



Pro Bono Newsletter

A Global Commitment to Public Service

Fall 2017

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Introduction



Timothy C. Hester
Chair

Fall is the season when we welcome new associates to our Covington team and when all of us can renew our pro bono goals for the upcoming year. Meeting our newest colleagues reminds me of when I joined the firm 34 years ago. On my second day at the firm, with the encouragement of the partners I was working with, I took on my first pro bono matter, a habeas petition for a man sentenced to death. Like many of our lawyers, the firm’s culture encouraging pro bono work was an important reason why I came to Covington.

Capital cases have been my main pro bono focus ever since. I found it personally rewarding and good for my professional growth to work for clients on death row, even on top of a busy roster of paying work. After that first pro bono case, I went on to represent many other clients in their criminal habeas petitions and direct appeals of death sentences and life-without-parole convictions. More recently, given the demands of my role on the Management Committee, I’ve taken on matters of smaller scope, but still with great importance to our clients: veterans benefits appeals and landlord-tenant matters. These cases offer their own rewards—the opportunity to work with clients in our community, mentor young associates, and learn new areas of law.

The firm encourages lawyers at all experience levels to participate in pro bono projects that are meaningful to them, and our pro bono work spans an incredible variety of practices and issues. This newsletter highlights just a few matters selected from among the many noteworthy public service efforts that firm lawyers have been handling these past few months. We hope that reading these client success stories in the newsletter will inspire everyone to find pro bono matters that fit their interests and time commitments. Thanks to all of you for your support of the firm’s pro bono efforts.

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National Veterans Legal Services Program Presents the *Lawyers Serving Warriors Excellence Award* to Einar Stole

On November 16, the National Veterans Legal Services Program (“NVLSP”) honored Einar Stole with the Lawyers Serving Warriors Excellence Award. The award is given to just one volunteer lawyer each year, out of many lawyer volunteers nationwide. Since 2011, Einar has helped eight veteran clients to receive their benefits by representing them in their appeals to the United States Court of Appeals for Veterans Claims.



Einar Stole accepts the NVLSP Lawyers Serving Warriors Excellence Award.

Covington Challenges the Rescission of DACA

On September 5, 2017, the Department of Homeland Security (“DHS”) rescinded the program known as Deferred Action for Childhood Arrivals (“DACA”). Under DACA, nearly 800,000 undocumented individuals who were brought to this country as children were permitted to live, work, and study here without fear of deportation. The rescission threatens DACA recipients with the loss of their work, education, and country.

Three days after the rescission announcement, Covington filed a lawsuit in the Northern District of California on behalf of clients the Regents of the University of California and University President Janet Napolitano, alleging that DHS’s decision was cruel, arbitrary, and unlawful, and should be set aside. In the complaint, Covington argued that DHS violated the Administrative Procedure Act by failing to offer a reasoned basis for its decision to rescind DACA, and by failing to conduct notice and comment rulemaking. We also alleged constitutional claims.

In the weeks since filing the complaint, Covington lawyers have been assembling a massive factual record in support of a forthcoming motion for preliminary injunction, collecting nearly 20 declarations from university administrators, faculty, and DACA recipients, along with expert declarations from immigration scholars.

Meanwhile, the battle in the courtroom has already commenced. When the government submitted an “administrative record” consisting of only 14 publicly available documents, we moved to complete the administrative record. On October 17, 2017, Covington secured a meaningful victory when Judge William Alsup ordered the government to provide missing documents that formed the basis of DHS’s decision to rescind DACA, and found that the government had waived attorney-client privilege by placing the legality of DACA at issue. We also obtained an order from the magistrate judge authorizing a deposition of the Acting Secretary of Homeland Security. The government has now sought mandamus from the Ninth Circuit, and oral argument on the government’s petition is set for November 7.

The DACA litigation is a firm-wide effort involving lawyers from San Francisco, Silicon Valley, Washington, and Los Angeles. The team consists of Jeff Davidson, Mark Lynch, Alex Berengaut, Lanny Breuer, Alan Bersin, Mónica Almadani, Megan Crowley, Ivano Ventresca, Ashley Nyquist, Megan Rodgers, Kayleigh Scalzo, Liz Saxe, Jonathan Mincer, Kim Stietz, Erika Douglas, Matt Gibbs, Dominique Perez, Andrew Chang, Perrin Cooke, Bre Jones, Rafael Reyneri, Tyler Williams, Ellen Chiulos, Tom Spath, and Gaby Vasquez. Many others have contributed to the effort as well.

Client Serving Life Sentence Freed After Murder Conviction is Overturned

In 1998, William Kent was convicted of murder in connection with the 1996 shooting deaths of two drug dealers in Louisville, Kentucky, and sentenced to life in prison. Last week, after more than 20 years of incarceration, Mr. Kent walked out of the Louisville jail as a free man into the arms of his mother.

