

K&LNG Pro Bono report

issue 02
'06



In this Issue

K&LNG and Partnership
for a Drug-Free America:
A Collaboration to Keep
America's Kids Clean
New York..... 2

K&LNG Taking on
FEMA on Behalf of
Louisiana Katrina Survivors
Washington..... 3

Manchester vs. Cancer
London..... 4

Partners for Women and
Justice
Newark..... 5

Pittsburgh Lawyers Help Save
Respected International
Baccalaureate Program
Pittsburgh.....6

Harrisburg Lawyers Offer
Amicus Support to Immigrant
Women Subject to Domestic
Violence
Harrisburg..... 7

K&LNG Fighting for
Prisoners' Rights
Boston..... 8

K&LNG Assists in Reuniting
Parents with Lost Children
Dallas..... 9

K&LNG Fighting for the
Rights of Families
Pittsburgh.....10

K&LNG Litigation Lawyers
Are Active in the Ninth Circuit
Court of Appeals Pro Bono
Program
San Francisco.....11

Pro Bono at K&LNG: An Expanding Universe

By Carleton O. Strauss, K&LNG Harrisburg
Chair, Pro Bono Committee

The universe of pro bono work at K&LNG continues to expand in two very important ways. First, the array of pro bono projects undertaken by our colleagues has expanded to embrace new legal issues and to address a broader array of client needs. Second, the number of our colleagues who are actively participating in our pro bono program continues to grow, demonstrating that pro bono service is an important element of firm culture. The articles in this report illustrate the dynamic character of our pro bono program. This prefatory note provides some context for the balance of the report.

For many years, the pro bono work in several of our offices has focused on the legal needs of women and children. Our lawyers have protected families from domestic violence and have worked diligently to secure affordable housing for those in need. Our Pittsburgh office has served over 1,000 women in domestic violence matters in the past decade. Our continued commitment to such work is illustrated by the recognition received by our New York office from inMotion and the expanded work by our Newark office with Partners for Women and Justice.

The range of issues that we address has now expanded to include cases under the Hague Convention for Civil Aspects of International Abduction of Children and precedent-setting appellate work that reinforces the federal Violence Against Women Act. Similarly, there are perhaps few things so disruptive to family life than drug addiction. The work of our New York colleagues in supporting the Partnership for a Drug Free America addresses that challenge head on.

While some needs are chronic, others are acute. The aftermath of Hurricane Katrina left thousands of

continued on page 4

K&L® Challenge us.®
**Kirkpatrick & Lockhart
Nicholson Graham LLP**

www.klng.com

K&LNG and Partnership for a Drug Free America: A Collaboration to Keep America's Kids Clean

NEW YORK



David S. Versfelt

Twenty years ago, the U.S. confronted ever-increasing levels of illegal drug use among American adolescents. Particularly within our cities, “crack” cocaine was then at epidemic levels, disrupting the lives of too many individuals, families and communities. Use of other illegal drugs was spreading among ever-younger sectors and groups. Alarmed by seemingly unstoppable trends, a small group of senior executives at several national advertising agencies met to consider what might be done. They reasoned that American advertising agencies, with their media partners, are the most sophisticated professionals in the world at selling products to people. Why not put those powers of persuasion to work on “un-selling” illegal drugs so that American children could make the right choices? With that insight, the Partnership for a Drug-Free America (“PDFA”) was born. David Versfelt, a partner in the New York office, was present at that initial meeting, and he and other K&LNG lawyers have helped PDFA as a pro bono project ever since.

Virtually all Americans can recall PDFA’s “frying pan” public service message (“This is your brain. This is your brain on drugs.”), which was recently listed by the U.S. advertising industry as one of the top twenty most powerful advertising messages of the Twentieth Century. However, PDFA’s efforts to inform adolescents about the risks of illegal drugs, and more recently about the need to get help to those addicted, have given rise to more than 600 messages and more than \$3 billion in pro bono media exposure since 1987. “Tracking studies have shown a clear correlation between the visibility of drug-education messages and lowered usage of illegal drugs,” says David. “Drug use nationwide is down substantially since PDFA was founded, and the messages of PDFA no doubt have played a significant role.”

