

2010 - Volume 1

# for the public good

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

**K&L | GATES**

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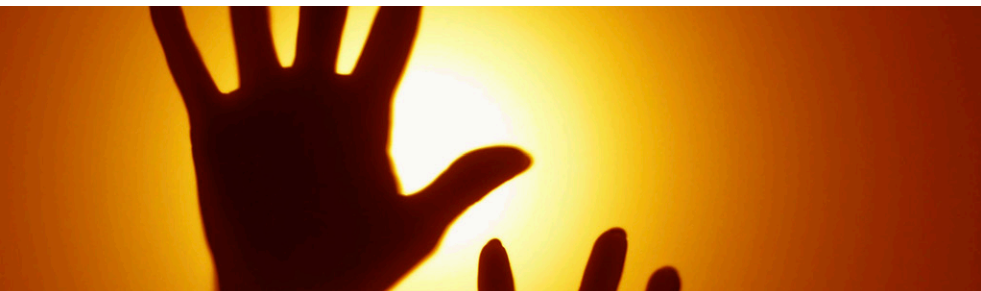
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# Protecting the Fundamentals

*By Peter Kalis, Chairman and Global Managing Partner*



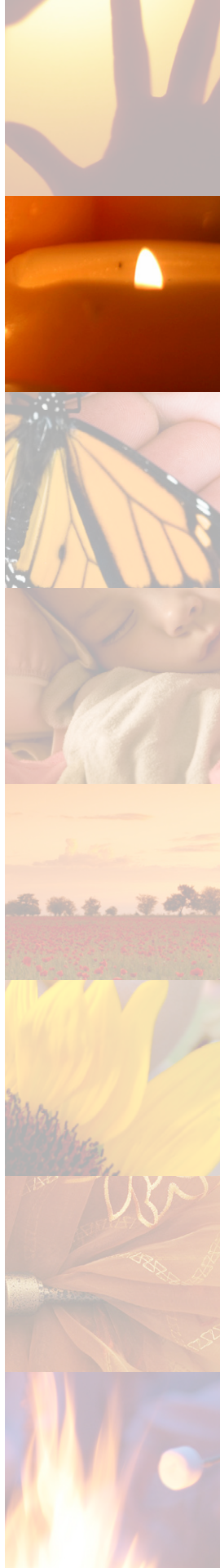
In a time of continuing global economic difficulty, defending and addressing basic human requirements becomes a priority. From fundamental legal rights to needs related to housing, medical care, and fresh water, K&L Gates lawyers aid those at the greatest risk of losing the very support they need most.

In this edition of “for the public good,” we report on stories as varied as the firm’s years-long representation of a death row inmate, ongoing assistance and volunteering at a legal advice center, continued lobbying for clean water funding, and aid in making sure a breast cancer patient received Medicaid funding. The firm’s efforts involving immigration assistance, from helping an entire family obtain asylum to ensuring a teenager could remain legally in the United States, have helped bring stability to clients who face persecution and hardship in their home countries.

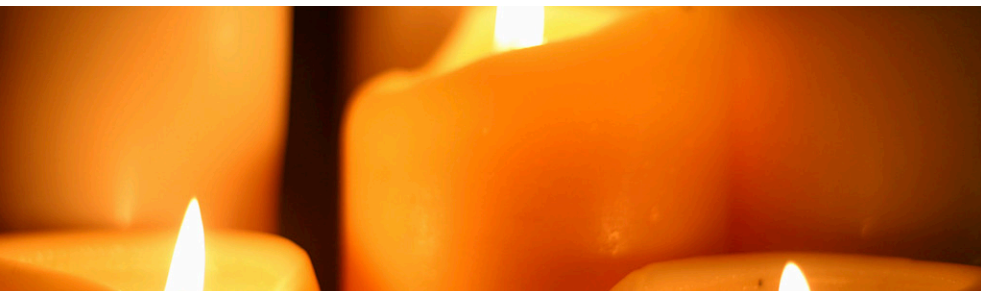
In addition to addressing basic needs, our lawyers have supported the arts and other outlets that help to make people’s lives more enjoyable in difficult times. Our work ranged from assisting an organization creating and maintaining bike trails from unused rail lines and giving advice to a local independent music and arts-focused radio station to helping a play and activity organization for children retain a trademark.

These stories exemplify our lawyers’ commitment to helping those with the greatest need. May they inform and uplift you.