We were appointed by the U.S. Court of Appeals for the Sixth Circuit to represent Mr. Kent on appeal after the district court denied his habeas petition. In March 2016, the Sixth Circuit ruled in our favor, sending the case back for an evidentiary hearing on our claim that Mr. Kent's trial counsel had failed to examine key physical evidence that the police had collected at the scene of the crime—evidence that could have undermined the charges against him.

The Covington team found documents leaving little doubt that the physical evidence, even though long since discarded, would have undermined key elements of the prosecution's case. They also

discovered additional evidence showing that police had mishandled the crime scene and then lied about it, adding prosecutorial misconduct and Brady claims to our ineffective assistance of counsel claims.

Based on our compelling showing, the Kentucky AG's Office—which had never before conceded a habeas claim—did so in our case, earning our client a new trial. The Covington team moved quickly to negotiate a deal that secured Mr. Kent's immediate release. The case received substantial local media attention.

The Covington team, led by Eric Sandberg-Zakian, included Seth Mohny and Jessica Arco. Patricia Johnson provided paralegal support. Jim Garland, Don Ridings, and Elaine Stone advised. Kevin King, Mark Mosier, and Amit Vora participated in a moot court for the Sixth Circuit argument. Gregg Levy supervised.

Ethiopian Wins Asylum in Impossibly Difficult Case

Covington scored an upset victory for Joseph Desta, a gay man and ethnic minority faced with the prospect of deportation to Ethiopia, where he would encounter near-certain violence or death. Earlier this month, Immigration Judge Donoso Stevens exercised her discretion to grant Mr. Desta asylum.

Mr. Desta's family was forcefully expelled from Ethiopia when he was 13 years old. After eight years, the family was reunited in the United States. Mr. Desta, an intelligent and educated permanent resident, unfortunately had multiple run-ins with the law. As a result of felony theft convictions in the District of Columbia, Mr. Desta was placed in removal proceedings. At the time of trial, Mr. Desta had three felony warrants pending in Michigan.

The Covington team took on Mr. Desta's case and jumped into action, compiling evidence of his traumatic past, criminal conduct, and the conditions he would face if returned to Ethiopia.

At trial, the Covington team deftly navigated Mr. Desta's lengthy criminal record, an earlier disclosure that he had traveled back to Ethiopia notwithstanding initial statements to the contrary, and surprise police reports introduced at trial that purportedly contradicted the client's sworn testimony. Judge Donoso Stevens made no adverse credibility determination and ruled from the bench, granting asylum on both grounds—his status as a gay man and an ethnic Eritrean.

Julia Brower and Mark Clifford tackled all aspects of this difficult case and split the responsibilities at trial. Julia conducted the direct examination of Mr. Desta, Mark conducted the direct of the expert witness, and both delivered effective closings. Rebecca Yergin provided helpful research on a critical legal question. Mike Labson supervised and provided guidance as the team navigated the complicated factual, legal, and ethical issues that arose throughout the course of our representation.

Record Number of Lawyers Honored at 2017 Pro Bono Recognition Event

At the firm's 17th annual Pro Bono Recognition Awards Ceremony, held this summer, Covington honored a record 523 lawyers who performed over 50 hours of pro bono in the prior year. The event also recognized both associates and senior lawyers who have shown extraordinary commitment in their pro bono practice. Named in memory of Covington partner Charles "Chuck" Ruff, the 2017 Ruff Pro Bono Lawyers of the Year Awards were given to associates Neha Jaganathan, Philip Levitz, and Steve Bartenstein and partner Shankar Duraiswamy. Senior counsel Joanne Grossman received the McKay Pro Bono Award, which is named for longtime Covington partner, Jim McKay, who after transitioning from full-time commercial practice opted against retirement and spent his final decades focused on pro bono service for children and veterans.

Since arriving at Covington in 2015, Neha has pursued her interests in criminal justice, taking on matters ranging from the expungement of a client's criminal record, to fighting for the dismissal of criminal convictions, to representing an indigent minor in connection with felony charges. More recently, Neha led a team working on behalf of the founders of Black Lives Matter, including addressing issues ranging from entity formation to trademark protections to the personal safety of the founders. In addition, Neha has devoted substantial effort to defending Black Lives Matter against unsupported conspiracy claims filed against them in Texas.



Neha Jaganathan accepts the award from Doug Sprague.

Steve and Philip have been driving forces on a large team working on a class action to secure reasonable accommodations for deaf and hearing-impaired inmates in Michigan. Steve led the pre-complaint investigation and settlement negotiations with Michigan. Those discussions did not result in settlement, but produced key information that became a foundation for the complaint. Steve drafted, with the help of others, the opposition to the motion to dismiss the complaint. He argued it in federal court, which was a resounding success.



Seth Tucker presents the awards to Steve Bartenstein and Philip Levitz.

Steve and Philip have also both extended their pro bono commitment beyond the Michigan prisoners matter. Steve devotes numerous hours to advising a nonprofit humanitarian organization and has represented other prisoners in parole and prison conditions matters. Philip has represented a class of mothers and children held in family immigration detention under a federal policy denying individualized bond determinations, contributed to the firm's Guantanamo work, represented a Virginia prisoner in seeking DNA testing, secured immigration relief for a client who was facing deportation, and assisted with numerous amicus briefs advocating for the interests of union workers, immigrant children, and detained immigrants.