What makes PDFA unique is that for most of its existence it has relied exclusively upon voluntary efforts at advertising agencies for the creation of its public service spots and on donated media time and space for dissemination of its messages. The actors and actresses who appear on camera and in print donate their time, as do all of the production personnel and everyone else involved in the creative process. In recent years, the Federal Government has provided financial support so that PDFA might

purchase media time, but PDFA continues to rely upon voluntary efforts to create the public service messages themselves. Despite the breadth of its goals, PDFA still consists of only about three dozen dedicated employees headquartered in New York City, with affiliated volunteer groups throughout the country.

Since incorporating PDFA and obtaining full state and Federal tax-exempt status for its efforts, David and other lawyers at K&LNG have helped to protect PDFA and its creative process in much the same way as would the in-house legal staff at an advertising agency. With associates in New York, K&LNG has assisted the process of obtaining necessary releases and approvals for many of the messages PDFA has created, including all appropriate rights and releases from the actors and non-actors who will be a part of the message. That process can be challenging, as when PDFA created a spot listing the names and faces of many well-known musical artists who had died from drug overdose. “Negotiating contracts to govern celebrity participation in PDFA messages has never lacked for lawyer volunteers,” explains David, who admits that, for a Yankees fan, getting an autographed Derek Jeter baseball at the end of a negotiation was a hit.

PDFA’s messages contain several well-recognized service marks and other intellectual properties, and K&LNG lawyers have long assisted the client in prosecuting the necessary registrations and protecting their use. Advising PDFA in connection with its web site has also been required, and the site now receives several million visitors each year. New York associate Dan Doron recently advised PDFA through a difficult separation with a former employee. “Even with a small staff of dedicated people, PDFA faces the types of employment law issues that we see arise with much larger clients,” Dan says. “Working them through in this instance provided me with a good opportunity to reach a win-win result.”

continued on next page

K&LNG Taking On FEMA on Behalf of Louisiana Katrina Survivors

WASHINGTON

K&LNG lawyers have not forgotten the people of Louisiana affected by Hurricane Katrina. For a good part of the past year, K&LNG, spearheaded by Washington partner Judy Karp, has been working to find a way to assist displaced residents of Louisiana who might need voices to obtain or maintain assistance from FEMA in the wake of losing their homes and jobs in the aftermath of Hurricane Katrina. Through referrals from The Pro Bono Project, one of the local legal service providers designated by the Louisiana Supreme Court to work with out-of-state volunteer lawyers working on Katrina matters, K&LNG lawyers in New York and Washington are beginning work for eligible persons. While the cases are just now coming through the door, the clients' problems appear to cover a wide variety of FEMA-related issues. Clients are being referred because they have been denied housing, relocation or other FEMA benefits for which they believe they are entitled. Other clients need assistance appealing determinations from FEMA that their benefits are now expired or are shortly terminating. Still other clients need help fighting claims by FEMA for refunds of cash assistance previously paid.

In addition to client referrals from The Pro Bono Project, the Texas Rio Grande Legal Aid is referring eligible displaced residents of Louisiana seeking assistance with their FEMA-related issues.

"Kudos" to Mike Gerard, a New York associate now in his second year, for his persistence in getting this effort off the ground. As it became clear that The Pro Bono Project was not receiving requests for legal representation from individuals entitled to pro bono assistance under their guidelines, Mike single-handedly jump-started this important project. He tracked down other pro bono groups, offering K&LNG's services, ultimately leading to the referrals from Texas Rio Grande Legal Aid.



By Judith Sturtz Karp

Lending their time to this pro bono effort are New York lawyers William P. McLoughlin, Leah A. Ramos, Hetal S. Dhagat, Eliot S. Choy, Betty Louie, Shari A. Alexander, Gerald A. Novack, Whitney John Smith, Robert J. Borzone Jr., Lorraine Massaro and Sandip Kakar, as well as Washington lawyers Nicole A. Baker, Julia Reynolds Johnson, Lawrence Coe Lanpher, Erin E. Troy, Laura A. Johnson, Nanci L. Weissgold, Bruce H. Nielson, Lisa M. Richman, Tanya E. Stern (now migrating to New York), Jarrod R. Melson, and Michael J. Missal. It is expected that lawyers in other K&LNG offices will join this effort as more cases are referred in the Fall. K&LNG

K&LNG and Partnership for a Drug-Free America

continued from page 2

There is the occasional risk of litigation against PDFA, too. "The creatives at the agencies making a spot often look first for the image or tune that they believe perfectly fits the spot's message. There have been a few occasions when the lawyers have had to step in after the fact in order to prevent a legal challenge. In those few instances, it has helped immensely in negotiating an acceptable resolution that PDFA is a public interest group with no commercial self-interest," explains David.