# Civil Rights



# Death Penalty Effort Comes to an Unfortunate End

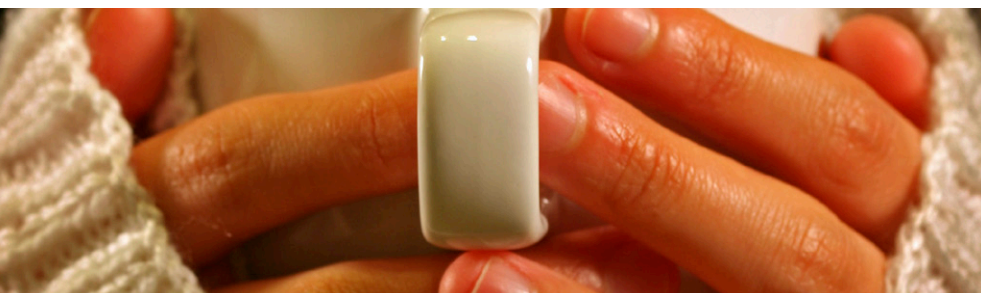


On November 17, 2009, Larry Bill Elliott was executed in Virginia. Lawyers and staff from five K&L Gates offices, including Seattle, Dallas, Anchorage, Portland, and Washington, D.C., had been representing Mr. Elliott in his state and federal habeas corpus petitions since the summer of 2004.

On behalf of Mr. Elliott, the firm contended that there were extensive and material problems with the performance of Mr. Elliott's trial counsel. The firm also argued that there were multiple instances of what should have been reversible misconduct on the part of the police and the prosecution. While the Virginia Supreme Court took an unusually long time – two-and-a-half years – to make its ruling on the more than 40 points of error that the K&L Gates team raised, the court ultimately refused to grant Mr. Elliott relief. The federal courts, constrained by the limitations on federal review of state habeas decisions, also rejected Mr. Elliott's petition. A clemency petition to the governor of Virginia was also to no avail.

Mr. Elliott was 60 years old at the time of his death. He was a college graduate who had served with distinction in the Army for almost 30 years and had never been arrested prior to the arrest in this case. The night before his execution, Mr. Elliott wrote out his final statement and asked that his lawyers read it to the press after his execution. In it, he reiterated his innocence. He also thanked K&L Gates, writing that "I want to thank you for all of your efforts, especially the fact that you were able to discover and present evidence of my innocence that should lead any objective reviewer of facts to conclude that I am innocent of the murders." He added, "Hopefully, groups that oppose the death penalty will take a long, hard look at the facts that my habeas attorneys have uncovered and use those as a launching pad for the elimination of the death penalty."

The lawyers working on the federal habeas and clemency petition included Tom Kelly, Joanne Hepburn, David Binney, and Stan Purser, with assistance from Joell Parks, Wendy Leahy, Shirli Simmons, and Kathy Schwarz. Numerous other individuals worked on the state habeas petitions and other portions of the case, including Stephanie Anderson, Alison Bettles, Sam Castic, Richard Denenny, Joshua Gaul, Michelle Jensen, Sarah Johnson, David Lenci, Stephen Leptich, Dan Litwin, Greg Luloff, Brian McCalmon, Richard Price, Martha Rodriguez-Lopez, Joanna Valeri, Greg Wong, Christopher Wyant, and a number of individuals who are no longer with the firm.



## Stay Granted for Habeas Petitioner

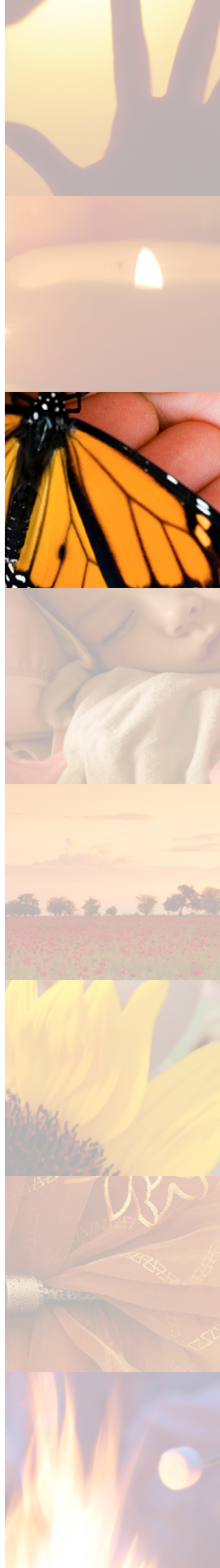
Pittsburgh associate Nicholas Ranjan secured a victory on an issue of first impression before the U.S. Court of Appeals for the Third Circuit. In *Heleva v. Brooks*, 581 F.3d 187 (3d Cir. 2009), the client originally filed a pro se federal habeas petition challenging his state-court conviction. However, he filed the petition near the end of the one-year statute of limitations, even though he had not yet exhausted his claims in state court as required. The client feared he would not have sufficient time left in the limitations period to file the petition in federal court once he had exhausted his claims, so he instead filed a motion to stay the petition until he could fulfill the exhaustion requirement, which was denied. Ranjan represented the client on appeal to the Third Circuit, arguing that even petitioners who have failed to exhaust any of their claims are eligible for the “stay and abeyance” procedure previously endorsed by the Supreme Court in the context of partially exhausted petitions. The Third Circuit agreed, and in an opinion designated as precedential, held that a habeas corpus petitioner may obtain a stay of his petition even when he has failed to exhaust any of his constitutional claims in prior state proceedings.