Shankar has been leading a team in filing class action litigation to challenge racially discriminatory tax foreclosures based on over-assessed property values in Detroit—a widespread practice that disparately impacted African-American homeowners,

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destabilized families and neighborhoods, and undermined the region's economic recovery. Over the years, Shankar has lent his time and talents to numerous other pro bono efforts, including assisting in an Alabama death penalty appeal and representing a group of D.C. tenants challenging an illegal rent hike.



After learning that Shankar would be traveling on the day of the pro bono awards event, Seth Tucker and Kelly Voss surprised Shankar outside of his office to present him with the Ruff Award

The James C. McKay Pro Bono Award is awarded on a periodic basis to recognize a firm lawyer who has reached senior status, has transitioned out of his or her full-time commercial law practice, and has demonstrated an extraordinary commitment to pro bono practice. This year the McKay Award was given to Joanne Grossman. Upon moving to senior status in 2014, Joanne eagerly took up the mantle of public service, actively seeking out a significant pro bono assignment and committing herself to one of the largest class actions Covington is handling, an Alabama voting right case co-counseled with the NAACP Legal Defense Fund. In this case, Covington is challenging Alabama's Photo ID requirements, which disproportionately affect African Americans and Latinos.



Joanne Grossman received the McKay Award from Seth Tucker.

An inspiring keynote speech was given by Judy Lichtman, a senior advisor and past president of the National Partnership for Women and Families. Lichtman spent over four decades at the forefront of the fight for equality for women. Under her leadership, the National Partnership became one of the most influential forces in shaping U.S. policy related to women and families. Covington lawyers, including Chuck Ruff himself, have for many years supported the National Partnership's important work. Lichtman spoke movingly of Chuck's and the firm's support of her and her work over the years, as a testament to the dedication to pro bono she herself has witnessed from Covington.



Judy Lichtman recalls Chuck Ruff's contributions to public service.

Asylum Win for Gay Ghanaian Refugee

In partnership with The Bronx Defenders, Covington secured victory against tough odds in early May for pro bono client Reginald Okai, a 31-year-old gay man who fled Ghana after his family and members of his community tried to kill him because of his sexual orientation. Despite Mr. Okai's compelling story, victory was far from assured, and the Government lawyer cross-examined Mr. Okai aggressively. Immigration judges have been granting far fewer asylum applications recently, and the judge who heard the case has a tough reputation. Although she typically takes several months to issue a decision, the judge granted asylum to Mr. Okai on the spot. Mr. Okai, who had been in custody for 10 months and had been displaced since he took flight from Ghana three years ago, was released on May 8, 2017. He is overjoyed.

Jack Nelson, an associate in the New York office who worked on the case under the supervision of David Kornblau, was enthusiastic:

“It has been thrilling and sobering to work on Mr. Okai’s case at a time when immigration law is in such turmoil. Personally as a gay man, I find Mr. Okai’s story a powerful reminder of the risks that people across the world are willing to take for the legal protections I enjoy every day.”

Jack Nelson, Associate

Client Facing Deportation Released from Detention

In mid-June, Covington secured the release for pro bono client Camran Karimov and returned him to his family and two young children after he had been held in detention for the past eight months. Mr. Karimov was facing cancellation of his green card for multiple shoplifting convictions. The government was seeking to remove him to Kazakhstan, a country that he had fled with his family in the 1990s when he was 12 years old. There was reason to believe that he would face ethnic and religious persecution if forced to return.

At trial, the Covington team deftly addressed Mr. Karimov's lengthy criminal record, as well as his wife's record, and were able to convince the immigration judge and the DHS lawyer that the motion should be granted. After hearing testimony from our three witnesses, the DHS lawyer conceded that Covington's motion should be granted. Mr. Karimov was picked up by his overjoyed parents later that evening.

This case also showed the great teamwork that Covington can marshal. When the judge denied our immediate motion for a continuance, the full

briefing, exhibits, and witness declarations were due within days. Henry Liu, Courtney Forrest, and Kayleigh Scalzo jumped in with little notice to help the team prepare the pre-hearing brief, declarations, and exhibits in time to meet the tight deadline. Noam Kutler managed the case from beginning to end and ably managed the direct examination of the client's testimony. Elizabeth Guo and Jean-Pierre Denour also conducted direct examination of the two family members. Glenn Bryant provided helpful translations and Daniel Arevalo provided paralegal assistance. Summer associate Marianne Spencer also provided legal research on the issue of statelessness. Lanny Breuer supervised and provided guidance as the team navigated the complex factual and legal issues that arose throughout the course of the representation.