The best way to understand what K&LNG does for PDFA is to realize that PDFA has never had a lawyer on its staff. As a result, the organization has always looked to K&LNG for legal assistance whenever and wherever it is needed. From negotiating the commercial lease for its space (not surprisingly, near Madison Avenue), to advising it about its obligations to employees under ERISA and HIPAA, to counseling regarding statements in its brochures seeking donor contributions, K&LNG lawyers have been a big help to PDFA's efforts to "un-sell" illegal drug use in the U.S. K&LNG

Manchester v. Cancer

LONDON



By Nigel A. Davies

Partners and associates from the London office started 2006 with the culmination of pro bono efforts involving the long-awaited reunion of certain legendary northern miserabilists and many other veterans of the Manchester music scene. The firm acted pro bono in assisting the Manchester v. Cancer charity with the organisers of its high-profile - and well-reviewed - concert event held at the Manchester Evening News Arena.

The concert took place in January and was attended by almost 30,000 people. Artists who performed at the concert included New Order, the Doves, Badly Drawn Boy and Shaun Ryder. The concert also saw Johnny Marr and Andy Rourke (formerly of the Smiths) reunite for a one-off performance for the first time since the band's demise, in which feelings ran notoriously high as reflected in subsequent court proceedings. The purpose of the event was to raise money for the Christie's Cancer Treatment Hospital in Manchester. You can see more details about the concert at www.manchestercancer.co.uk.

Music group partner and associate Nigel Davies and Gregor Pryor, corporate associate Nick Brown, and charity and tax associate Nigel Beadsworth assisted the organisers of the event with various legal issues. The first task was to set up a corporate vehicle with charitable status to collect money raised

from the concert. K&LNG was then involved in negotiating directly with record labels, artist management, artist representation and in some cases the artists themselves concerning their appearance and performance at the concert - including the bringing together of representatives of the previously opposing factions from the Smiths. K&LNG also prepared documentation for various aspects of the production of the concert, including film production arrangements, post-production agreements and artist consents and releases.

As is not uncommon with live music events, there was a flurry of late activity as artist clearances were obtained and record label consents were finalised. On the night, the artists gave enthusiastic performances to a rapturous reception. Badly Drawn Boy sang a duet with Doves and New Order performed a large number of Joy Division tracks. K&LNG is continuing to assist Manchester v. Cancer as it obtains further clearances necessary to release recordings of the concert on CD, DVD, download and for consumption on mobile phones. We hope to be involved with the concert again next year. K&LNG

Pro Bono at K&LNG: An Expanding Universe

continued from page 1

families with acute needs that, regrettably, still persist. Immediately after the calamity, our lawyers expressed interest in providing legal assistance to the victims, but the logistics of rendering service in the distant Gulf region made that impractical. However, through the persistent interest and energy of our colleagues, we are now undertaking work for Katrina victims under the auspices in collaborating legal services organizations.

This array of pro bono work serves as a reminder that pro bono does not only involve litigation matters. As illustrated by the following articles, the work for the Partnership for a Drug Free America and for the victims of Katrina does not involve litigation. Comparable programs are in place in virtually all of our offices. Our portfolio of pro bono work continues to expand.

Similarly, the number of hours of pro bono service by K&LNG lawyers has grown dramatically over the past few years. Our institutional commitment to pro bono was underscored when we became a signatory to the Pro Bono Challenge of the Pro Bono Institute. Our individual commitments to pro bono were recently demonstrated by the fact that more than 60% of K&LNG lawyers performed pro bono work last year and that trend continues. Pro bono participation is expanding within the firm as more of our lawyers make pro bono a part of their professional lives. Their individual commitments are the threads that continue to strengthen the fabric of our pro bono program. K&LNG

Partners for Women and Justice

NEWARK



By Elizabeth M. Harris

June 2006 was the month that changed my life. [Okay, just kidding.]