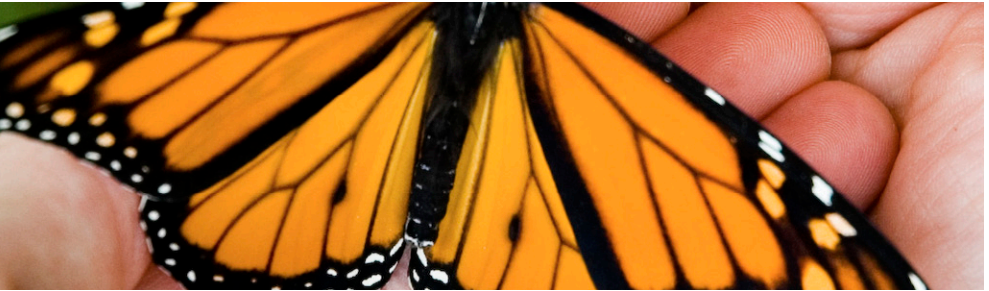
## Groups Defend Constitutionality of “Pole Tax”

A team of lawyers from the firm’s Dallas office, including partners Chris Kratovil, David Coale, and Danny Ashby, and associate Stephen Dacus, drafted an amicus brief convincing the Texas Supreme Court to hear arguments regarding the constitutionality of a law requiring a \$5 fee on “adult cabaret” patrons. The fee, better known as a “pole tax,” would fund anti-sexual assault and anti-domestic abuse programs as well as legal services for the poor.

The clients, a state legislator who sponsored the original bill and two public service legal organizations who benefit from the tax, turned to K&L Gates for assistance writing their amicus briefs. The case came to the Texas Supreme Court after two lower courts struck it down over concerns the tax violated the First Amendment by “chilling” the free speech of dancers and patrons. Several states across the country have enacted similar bills, making this a closely watched case. The amicus brief prepared by K&L Gates has received considerable attention – including recent articles in the *American Lawyer* and in *Texas Lawyer* – because it uses unusual “post-enactment” evidence of legislative intent to help defend the constitutionality of the so-called “pole tax.”

Corporate





### St. Giles Trust

London partner Paul Callegari and former K&L Gates lawyer Laura O'Brien advised the St. Giles Trust with respect to an employee's dismissal from the charity and the negotiation of a compromise agreement in relation to a disciplinary investigation. The matter involved potential conflicts of interest and related issues.

The Trust assists individuals released from prison in finding opportunities and provides practical help and services to these individuals.

### Crazy Hats Breast Cancer Appeal

London trainee Abigail Tumulty is currently advising Crazy Hats Breast Cancer Appeal in drafting suitable terms and conditions of use for their website.

The Crazy Hats Breast Cancer Appeal supports women and men who are going through treatment for breast cancer or who are about to undertake treatment. The charity raises money throughout Northamptonshire for work at the three major hospitals in Kettering and Northampton and also works with the breast reconstruction team at Leicester Royal Infirmary.

### Story Sport and Play Community Interest Company

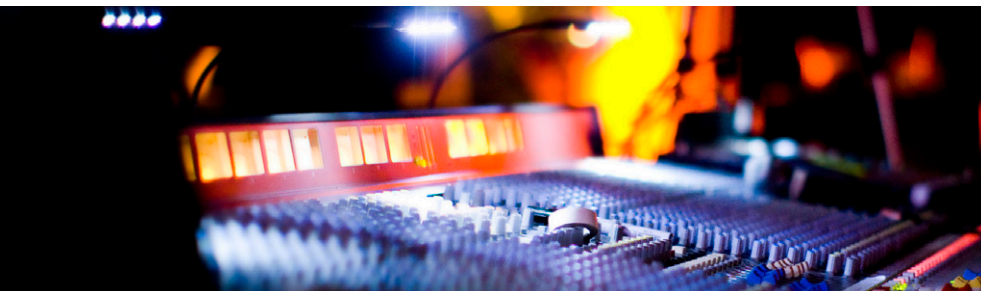
London assistant Stuart Baker recently worked with Story Sport and Play Community Interest Company, an organization providing multiskill and active play sessions for children, in a matter involving a dispute over the trademark "Story Sport."

The conflicting parties had submitted applications with the U.K. trademark registry to register the trademark. The client was the later applicant, had applied for a logo containing the words "Story Sport," and had overlapping goods and services with the other party's prior application for the trademark "Story Sport." The conflict was resolved with a trademark co-existence agreement.

### The Careers Surgery

London assistant Joe Lavelle recently assisted The Careers Surgery in connection with its incorporation and selection of its corporate structure. The Careers Surgery is a community group which aims to empower young people to create their own futures by providing one-on-one coaching, career workshops, and interactive digital learning resources.