Protecting Transgender Service Members' Rights to Serve in the Military

Men and women who are transgender have long served this country in the U.S. Armed Forces. They have seen combat in distant theaters and performed critical roles at home. Many have devoted their careers to service and developed mission-critical skills on which our national defense relies. Since June 30, 2016, these transgender individuals have been able to serve their country openly, when, after extensive study and review, the Department of Defense concluded that there was no justification to exclude from service people who are ready, willing, and fit to serve simply because they are transgender. President Trump has now overridden DoD's earlier reasoned determination. Acting without further study and catching DoD by surprise, President Trump announced on Twitter that "the United States Government will not accept or allow Transgender individuals to serve in any capacity in the U.S. Military." On Friday, August 25, 2017, the Administration issued three directives formalizing this change ("the Ban").

Covington immediately leapt into action. Three days after the issuance of the Ban, after working all weekend, the Covington team filed a complaint on behalf of its longstanding client, the ACLU, as well as six current transgender service members. The complaint as amended seeks a declaration from the Court that the directives encompassed in President Trump's August 25, 2017 announcement violate equal protection and substantive due process. Covington followed up the complaint with a lengthy motion for preliminary injunction, which attached supporting declarations by military and

medical professionals and the individual Plaintiffs themselves.

A hearing on Plaintiffs' motion for preliminary injunction was held on Thursday, November 9, 2017 before Judge Marvin Garbis of the U.S. District Court for the District of Maryland. On November 21, Judge Garbis ruled in our favor, preliminarily enjoining the Ban and substantially adopting the arguments that we presented.

In a lengthy, detailed opinion, Judge Garbis preliminarily enjoined each of the three components of the Ban, thus becoming the first court in the nation to halt President Trump's ban on the military's provision of medically necessary surgical care for transgender troops (the Ban also prohibits new accessions by transgender individuals and renders currently serving transgender persons automatically "subject to discharge" as of March 23, 2018, solely because they are transgender). In addition to finding that Plaintiffs have standing to challenge the Ban, Judge Garbis held that they are clearly likely to succeed on the merits of their claim that the Ban violates equal protection.

The Covington litigation team is led by David Zions, Carolyn Corwin, Mark Lynch, and Mitch Kamin and includes associates Jaclyn Martínez Resly, Jeff Bozman, Marianne F. Kies, Christopher Hanson, Joshua Rovenger, Tom Plotkin, Peter J. Komorowski, and Nik Lampros. Paralegals Madeleine Regan and Emma Conover-Crockett have provided invaluable assistance.

Vindication for Wrongfully Convicted Client

In mid-June, Covington obtained a favorable settlement of a civil rights suit for Vincent Taylor, who was wrongfully convicted of the 1979 murder of the wife of a New Orleans police officer.

In May 2014—34 years after his arrest—Mr. Taylor's conviction was vacated based on egregious Brady violations (withholding of exculpatory evidence). In an unusual move, the Orleans Parish DA publicly condemned the police

and prosecutors involved, citing "intentional prosecutorial misconduct."

Mr. Taylor then retained Covington to bring a civil rights suit. The firm alleged a conspiracy to frame Mr. Taylor for the murder and advanced civil rights damages claims against the local governmental actors under the Supreme Court's Monell case based on the litany of Brady violations. Given some potentially unfavorable case law, the

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Covington lawyers faced long odds. But the firm fended off multiple motions to dismiss, and, in 18 months of dogged discovery, uncovered facially unconstitutional Brady policies.

After an initial settlement conference where the DA offered no money and the City made a nuisance-value offer of \$15,000, Covington turned up the heat with an amended complaint alleging a “code of silence” at NOPD. Less than two months before trial, the City buckled and agreed to a favorable monetary settlement. Mr. Taylor is deeply grateful to Covington for this successful result.

The team included associates Kim Allen, who managed the case and successfully argued multiple motions to dismiss; David Sneed, who helped manage the case from inception; Rob Tilley; Will McAuliffe; Tina Thomas; Rachel Cox; Jack Zugay; Gabe Fulmer; Mike Gaffney; Pat Gavin; Ryan Burnette; Juliana Clay; Scott Shelton; and former associate Caitlin Cottingham; plus current summer associates Laura Collins, Zack Cowan, Catherine McGrath, Matt Miller, and Taryn Winston; as well as paralegals Danielle Catalan, David Rudloff, and Mariel Turner. Ben Haley and Mike Lechliter supervised, with advice from Chris Denig.

Working on this case provided invaluable personal and professional experience to associate David Sneed: “I enjoyed the experience of working on a case to try to right such a horrible wrong that had been done to our client. Mr. Taylor’s wrongful conviction came not from mistake or negligence, but an ugly history of wrongdoing like coercing confessions and burying evidence by the DA’s Office and the NOPD. This case served to give a voice to our client and dozens (at least) of other wrongfully

convicted defendants in a jurisdiction where the prosecutors and police played by their own set of rules. We fought for and dug through records of cases like our client’s case in New Orleans and I hope that our work will make the prosecutors and police that much more accountable for such wrongdoing. Professionally, this case gave me the chance to learn by doing—before this case, I had never drafted a complaint, interviewed witnesses, drafted motions to compel, taken a deposition, argued a motion, etc. The opportunity to take a leading role and the support of the senior attorneys in this case has shown me how to translate my legal education into tangible skills I can use as an attorney.”

