Counsel, the team is helping the family present the case against the contractor, a construction manager, as well as the city of Los Angeles, which funds the program that allowed the family to renovate their older home. The case is ongoing.

eCitizen Foundation Explores Best Practices for Governance in Digital Age

Seattle partner Scott David is acting as counsel to the eCitizen Foundation. The organization is taking a leadership role in convening governmental, commercial, and academic parties to research and develop information and best practices regarding technology implementation and standards for federal and state governance in the information age.

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