## Test Positive Aware Network

Chicago associate Jeremy Gottschalk registered trademarks on behalf of Test Positive Aware Network (TPAN) for two of its major fundraising events, "Ride for AIDS Chicago" and "Chicago Takes Off."

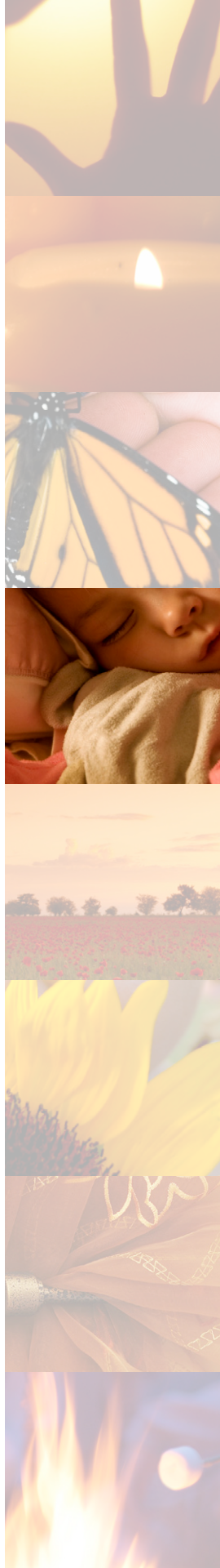
TPAN, one of Chicago's oldest and largest HIV/AIDS organizations, was founded in 1987. Its goal is to empower people living with HIV through peer-led programming, support services, information dissemination, and advocacy as well as providing services to the broader community to increase HIV knowledge and sensitivity, and to reduce the risk of infection.

## The Chicago Independent Radio Project

Chicago associates Matthew McClintock and Sarah Bryson have assisted the Chicago Independent Radio Project (CHIRP) in a number of capacities, including successfully helping CHIRP to obtain tax-exempt status from the Internal Revenue Service and file annual information returns. This matter was referred to the firm by Lawyers for the Creative Arts.

CHIRP was formed to bring an independent music and arts-focused community radio station to Chicago, and to further the causes of localism, diversity, and independence in broadcasting. CHIRP Radio currently is a web-only outlet, but is working to convince Congress and the Federal Communications Commission (FCC) to remove existing barriers to the granting of low power FM radio licenses in urban areas.

# Family Law



## Chicago GALs Support Best Interests of Children



Several lawyers in the firm's Chicago office regularly assist Chicago Volunteer Legal Services (CVLS) through the organization's guardian ad litem (GAL) program. GALs represent the best interests of the children involved and are appointed by the court to determine those interests. GALs do not serve as lawyers for the minor.

During the past year, associate Bryan Maguire has been working on a case in which there was a concern about whether a high school-age mother was committed to caring for her 18-month-old child. The mother has limited resources with which to support the child and is unable to care for the child full time. Over time, significant tensions arose between the mother and the petitioner in the case, who has been supporting the child for most of the child's life, as well as between the lawyers for both parties. Maguire served as the guardian ad litem for the child, and fortunately the group was able to avert trial, which would have further deteriorated the relationship between the parties. The parties reached an agreement where the child

will safely remain with the guardian while the mother stabilizes her life and cultivates a stronger relationship with the child through visitation.

During the past several years, partner Heather Boice has served as a guardian ad litem for five siblings who had been living with a legal guardian while their biological parents were in prison. After the mother was released from prison, she petitioned to discharge the guardian so she could raise her children. Although the children barely knew their mother, all five wanted to be reunited with her. The mother, however, was still in the process of establishing a safe and stable home environment and maintaining a job, and Boice determined that it would be in the children's best interest if the court appointed the children's maternal aunt as guardian.

Over the next two years, the mother worked on reestablishing her relationship with the children, found a job, and found housing in a complex that provides counseling and support to families trying to recover and establish stability. The mother re-petitioned to discharge the guardian, and after investigation, Boice agreed that it was in the children's best interest to be reunited with their mother.



## Team Successfully Defends Day Care Administrator

In a two-day trial in Washington, D.C., of counsel Brian Stolarz and associate Lewis Brown successfully defended a day care administrator charged with failing to report suspected abuse to authorities.

The client knew the child who was the subject of the alleged abuse and his family very well; she conducted a thorough investigation regarding the suspected abuse and spoke with her supervisors and others at the day care center about the alleged abuse. Everyone involved determined that no abuse had occurred, and in fact, no abuse had ever occurred to the child. Nevertheless, the client was arrested and charged with failing to report the suspected abuse to authorities.

After a two-day trial, the court found the client not guilty.

## Seattle Team Defends Against Abusive Litigation

Seattle partner Laura Clinton and associate Jessica Skelton represented a defendant in a case where the pro se plaintiff filed a lawsuit claiming conspiracy, false arrest, intentional infliction of emotional distress, false imprisonment, and other claims against his ex-wife, her friend, and her former employer. Clinton and Skelton represented the ex-wife's former employer, a widowed immigrant from Thailand who operates a Thai restaurant.