This victory is Covington’s fourth successful case seeking damages for a wrongfully convicted individual in Louisiana, continuing a tradition that began in 2005 in a matter supervised by Eric Holder.

“...Professionally, this case gave me the chance to learn by doing—before this case, I had never drafted a complaint, interviewed witnesses, drafted motions to compel, taken a deposition, argued a motion, etc. The opportunity to take a leading role and the support of the senior attorneys in this case has shown me how to translate my legal education into tangible skills I can use as an attorney.”

David Sneed, Associate

Covington Confirms Right of Prisoners to Pursue Grievances Free From Retaliation

In virtually every circuit, it is well established that retaliation against an inmate for pursuing a prison grievance violates the First Amendment. But until recently, recognition of this principle was curiously missing in the Fourth Circuit. Indeed, an unclear Fourth Circuit opinion arguably suggested that prisoners who file grievances have no constitutional protections at all. Absent Fourth Circuit precedent squarely recognizing this right, a district court dismissed the claim of South Carolina inmate Thomas Roberts who alleged that he was issued a false disciplinary charge of physically threatening an officer, when all he did was to follow prison procedures to initiate a grievance against that officer. The court found that, even if the right was clearly established in other circuits, it was not clearly established in the Fourth, and so the prison officers were entitled to qualified immunity.

Covington was appointed to represent Mr. Roberts on appeal, and the firm convinced

the Fourth Circuit to reverse the district court. The appeals court determined that the First Amendment protects prisoners who file grievances from retaliation. Overcoming the panel's initial skepticism at oral argument, Covington also persuaded the court that this right was clearly established in the Fourth Circuit, and that no reasonable officer could think retaliation was permitted, notwithstanding the potentially bad language in Fourth Circuit precedent. Mr. Roberts will now have the opportunity to prove his case on the merits, and it will be clear to other prison officers in the Fourth Circuit that this type of retaliation violates the Constitution.

David Zions argued the appeal. Ryan Hayward wrote the initial draft of the opening brief as a summer associate last summer. Bob Long advised and participated in a moot court, along with Mark Mosier and Lauren Willard.

Sudanese Expert Works in the U.S. to Combat Extremism with the Assistance of Covington Team

Peter Lichtenbaum and Anne Pence, and others at Covington, have worked closely for well over a year with former Covington summer associate Gaby Kohan (who referred the matter) and Becki Young of the immigration firm Hammond & Young in support of client Mohamed Abubakr. The Covington team helped to mobilize human rights experts and organizations, members of Congress and former government officials in support of a rarely-granted O1 visa for youth activist Mohamed Abubakr. O1 visas require evidence—academic writings, media coverage, expert references, and a schedule of relevant activities (and resources) in the United States—to support that the applicant is an individual of extraordinary and unique ability in his or her field.

Securing the O1 visa enabled Mohamed to share his experience and expertise on youth activism, peace-building and countering violent extremism

with domestic and international organizations, human rights groups, schools, and government agencies in the United States. His hard-won insights already have had significant influence on thinking in the United States about how to combat extremism and build peace by mobilizing youth in troubled regions.

To facilitate Mohamed Abubakr's efforts to build networks of young people committed to productive engagement and peaceful change, and to combating extremism, Covington also helped him launch a new NGO—the African Middle Eastern Leadership (AMEL) project. AMEL's formal mission is to: "mobilize, empower and unite millennial leaders from the Middle East and Africa (MEA) to build inclusive, resilient societies free from discrimination, persecution and violent coercion, and to advocate for policies in support of these goals." Covington's Victor Ojukwul

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prepared AMEL's application for charitable tax exemption and he and Anne Pence helped to craft the governance structure, mission statement and other core elements of the new organization. Keir Gumbs, Peter and Anne also have advised Mohamed on effective fundraising strategies for AMEL, including the legal and practical requirements for online and other fundraising mechanisms.

In response to Yala and other stakeholders desire to see Mohamed expand efforts in the United States and to take on the role of President of AMEL in the United States, Peter and Anne then worked closely with Becki Young and AMEL's advisory team to mobilize high level references and other key elements for a green card application for Mr. Abubakr. The references include not only Covington's Stu Eizenstat and Witney Schneidman, but Aileen Getty, whose foundation promotes inclusive societies, Ambassador Uri Savir of the Peres Center for Peace, and Virginia

Congressman Don Beyer. When it became clear that a forthcoming Executive Order (E.O.) on immigration might derail the application, Covington's team swung into action to help engage the State Department and Congress on communication with the Department of Homeland Security (DHS) on expeditious approval and to stay abreast of the E.O. The day before the E.O. was formally issued, word came through Congressional staff that Mohamed's green card application had been accepted.