In the last issue of the Pro Bono report, we introduced readers to Newark’s recently launched pro bono program with Partners for Women and Justice (“Partners”). In the short time since the previous report, we have been involved in a pro bono case so valuable we feel the need to highlight the program again. This case has had a positive impact on everyone involved and highlights the reason why organizations like Partners and pro bono work is so critical to the legal system.

The family court system in New Jersey is particularly aggressive in its treatment of those who commit acts of domestic violence, and is turning into an even stronger advocate for victims. Despite a climate of heightened advocacy, obtaining justice and security for victims of domestic violence continues to be a difficult process. Through Partners for Women and Justice, the gap can be filled and the women who most need assistance can receive it. Our case showed us the realities and limits of the system, as well as the tremendous good that can come from our involvement.

The scope of the case, assigned to us by Partners, initially appeared to be typical – we needed to convert the Temporary Restraining Order our client had obtained *ex parte* into a Final Restraining Order (FRO). Complicating matters, our client had recently immigrated to the U.S. in April 2006 and her immigration status was still pending. The defendant, her husband, sponsored our client’s visa and green card application, and our client was completely financially dependent on him, giving him leverage to use the green card to control her once she arrived in this country. As a result, our client had no money with which to hire a lawyer. Legally savvy and sophisticated, her husband even used her pending immigration status as a tool with which to get her to drop her claims against him. The critical issue for us, though, was building a case for continuing monetary support and damages.

Though technically a hearing, the process for seeking an FRO is run more like a trial. I was required to conduct direct examina-

tions of witnesses, as well as a cross-examination of the defendant. This being my first trial, I was particularly thrilled when I was able to, on cross, uncover the defendant’s numerous lies, contradictions and fabrications. The judge granted the FRO and ordered a support hearing to determine whether our client was entitled to temporary monetary support and punitive damages. I learned how incredibly challenging it is to argue before a judge, as compared to the relative calm of writing a brief, since you are required to articulate your arguments “on the fly” and with consistency in the best interest of your client.

This matter was also an excellent learning experience for Mohamed Shiliwala, a Newark Summer Associate, who was tasked with extensive research and contributing to a punitive damages brief. He was able to watch partner David Kwon conduct a deposition on the defendant and learned how one can use psychology to obtain information from an unwilling witness. As part of the team, he was able to witness the mechanics of a trial – both in the courtroom and behind the scenes – in a way that adds dimension to what he has learned in the classroom.

“It was amazing to see what enthusiastic advocates David and Elizabeth were. They pushed forward regardless of the hours because they really wanted to help the client. They even went above and beyond the scope of the engagement, helping to connect her with services and writing letters on her behalf to the judge in the parallel criminal trial [the client’s husband has pressed charges claiming that she was the abuser, not him].”

Although the case continues as the issue of support and punitive damages has not yet been decided, a positive result was obtained for the client. Also, her immigration status will soon be finalized, so that she can begin working toward self-sufficiency and advancement. K&LNG

Pittsburgh Lawyers Help Save Respected International Baccalaureate Program

PITTSBURGH



By Patrick J. McElhinny

On February 20, 2006, the Board of Directors of the Upper St. Clair School District (a Pittsburgh suburb) voted, over the objections of more than 1,000 residents in attendance, to abolish the District's International Baccalaureate (IB) Program. The International Baccalaureate Program is a rigorous educational program sponsored by the International Baccalaureate Organization, which is based in Geneva, Switzerland, that focuses on developing a rigorous curriculum, stimulating critical thinking, making academic studies to real world application, developing writing skills, promoting community involvement and fostering inter-cultural understanding and respect. IB programs have been endorsed by, among others, President George W. Bush and the United States Department of State, and are particularly attractive to executives employed by multi-national corporations or individuals serving in the United States military who frequently relocate throughout the world because such programs allow their children to maintain continuous and rigorous educational training in an internationally recognized program. The decision to abolish the IB Program generated an extensive amount of media coverage, including national and international reports and by media outlets, including ABC News, Newsweek and The London Observer.