Prior to this case, the plaintiff had demonstrated a pattern of engaging in abusive litigation by filing a series of lawsuits against his former spouse and anyone who offered her assistance. Clinton and Skelton were asked to represent the former employer by Legal Voice. After successfully defending against groundless motions for sanctions and for entry of default, Clinton and Skelton filed a motion for judgment on the pleadings. The court granted the motion, dismissing all claims against their client, and entered a finding that the plaintiff's claims were frivolous and advanced without reasonable cause.

Associates Cristin Kent and Bradley Bowen assisted with briefing in the case.

## Child Returned to Colombia



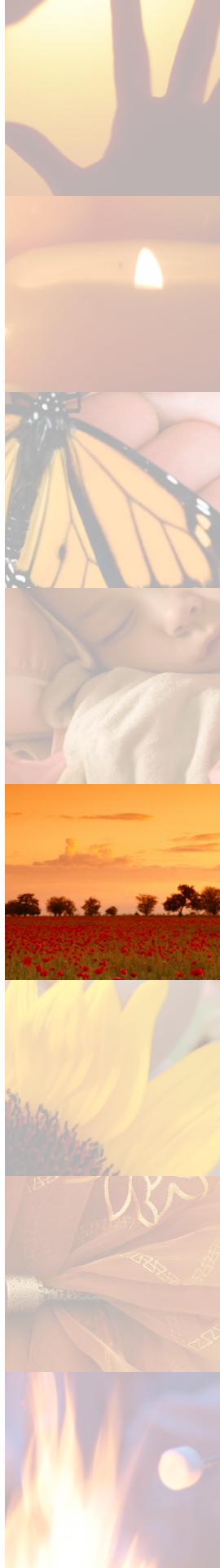
A matter involving the Hague Convention on the Civil Aspects of International Child Abduction was recently resolved by Miami partner Jonathon Morton and associates Rebecca Kibbe and Karen Finesilver.

The client, a Colombian citizen, sought to recover his nine-year-old son, who had been kidnapped and brought to the United States by the child's mother.

The father could not travel to the United States because he had been previously deported, while the mother could not travel to Colombia due to her political asylum status. The team filed a Petition for Return of Child under the Hague Convention. Hoping to resolve the matter amicably, the parties decided to mediate. However, mediation soon broke down, and the team obtained an expedited hearing date.

In a two-day trial, conducted without the benefit of discovery or even the physical presence of the client due to his deportation status, the team successfully persuaded the court to return the child to Colombia. The mother returned the child to the client in Colombia on November 16, 2009.

# Immigration





## Africa

Washington, D.C. associate Grace Murphy and former associate Erin Troy assisted a woman who was abused by her husband on a regular basis for several years. When the husband was transferred from the couple's home in Africa to the United States, the abuse continued. Although the client contacted the police, there were limitations on what the police could do in light of issues relating to the husband's employment status.

On behalf of the client and her two sons, Murphy and Troy filed a U-visa application and accompanying applications so that the client could receive documented status and continue to work legally in the United States. The purpose of the U-visa is to give victims of certain crimes temporary legal status and work eligibility in the United States for up to four years. The decision took several months, which put the client's work and living situation in jeopardy, however Murphy and Troy advocated tirelessly with U.S. Citizenship and Immigration Services to ensure that the client's application received a timely review. The client recently received word that her U-visa application was approved, one day after her previous work permit expired, and she and her family anticipate a hopeful future in the United States.

## El Salvador

Washington, D.C. of counsel Brian Stolarz and staff lawyer Lisette Howells recently represented a woman who was abused by her husband both physically and mentally in El Salvador. After

Stolarz and Howells filed an extensive petition on the client's behalf, the client was granted work authorization and a U-visa, a type of visa for immigrant women who are victims of crimes and are cooperative in the prosecution of the crimes. Stolarz and Howells will now represent the woman in her application for a green card.

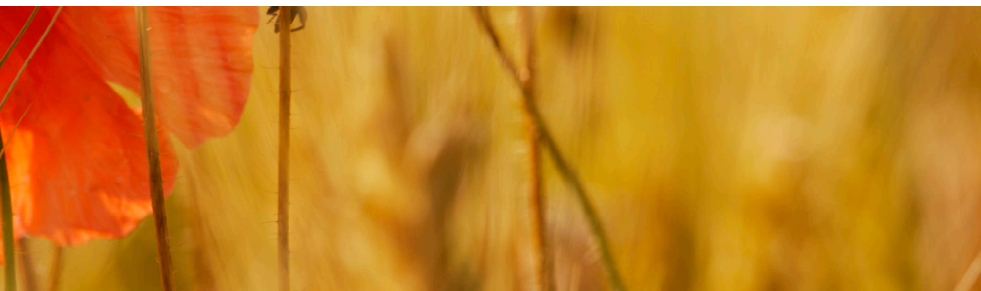
## Mexico

In partnership with Volunteer Advocates for Immigrant Justice (VAIJ), Seattle associate Emily Throop and former K&L Gates lawyers Ramie O'Neill and Helen Bergman Moure have been assisting a Mexican teen in his immigration proceedings.