The Covington teams' legal and policy skills and contacts have played a key role in enabling Mohamed Abubakr to give voice in the United States and worldwide to the need and potential to mobilize millennial leaders in Africa and the Middle East. This approach promotes societies that reflect values and principles which underpin strategic interests of the United States and other democracies.

Covington Vacates 12-Year-Old D.C. Judgment, Clearing Way for Single Father to Reclaim Driving Privileges

In September 2016, Covington was retained by a single father with two children who was seeking to restore his D.C. driving privileges. Those privileges were suspended in 2010 for failure to satisfy a default judgment in favor of GEICO. The judgment was entered by D.C. Superior Court in 2005, after the client failed to answer a complaint alleging that, in 2002, he caused an accident with GEICO's insured.

Covington lawyers investigated the purported service of the 2005 complaint, and also the 2002 accident, of which the client claimed no knowledge. Covington developed evidence that the client was never properly served with the 2005 complaint and could not have been responsible for any accident in 2002. With respect to the accident, the firm located two 15-year-old police reports in the Prince George's County archives establishing that our client's car was in fact stolen at the time of the accident.

Covington explained this evidence and its legal implications in a letter brief to GEICO, demanding

that it agree to vacate its nearly 12-year-old judgment and dismiss its complaint with prejudice. The day after he received the letter, GEICO's counsel called to concede error and negotiate a resolution. Covington subsequently filed a consent motion to vacate the judgment. On May 4, 2017, the Superior Court granted the motion and dismissed the complaint with prejudice. The 2010 suspension order was lifted upon delivery of the Superior Court's order to the DMV. As of fall 2017, the client was in the process of completing his driver's exam(s).

Colin Watson, who led the matter from start to finish and developed the winning arguments, very much appreciated the opportunity to secure meaningful relief for an individual client facing the challenges of fatherhood without many of the resources that other fathers might take for granted. Securing that relief opposite an insurance company that, before Covington was involved, had shown little regard for our client's rights was especially gratifying.

Defending Muslim Immigrants from a Discriminatory Travel Ban

The third time's not the charm for the Administration's controversial travel ban. After courts partially blocked two prior iterations of the travel ban, President Trump issued a Presidential Proclamation on September 24 indefinitely banning more than 150 million people from multiple Muslim-majority countries from entering the United States. Within days, Covington filed the first complaint, *Iranian Alliances Across Borders v. Trump*, challenging the Proclamation as an unlawful application of the Muslim ban that President Trump had promised on the campaign trail.

Working closely with our non-profit partners, including co-counsel Muslim Advocates and Americans United for Separation of Church and State, our team got to work on securing a quick preliminary injunction of the Proclamation. Our motion for a preliminary injunction was briefed and argued on an expedited schedule: it was filed four days after the complaint, fully briefed a week later, and argued two days after that at a hearing on October 16 where Covington's Mark Mosier presented important parts of the argument, in conjunction with lawyers from the American Civil Liberties Union and National Immigration

Law Center, who represented the International Refugee Assistance Project.

Early on October 18 (the day that the Proclamation was scheduled to come into full effect), the court granted our motion and issued a nationwide preliminary injunction broadly restricting enforcement of the Proclamation. As a result, the Proclamation will not preclude our clients—mostly U.S. citizens of Iranian descent—from seeking that their Iranian spouses, fiancés, siblings, and children join them in the United States.

Our pro bono litigation team is being led by Mark Lynch and Mark Mosier, with advice from Herb Fenster. The team includes John Sorrenti, Rebecca Van Tassell, Karun Tilak, José Arvelo, Kate Cahoy, and Marianne Kies, with the support of paralegals Emma Conover-Crockett and Madeleine Regan.

Covington also co-counseled with the ACLU of Michigan to challenge a prior iteration of the travel ban. In addition, the firm filed an amicus brief on behalf of a large number of religious leaders and groups in the U.S. District Court for the Western District of Washington, in support of a plaintiff harmed by the travel ban.

Victory for Imprisoned Client Seeking DNA Testing

Last week, the Fourth Circuit ruled in favor of our client, Kevin Duval, in a Section 1983 civil rights action. Mr. Duval has long sought DNA testing to prove his actual innocence, pursuant to testing procedures that were not available when he was convicted. Mr. Duval filed a number of petitions for DNA testing in Virginia. But each petition was summarily denied, pursuant to Virginia's unusually onerous post-conviction DNA testing statute.

Unable to obtain relief in state court, Mr. Duval filed a pro se federal civil rights action, challenging the constitutionality of the Virginia statute. After three years of litigation, and the defendant's unsuccessful motions to dismiss and for summary judgment, the district court dismissed the action sua sponte, finding that Mr. Duval's complaint was both barred by the Rooker-Feldman doctrine

(barring federal court review of certain state court decisions) and that it failed to state a claim.

Mr. Duval appealed, and the Fourth Circuit appointed Covington as counsel. Last week, the Fourth Circuit—drawing heavily from Covington's briefs—concluded that the district court erred both in applying the Rooker-Feldman doctrine to Mr. Duval's constitutional challenge and in finding that he failed to state a claim. The Court also rejected the defendant's standing challenge.