While the decision of a duly elected school board to eliminate an educational program, purportedly to save money, is presumptively within the Board's discretion, certain elements of the decision to abolish this highly acclaimed academic program led community residents to question whether the decision was made in accordance with law and constitutional requirements. Working in conjunction with the Pittsburgh Chapter of the American Civil Liberties Union and another law firm, K&LNG undertook the representation of a group of nineteen parents, investigated the facts surrounding the decision and filed a complaint against the School District and members of the Board majority alleging constitutional and state law violations, including:

- Retaliation for expression of protected political speech;
- Establishment of religion and a proscribed political, national and religious orthodoxy;

- Deprivation of due process;
- Violation of certain state law requirements (i.e., the District's own rules and procedures governing curriculum changes); and
- Violation of Pennsylvania's Sunshine Act.

The plaintiff parents group sought a preliminary injunction whereby the School District would be required to reinstate the program and to perform an evaluation in accordance with the District's own written procedures, which the Board had ignored in abolishing the IB Program. The litigation also garnered its share of news coverage, with regular reports in all of the local media regarding its progress. Simultaneously, a grassroots parent group secured the support of the Governor of Pennsylvania, Edward G. Rendell, Allegheny County Chief Executive, Dan Onorato, and The Allegheny Conference in an effort to restore the program as an important one for the region and its business community. The School District, however, rejected all such overtures, including offers to fully fund the program for one year if it were reinstated for that year while it was studied.

After we conducted expedited discovery in support of the plaintiffs' motion for preliminary injunction and briefed the issue of whether the complaint stated viable causes of action, the District settled the case, agreeing to reinstate the Program for a two-year period (not just the one year that the District had rejected previously) and to conduct an evaluation over a period of no less than nine months as to whether to maintain the Program beyond that two-year period.

The K&LNG effort, which included Pittsburgh lawyers, Patrick J. McElhinny, Thomas M. Reiter, Matthew J. Fader, Scott A. Bowan, Jeremy C. Smith and Nicholas Ranjan, was part of the firm's ongoing relationship with the ACLU, whereby K&LNG lawyers work with the Pittsburgh Chapter of the ACLU on appropriate cases. K&LNG

Harrisburg Lawyers Offer Amicus Support to Immigrant Women Subject to Domestic Violence

HARRISBURG

K&LNG's Harrisburg lawyers have been providing pro bono assistance at the intersection of immigration law and domestic violence law. At the request of Legal Momentum (the organization formerly known as the NOW Legal Defense Fund), K&LNG lawyers have filed amicus curiae briefs in the U.S. Court of Appeals for the Ninth Circuit and the Board of Immigration Appeals.

"We have learned a great deal from these projects," notes K&LNG lawyer David R. Fine, who has worked on the Legal Momentum briefs.

"K&LNG has a long history of providing pro bono help to victims of domestic violence," Fine says. "Our Pittsburgh office's strong commitment to the local protection-from-abuse program has heightened our sensitivity to the problem."

Domestic violence is a particular problem for women who are also immigrants. "Depending on their immigration status, women who are victims of domestic violence may be reluctant to contact law-enforcement authorities who might help them end the violence," says Fine. "Many of these women also fear being deported to countries that have non-existent or ineffective laws against domestic violence."

K&LNG lawyers represented Legal Momentum and the Alaska Network on Domestic Violence and Sexual Assault (the "Alaska Network") and filed an amicus brief in the Ninth Circuit in support of the petitioner in *Lopez-Umanzor v. Gonzales*, 405 F.3d 1049

(9th Cir. 2005). Rosalina Lopez-Umanzor alleged that her estranged husband physically abused her and that, when she fled, he followed her. Her situation became more difficult when immigration authorities sought to deport her to Honduras. She feared that, if she were sent to Honduras, her estranged husband would follow. During a hearing before an immigration judge, Ms. Lopez-Umanzor described the history of her estranged husband's conduct, and she sought to offer testimony from experts on the manifestations of domestic violence. The immigration judge doubted her testimony and refused to hear her expert testimony. After the Board of Immigration Appeals affirmed the immigration judge's determination that Ms. Lopez-Umanzor be deported, she filed a petition for review in the Ninth Circuit. Through the amicus brief K&LNG lawyers filed, Legal Momentum and the Alaska Network described the problems inherent in the immigration judge's stereotyped view of domestic violence, and it also highlighted the provisions of the federal Violence Against Women Act that require a more careful review of domestic violence claims than Ms. Lopez-Umanzor received.