The team began representing the teen in early 2009, at which time he was in removal proceedings and being held in a juvenile detention facility. The client, who had grown up in the United States, feared for his safety if forced to return to Mexico. While pursuing an asylum application, the team learned that the teen could also be eligible for a change of status under the Special Immigrant Juvenile status for unaccompanied alien children who are abused, abandoned, or neglected. To be considered under this status, the teen had to be declared a dependent by the state. The team successfully argued his dependency before the Washington state court in late 2009.

As a result of his dependency, the teen has now received a visa and is legally in the United States for the first time in his life. Applications for lawful permanent residence and a work permit





are now pending. Just as importantly, during the pendency of these proceedings, the team was also instrumental in having the client released to an independent living facility and connecting him with needed social services. He is now pursuing his GED and making plans for his future.

## Mongolia

San Francisco associates Jas Dhillon, Megan Cesare-Eastman, and Kara Warner represented a client and his family seeking refuge in the United States after the husband was persecuted in Mongolia due to his political views. The husband was a member of an undercover police investigative unit. After parliamentary elections in 2008, the citizens of Mongolia took to the streets to protest the results of the election. The husband was given orders to observe, record, and report this turmoil so the police could hold the protestors responsible for their criminal acts.

On the night of the protest, however, the husband personally witnessed acts of police violence and brutality, including a police officer shooting an innocent civilian in the back. When he reported this brutality to his supervisors, he was targeted, threatened, and beaten. He was later fired from his job because he had reported the acts, which his supervisors said violated the public trust in the police. The client and his family suffered months of threats and lived in fear they would be beaten or killed.

Cesare-Eastman, Dhillon, and Warner interviewed the client and assisted him in preparing his asylum

application and supporting documentation. With the assistance of partner Jeff Bornstein, the team met with the client and his wife to prepare them for their asylum interviews. In early 2010, the asylum officer held that the clients had a well-founded fear of persecution and granted them indefinite asylum.

## Morocco

After five years of litigation, Boston partner Rebecca O'Brien Radford succeeded in her pro bono immigration representation of a domestic violence victim from Morocco. The client suffered years of serious beatings, death threats, intimidation, and confinement at the hands of her husband, a police chief.

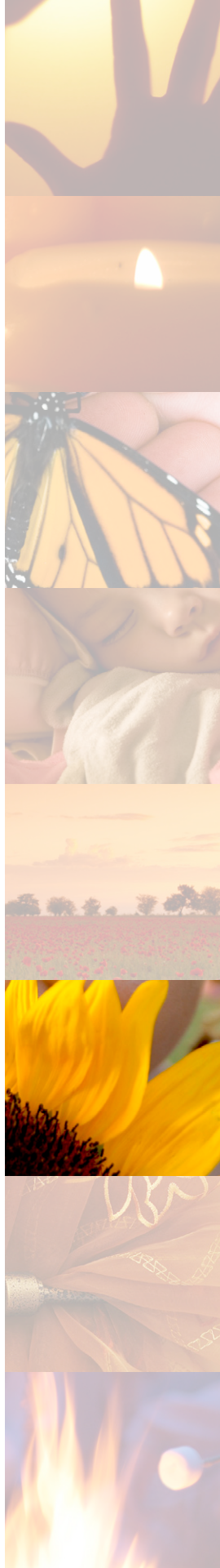
The withholding of removal decision means the client will now be able to remain safely in the United States. On the same facts, the client's minor son was granted the same status.

The Political Asylum/Immigration Representation Project (PAIR) referred the client to Radford. PAIR is a nationally recognized pro bono organization that works to secure safety and freedom for asylum-seekers who have fled from persecution throughout the world and to promote the rights of immigrants unjustly detained.

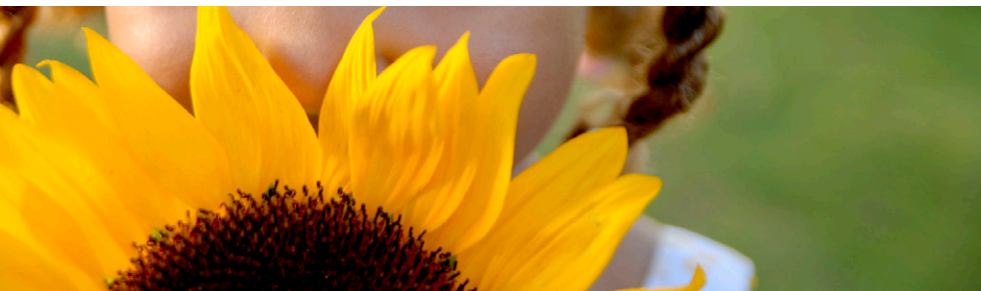
Washington, D.C. associate Mirela Izmirlac assisted with the trial.