Philip Levitz drafted the winning briefs and presented the oral argument. Greg Halperin, Robert Jacques, Steve Kiehl, and Kevin King participated in a moot court. Summer associates Andrew Chang and Hali Kerr provided valuable research assistance, and Trish Johnson provided paralegal support. Mark Mosier supervised.

Veteran with Kidney Cancer Granted Much-Deserved VA Benefits

The Court of Appeals for Veterans Claims ruled in late May for Covington client, Patty Bennett, vacating a decision denying her claim for benefits and remanding the matter for readjudication.

Ms. Bennett served on active duty in the United States Army as a radio operator from 1974 to 1977. In June 2005, a scan at a VA medical center revealed lesions in her left kidney. For the next three and a half years, Ms. Bennett continued to undergo regular scans, each of which showed one of those lesions progressively increasing in size. However, it was not until Ms. Bennett arrived for a medical appointment in January 2009 that VA doctors informed her that they suspected renal cell carcinoma. Ms. Bennett underwent a partial nephrectomy and, following surgery, it was confirmed that Ms. Bennett had kidney cancer.

Ms. Bennett sought additional benefits related to the delay in her cancer diagnosis. Notwithstanding medical records showing progressive growth in her kidney lesions over a three-year period, a VA medical examiner opined in January 2010 that Ms. Bennett's cancer had been stable over the years and that no additional disability was caused by the delay in her cancer diagnosis. One month later, a VA regional office denied Ms. Bennett's claim. Bennett appealed; in December 2015, the Board of Veterans' Appeals denied her claim for benefits.

National Veterans Legal Services Program referred the case to Covington. On appeal, Covington successfully demonstrated that the Board erred in relying upon the faulty medical opinion of the VA examiner. The Court vacated the Board's decision on the ground that the underlying medical opinion was based on an "inaccurate factual premise" and remanded the matter for further adjudication based on an adequate medical opinion.

Micaela McMurrough wrote the winning briefs. Ben Block supervised.

Of the experience, Micaela says,

"It was an honor to represent Ms. Bennett in this matter. Aside from the tremendous personal satisfaction that resulted from the court's decision, it was also a terrific opportunity to engage in appellate practice and to exercise written advocacy skills. That said, I can't say enough about the invaluable input from the National Veterans Legal Services Program, and Jill Davenport, in particular. I am so impressed with their tireless work on behalf of veterans, their knowledge of the VA system, and their deep understanding of the law in this area. I look forward to working with them on another matter."

Micaela McMurrough, Special Counsel

New York-Based Covington Team Advocates for Environmental Justice in Mexico

Over the last three years, and at the behest originally of the Cyrus R. Vance Center for International Justice, a Covington team comprised of partner Ruben Kraiem and Cecile Zwiebach has been working with a New York-based NGO known as Pure Earth (formerly the Blacksmith Institute) in an effort to persuade authorities in Mexico to enforce existing prohibitions against the use of lead oxide in the glazing of traditional pottery and ceramic products, and to ensure that affordable alternatives are made available to artisans and that these alternatives will reach Mexican households.

When pottery is produced in lower-temperature, wood-fired kilns (which are typically used by artisans in rural areas of Mexico, as opposed to higher-temperature, gas-fired kilns), and then finished with lead-based glaze, the lead that is applied will eventually leach into food that is cooked or consumed in that pottery. Frequent use of these pots or dishes results in lead exposure for millions of Mexican households, with severe public health consequences particularly among the poorer sectors of the population. For a variety of reasons (including budget constraints and cuts across the federal government, and the perceived sensitivity of interfering with a traditional artisanal practice), the relevant Mexican government agencies have historically been unable or unwilling to address this public health threat. Covington's assignment was to help Pure Earth in bringing this issue to the attention of the government at the highest levels, and in pushing for the design of an effective government strategy.

Pure Earth, working together with Mexico's public health research institute (Instituto Nacional de Salud Pública, or INSP), has performed tests (including measuring blood levels of lead in newborns whose mothers were regular users of lead-glazed ceramics, and testing product that is sold or consumed in typical markets) and surveyed the existing technical literature with a view to provide evidence that the use of lead-based glaze in the production of traditional ceramics (a) is causing significant harm to tens of thousands of children every year who may suffer irreversible neurological injury, and (b) results in increased long-term risk of cardiovascular and other disease in the country at large. Pure Earth and INSP have found that significant percentages (as much as 15 percent in

urban centers and as much as 20 percent in affected rural areas) of the population have blood lead levels that are very significantly above what is considered safe or acceptable by the World Health Organization or U.S. authorities.