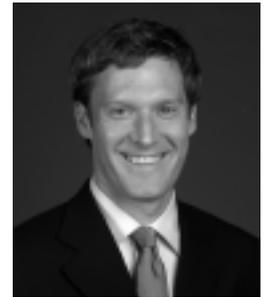
The Ninth Circuit found that the immigration judge erred, granted Ms. Lopez-Umanzor's petition and remanded her case for a new hearing by a different immigration judge. K&LNG



By Carleton O. Strouss

K&LNG Fighting for Prisoners' Rights

BOSTON



Daniel P. Kaufman

K&LNG lawyers have taken the initiative to fight for one of the most overlooked and underrepresented populations in the United States—prisoners. The firm has taken the fight for prisoners' rights to the United States District Court for the District of Massachusetts through representation of a group of former and current inmates with claims of multiple civil rights violations against the Massachusetts Department of Corrections (the "DOC").

The inmates allege that they were victims of cruel and unusual punishment, and various other constitutional violations, as a result of the DOC's actions in quelling a prison riot in April of 1995. They brought suit against more than fifty defendants, including both DOC officers and administration officials, as well as prison medical staff that allegedly failed to properly treat the inmates' injuries following the riot. The inmates' claims were initially dismissed by the District Court judge for failure to exhaust administrative remedies. However, the First Circuit reversed and remanded to the District Court. Since the matter came to K&LNG in 2004, our lawyer's have proceeded into the discovery process. Due to the large number of plaintiffs and defendants, discovery has been extensive. K&LNG lawyers have taken and defended numerous depositions, drafted and responded to interrogatories, and examined countless pages of documents.

Discovery is slated to close on October 31, 2006. Along with the guidance of Arnold R. Rosenfeld and the assistance of fellow associate Edmund M. Han, Daniel P. Kaufman has acted as lead counsel on the case since February 2006. Mr. Kaufman and Mr. Han have traveled to prisons throughout Massachusetts to defend their clients during depositions and to communicate in person regarding their claims. In addition, Mr. Kaufman communicates via telephone on a weekly basis with all seven of the current and former inmates.

"The case has required tremendous dedication on my part. Both due to the fact it requires a great deal of time, and because I often get odd looks from others, co-workers included, when I tell them that I am representing convicted felons. But conviction for even the most heinous of crimes does not equate to a complete denial of one's civil rights. Our clients have the right not to be arbitrarily punished at the hands of the prison guards," commented Mr. Kaufman.

Mr. Kaufman notes some unique challenges, "It's never easy when you are representing inmates--mail often gets lost, your clients often forget to call you or are unable to call you. I have to admit that the case has been extremely frustrating at times, not only because it is always difficult representing inmates, but because it is sometimes difficult to garner support from fellow associates for clients that few want to deal with, and for a cause that most people are unenthusiastic about supporting."

Although Mr. Kaufman will be the first to admit that the case has been difficult, it has provided him with the opportunity to engage in a number of litigation techniques that most young associates do not get exposed to until their third or fourth year of practice. "Although frustrating at times, the case has allowed me to take and defend depositions and to manage a complex civil litigation. At the same time, I am grateful for the opportunity to provide legal services to a part of society that is often ignored." K&LNG

K&LNG Assists in Reuniting Parents with Lost Children

DALLAS

K&LNG lawyers Michael Napoli and Kirstin Dietel, along with paralegal Viviana Wilson, helped a father with his children. The father, a Mexican national, was married to an American citizen. After they separated, the mother returned to the United States, leaving the children in the care of the father. After a year or so, the mother returned to Mexico, took the children from their father's home without permission and disappeared. After an investigation by Mexican law enforcement authorities determined that the children had been taken to the United States, the father requested the assistance of the U.S. government under the Hague Convention on the Civil Aspects of International Child Abduction. His application was referred to the National Center for Missing and Exploited Children which acts for the State Department in Hague Convention matters. The NCMEC, with the assistance of U.S. law enforcement authorities, found the children in Dallas. The NCMEC asked K&LNG to represent the father in obtaining the return of his children to Mexico.