# Basic Legal Needs



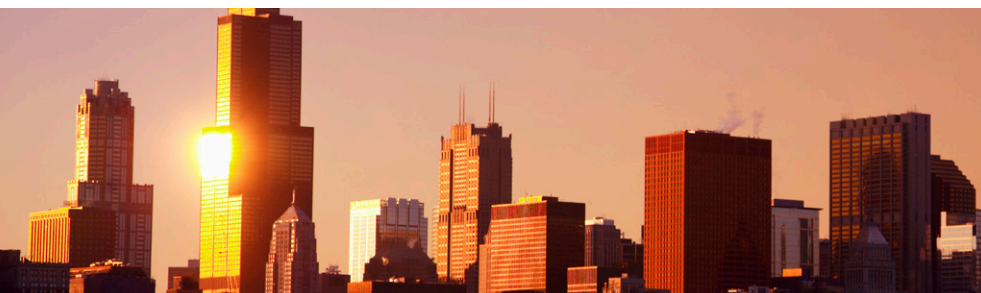
## inMotion Gives Pro Bono Experience to Summer Associates



For five years, the firm's New York office has been a corporate partner of inMotion, a New York nonprofit organization that provides and coordinates legal services to indigent women in custody, support, abuse, divorce, and immigration proceedings.

Each summer associate in the New York office represents an inMotion-referred client under the supervision of a partner mentor. The associates interview their client, evaluate the client's situation, and chart a course of action. They also draft pleadings, take depositions, and make court appearances. Throughout the course of the summer program, New York of counsel Bob Michaelson, who spearheads the inMotion sponsorship, leads a series of informal seminars with the summer associates at which they discuss their cases and share experiences.

Associate Roberto Alonso-Olmo worked with inMotion as a K&L Gates summer associate. His client was a mother who was trying to get a restraining order against the father of her son. The client eventually dropped the charges, deciding to try and reconcile with her son's father for the benefit of the child. Through the experience, Alonso-Olmo acted as an active participant in a court case and experienced issues ranging from proper gathering of the facts from the client to court preparation and answering a judge's questions. "Working with inMotion was a positive experience for me during the summer," Alonso-Olmo says. "It not only gave me courtroom experience, but also allowed me to work with a partner on next steps in the case while receiving valuable advice."



## Raleigh Charter School Expands

Raleigh associate Camden Betz is assisting Casa Esperanza Montessori Charter School on an ongoing basis as they try to expand or relocate to better serve their students.

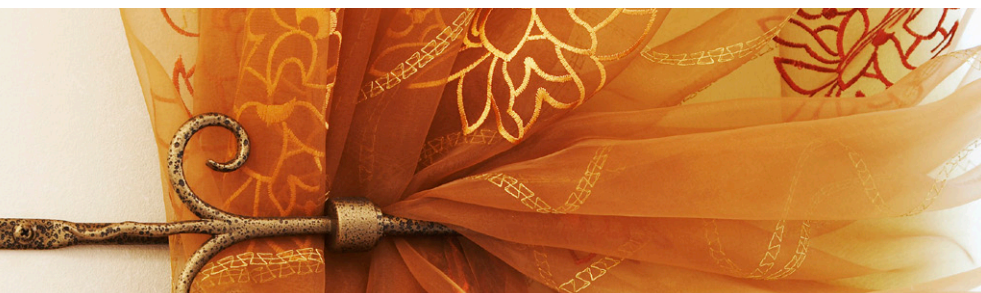
Casa Esperanza Montessori, a public charter school and private preschool, uses Montessori philosophy and pedagogy in an English-Spanish dual-language environment. The Casa Esperanza community of families, educators, and dedicated volunteers actively fosters enthusiasm for learning, independence, individual academic progress, cultural awareness, and social and emotional well being.

Associate Michael Birch is also assisting with this ongoing work.

## Association Works to Provide Resources to Chicago Neighborhood

K&L Gates has provided pro bono legal services to the Northwestern University Settlement Association for more than a decade. The Settlement was founded in 1891 and has for the past 119 years provided a variety of services from its settlement house located in Chicago's West Town neighborhood, a port of entry for many generations of Chicago's immigrants. The Settlement's mission is to provide resources to empower individuals to take personal responsibility for overcoming the obstacles of poverty and improving the quality of their lives.

The team's assistance has included acquisition of property from the city of Chicago; zoning, licensing, and building permits for settlement house expansion; zoning, leasing, and financing for Noble Street High School; acquisition and leasing of camp grounds in Wisconsin; and legal advice regarding personnel policies, fundraising, and corporate reorganization.