With Covington's help and participation, Pure Earth and INSP were then able to present their research, and to outline concrete, cost-efficient strategies for replacing lead-based glaze with alternative, lead-free additives, to the most senior officials in Mexico's Ministry of Health, Mexico's FDA-equivalent (Comisión Federal para la Protección contra Riesgos Sanitarios, or COFEPRIS), the Mexican public healthcare system (Instituto Mexicano del Seguro Social), Mexico's Ministry of Social Development (SEDESOL), and members of the Mexican Congress. At the conclusion of these meetings and in response specifically to the evidence presented, the Minister of Health personally instructed COFEPRIS to put in place, as a government priority, a program aimed specifically at eliminating the use of lead-based glaze in traditional ceramics and making a cost-efficient lead-free alternative available generally to artisans. In response, COFEPRIS has now formally adopted an expansive reading of existing norms so that the supply to artisans of lead-based glaze can be stopped (as opposed to punishing the artisans for using a lead-oxide substance that was being marketed to them). This was an important change in government policy. COFEPRIS is also working on putting in place measures that will make the lead-free alternatives readily available to artisans and make the benefits of using it known to the artisans themselves and to the population at large.

Over the last several months, Covington together with senior Pure Earth and INSP representatives have met repeatedly with COFEPRIS's leadership to review the design of this program and to follow the early stages of implementation. Full implementation could save millions of children from significant harm to their health, from developmental impairment and from loss of educational and other opportunity. COFEPRIS will make a formal announcement of the program in mid-2017, and has consistently acknowledged the important contribution of Pure Earth (and Covington) in bringing it into existence. Pure Earth continues to expand its activities in Mexico, and will work closely with COFEPRIS in monitoring enforcement and other measures.

Covington Lawyers Speak on Civil Rights Panel



Elissa Johnson of the Southern Poverty Law Center; Stan Young, Covington & Burling; Tracie Washington, Professor, Dillard University & Louisiana Justice Initiative; the Honorable Ivan R. Lemelle, U.S. District Court Judge for the Eastern District of Louisiana (who moderated the panel consisting of the previous three); and Wylie Stecklow, Stecklow & Thompson, New York (chair of the Federal Bar Association Civil Rights Law Section and event organizer).

On April 7, 2017, the firm sponsored a Federal Bar Association Civil Rights Law Section CLE event in New Orleans. Stan Young participated on a social justice panel, speaking about the firm's effort to put a halt to racial profiling by former Sheriff Joe Arpaio of Maricopa County. Class-action lawsuits are an important tool to advance civil rights. The panel focused on the value of impact litigation to advance social justice and civil rights. Lawyers from various jurisdictions shared their experiences in bringing impact litigation related to prison conditions, racial profiling, and other targeted and vulnerable populations. They discussed strategies to continue to use impact litigation as a tool to advance civil rights.

Public Advocates Honors Covington



Mike Plimack, Kit Garcin, and Laura Muschamp accept the award from Angelica Jongco and Isabel Alegria of Public Advocates. Tom Garten was also recognized (not pictured).

Earlier this year, Public Advocates honored Covington at its Voices of Conscience Celebration for contributions to advancing education equity.

Public Advocates is a nonprofit law firm and advocacy organization that challenges the systemic causes of poverty and racial discrimination by strengthening community voices in public policy and achieving tangible legal victories advancing education, housing, transportation equity, and climate justice. They spur change through collaboration with grassroots groups representing low-income communities, people of color and immigrants, combined with strategic policy reform, media advocacy and litigation, "making rights real" across California since 1971. Covington co-counseled with Public Advocates in an action seeking to compel a California school district to increase and improve services for low-income students, foster youth, and English language learners, as required by California's Local Control Funding Formula.

***Note: Most client names have been changed to protect privacy.**

Pro Bono at Covington

Since its founding nearly 100 years ago, Covington & Burling LLP has had a strong commitment to public service. Over the years, the firm has received recognition both nationally and locally for its contributions to the legal needs of persons and organizations of limited means.

Much of Covington's pro bono work reflects the firm's commitment to providing legal services to economically disadvantaged individuals and families in our surrounding communities. Our six-month rotation program reflects this commitment by loaning lawyers and staff to work at each of three Washington-based legal aid organizations—Neighborhood Legal Services Program, the Children's Law Center, and Bread for the City.

While many of Covington's pro bono efforts are anchored in meeting these significant local needs, the firm also has a long history of serving the most vulnerable clients and important causes, regardless of location. The firm handles numerous death penalty and wrongful conviction matters across the United States, as well as other important civil and human rights matters, including class action litigation and systemic reform projects related to homelessness, marriage equality, freedom of the press, juvenile justice, mental health, mass incarceration, and government-sanctioned discrimination. Lawyers in all of Covington's offices are also working to advance international human rights and global access to justice, advising hundreds of NGOs focused on improving access to food, water, healthcare, education, economic opportunity, peace, and justice in the world's poorest regions.

Covington's pro bono program is managed by the firm's Pro Bono Counsel, Kelly Voss, and its Pro Bono Managers, Sharmaine Heng, Mary Burner, and Dia Montecillo. They actively seek to expand access to justice by connecting the skills of Covington lawyers to needs in the community.

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