Under the Hague Convention and the International Child Abduction Remedies Act (which implements the Convention in the U.S.), a parent can petition a U.S. court to order his or her child returned to their homeland. To obtain the return of the child, the parent must establish that the child was removed to or retained in the United States in violation of the complaining parent's custody rights under the law of the child's country of habitual residence – the child's permanent residence prior to removal

to the United States. In deciding a Hague Convention case, the court does not decide which parent should have custody over the child but whether a U.S. or foreign court should decide the issue of custody. Depending on the circumstances of the case, however, the court may consider whether the child has become sufficiently settled in the United States such that return would not be in the child's best interests, whether return of the child will lead to a grave risk of harm and the child's preference.

K&LNG worked closely with the U.S. Marshals Service to locate and serve the mother who was evading service. After service was obtained, the court – itself in the middle of a major criminal trial – agreed to hear the case after hours over the course of a week. After several nights of emotional and exhausting hearings, the court ruled in favor of the father and ordered the children returned to Mexico pending a final custody determination by the Mexican courts.

This was one of three Hague Convention cases handled by the Dallas office in the past year. Each of these cases has been challenging on a personal and professional basis. But seeing a father reunited with his children after an absence of more than a year is more than sufficient reward. K&LNG



By Michael D. Napoli

K&LNG Fighting for the Rights of Families

PITTSBURGH



By Kenneth M. Argentieri

On October 4, 2001, Selena Underwood and her eight-month-old son William were visiting Ms. Underwood's aunt and cousins in Beaver Falls, Pennsylvania when a caseworker of the Beaver County Children and Youth Service (BCCYS) and five police officers entered the home. That is how Ms. Underwood's long nightmare began. Within hours, BCCYS had demanded that Ms. Underwood relinquish custody of William upon threat of arrest and imprisonment. William was taken away and put in foster care. It would be months before Ms. Underwood would see her son again, and, unfortunately, they would never again live together as a family. On February 19, 2003, Ms. Underwood gave birth to her second child, a daughter named Na'Dayja. One day later, BCCYS took Na'Dayja from her mother and placed the newborn baby in foster care. Na'Dayja remained in the custody of strangers and apart from her mother for the first five months of her life.

The United States Supreme Court has stated that "the interest of parents in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests. . . . [T]he custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." *Troxel v. Granville*, 530 U.S. 57, 65-67 (2000). In conjunction with its co-counsel, the ACLU, K&LNG set out to defend this fundamental constitutional right by filing suit against BCCYS on behalf of Ms. Underwood and her children. The suit contended that BCCYS violated Ms. Underwood's constitutional rights when they took William and Na'Dayja without a court order, without a hearing, without probable cause, and without any evidence that the children were in any danger.

The lawsuit aimed to redress the specific wrongs to the Underwood family and also to rectify system-wide deficiencies in BCCYS's policies and procedures – deficiencies that not only failed to prevent the unconstitutional seizures of children, but

offered no means to identify and rectify erroneous separations after they occurred. One of the most significant deficiencies, and one of the greatest problems in forcing compliance with lawful, constitutional policies and procedures going forward, was that prior to the litigation BCCYS did not have any written policies and procedures in place addressing the primary concerns that led to this dispute.

In January 2006, after two years of litigation and one month before trial was scheduled to begin, Ms. Underwood and BCCYS reached a settlement of the litigation. Ms. Underwood insisted that any settlement address the fundamental deficiencies in the way the Agency operates so that, in Ms. Underwood's words, "what happened to me and William and Dayja won't happen to anyone else." As a result, BCCYS agreed in the settlement to establish a set of written policies and procedures applicable to its interaction with parents being investigated for neglect and its removals and placement of children. The settlement also provided a procedure for consultation, input, and review of those policies and procedures by Ms. Underwood's counsel and an expert consultant. BCCYS produced that set of written policies and procedures in draft form in June 2006 and has indicated its agreement to further amend that document in response to the comments provided by Ms. Underwood's counsel and expert. In addition, BCCYS paid Ms. Underwood a substantial sum in settlement of her claim.

K&LNG lawyers Joseph L. Luciana, III, Matthew J. Fader, and W. Chad Pociernicki and K&LNG paralegal Irene Dornish invested substantial time over two years in this pro bono matter. Their commitment and work resulted in an outcome that will not only benefit our client, but likely many others who will benefit from BCCYS's improved practice resulting from this litigation. K&LNG

K&LNG Litigation Lawyers Are Active in the Ninth Circuit Court of Appeals Pro Bono Program

SAN FRANCISCO

The litigation lawyers in K&LNG's San Francisco office are actively participating in the Ninth Circuit Pro Bono Program, which provides them valuable appellate and litigation experience as well as an opportunity to provide legal services to the indigent.