## Medicaid Reinstated for Breast Cancer Survivor

In August 2009, pro bono client the American Cancer Society Cancer Action Network (ACS CAN) learned that Tennessee had wrongfully denied Medicaid coverage to a breast cancer survivor based on the state's erroneous application of the law. The issue was whether her supplemental breast cancer policy would undercut her eligibility for Medicaid.

While the firm did not legally represent the patient, ACS CAN and Washington, D.C. associate Scott Baker brought the woman's case to the attention of the federal Centers for Medicare & Medicaid Service (CMS) as an example of a practice that could affect many other women in the state. At CMS' request, Tennessee performed a comprehensive review of their records and found that this type of denial for enrollees was faulty. The state reinstated the patient's eligibility for Medicaid, which in this case may be life-saving. The interpretation is likely to affect others in Tennessee, and CMS' actions affirm the access to care for many women who obtain Medicaid through the breast and cervical cancer screening programs in their states.

## Landlord-Tenant Dispute Successfully Resolved

Raleigh partner Curt Brewer represented a woman who, while a tenant in a boarding house, was arrested on an outstanding warrant. While she was in jail, the boarding house's landlord disposed of her personal belongings.

The client was referred to Brewer by Legal Aid of North Carolina, and Brewer successfully represented the woman before the local magistrate and won a small award of damages due to the landlord's improper disposal of the client's property.



## Recreational Trail Preserved

Pittsburgh lawyers Neal Brendel, Bill Semins, and Jeff Meagher represented the National Rails-to-Trails Conservancy (RTC) by filing amicus curiae briefs in a pair of cases in Pennsylvania involving challenges to railroad easements by adjacent landowners. The landowners claimed the property reverted to them once it ceased being used for railroad purposes and that trail conversion under the National Trails System Act constituted a taking.

In a precedent-setting decision last summer, the Pennsylvania Supreme Court ruled in favor of preserving the railroad right-of-way as a trail and gave great weight to the public policy arguments K&L Gates presented on behalf of RTC. Earlier this year, the U.S. Supreme Court denied the losing party's petition for certiorari in that case, leaving in place the Pennsylvania Supreme Court's favorable ruling.

More good news followed several days later when a judge in the Western District of Pennsylvania granted summary judgment to the defendants in a separate case in which the team had also filed an amicus brief for RTC. The judge's opinion cited heavily to the Pennsylvania Supreme Court's earlier decision, which had repeatedly referenced the arguments set forth by K&L Gates.

The team's efforts with the RTC have preserved many miles of recreational trails, leading trail users from as far away as Charlottesville, Va. to express appreciation for their efforts.

## 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. In 2009, the firm's public policy and law team helped secure \$315 million in development assistance funding—a total increase of \$215 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. The team of 16 lawyers working with Water Advocates is led by Washington, D.C. associate Paul Stimers and partners Daniel Ritter and Bruce Heiman.



## Bravewell Creates “Healthy Nation Partnership” Concept

Washington, D.C. associates Paul Stimers and Akilah Green, along with government affairs counselor Steven Cooper, worked with the Bravewell Collaborative and the Institute on Medicine to create a public-private partnership model for a proposed “Healthy Nation Partnership.” The model would empower and encourage individual behavior modification designed to promote health and well-being and at the same time, inspire American society to make the changes needed to support individuals in their efforts to improve their own health. With K&L Gates’ help, the two organizations drafted a concept paper, which Bravewell presented to the Secretary of Health and Human Services, Kathleen Sebelius. The K&L Gates team also assisted the organizations in drafting a memorandum of agreement to be used in establishing the potential public-private partnership.

Washington, D.C. of counsel, former U.S. Attorney General and former Governor of Pennsylvania Dick Thornburgh and partner Suzan Onel previously assisted Bravewell in negotiating with the Institute of Medicine (IOM) on a collaborative multiday conference titled “The Summit on Integrative Medicine and the Health of the Public.”

## Battersea Legal Advice Center Provides Free Advice

A 30-strong team of London lawyers coordinated by associate Lucinda Bayliss continues to provide ongoing assistance to the Battersea Legal Advice Centre, which offers free legal advice to the local community. Volunteers attend in the evenings and give advice on matters as wide ranging as residential landlord and tenant, consumer terms and conditions, small claims, debt, and employment. The volunteers meet with individuals and, if necessary, give assistance in completing governmental and court forms, and telephone and write to third parties as follow up where required. This year, the London team has increased its contribution by taking on additional evening surgeries.

## Working Advocacy in North Devon Enables Empowerment

Former K&L Gates lawyer Laura O’Brien advised WAND (Working Advocacy in North Devon) on redundancy obligations. WAND is a user-led helpline staffed by volunteers which provides help, support, and information to those affected by mental health issues with the aim of enabling these individuals to empower themselves and make appropriate life decisions to improve their future.

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