Since 1993, the Ninth Circuit Court of Appeals has implemented a pro bono program for *pro se* litigants. The goal of the program is to provide capable counsel to unrepresented parties in cases with complex issues or those that involve important questions of first impression. If an appeal is considered complex, the court reviews the case to determine whether pro bono counsel should be appointed.

K&LNG's participation in the Ninth Circuit Pro Bono program offers our litigation lawyers valuable learning experiences, while also providing underprivileged litigants access to quality representation.

This year, K&LNG's San Francisco office is handling two active cases for the court. Matt Ball, a litigation partner in the San Francisco office, took on his second Ninth Circuit pro bono case in almost as many years. In his current case, Matt is appealing the denial of a special agricultural worker (SAW) application. The court requested Matt's assistance in briefing this issue because the issue had not been brought to the court's attention during a petition for review. Having K&LNG serve as pro bono counsel in this situation helps the court handle these cases much more efficiently. Instead of diverting appellate staff attorney resources to review the law and the facts of the case, the pro bono counsel can brief the court on the important issues of the case.

Dylan Carp, a senior litigation and appellate associate, is currently serving as pro bono amicus counsel on an immigration appeal. The court in Dylan's case appointed pro bono counsel in order to determine the client's eligibility for Family Unity. As in Matt's case, the client's immigration lawyer neglected to bring the issue to the court's attention. After hours of research and participation in mediation, Dylan was able to determine that the client was eligible to stay in the country under the Family Unity Program.

Dylan believes the pro bono program benefits more than the disadvantaged pro bono client. According to Dylan, "Not only is it a great experience for me to be able to argue in front of the Ninth Circuit, but the program helps the court decide the case on its merits without having to do its own research. In addition, the program helps further K&LNG's role in the community."

As a first-year litigation associate in the San Francisco office, Leah Shough is assisting Dylan and Matt in their pro bono immigration cases. Leah believes that, "Being involved in these cases is a great opportunity for me. I get valuable writing experience and the chance to observe an appellate case from beginning to end. Being an immigrant myself, I find the ability to give back to the community through K&LNG's pro bono commitments extremely rewarding." K&LNG



By Leah G. Shough

K&LNG Pro Bono Committee & Coordinators



Firmwide Committee

Carleton O. Strouss, Chair

Kenneth M. Argentieri

Rory J. FitzPatrick

Coordinators

Boston

Harry P. Grill

Newark

Stephen A. Timoni

Dallas

Michael D. Napoli

New York

Eva M. Ciko

Harrisburg

David R. Fine

Palo Alto

Jeffrey L. Bornstein

London

Robert V. Hadley

Pittsburgh

Kenneth M. Argentieri

Los Angeles

Dennis M.P. Ehling

San Francisco

Jeffrey L. Bornstein

Miami

Judd J. Goldberg

Washington

Philip H. Hecht

Kirkpatrick & Lockhart Nicholson Graham (K&LNG) has approximately 1,000 lawyers and represents entrepreneurs, growth and middle market companies, capital markets participants, and leading FORTUNE 100 and FTSE 100 global corporations nationally and internationally.

K&LNG is a combination of two limited liability partnerships, each named Kirkpatrick & Lockhart Nicholson Graham LLP, one qualified in Delaware, U.S.A. and practicing from offices in Boston, Dallas, Harrisburg, Los Angeles, Miami, Newark, New York, Palo Alto, Pittsburgh, San Francisco and Washington and one incorporated in England practicing from the London office.

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer.

Data Protection Act 1988—We may contact you from time to time with information on Kirkpatrick & Lockhart Nicholson Graham LLP seminars and with our regular newsletters, which may be of interest to you. We will not provide your details to any third parties. Please e-mail cgregory@kln.com if you would prefer not to receive this information.

© 2006 KIRKPATRICK & LOCKHART NICHOLSON GRAHAM LLP. ALL RIGHTS RESERVED.

K&L® *Challenge us.*®
**Kirkpatrick & Lockhart
Nicholson Graham LLP**