



Message from Our Chairman

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For the past 10 years as Chairman and CEO of Dykema, I've also had the privilege to lead a vibrant pro bono practice. As I pass the baton to my successor Peter Kellett, the firm's interest and support of this practice remains as strong as ever.

Dykema's legal outreach is an integral part of our firm. Lawyers from every one of our 11 offices actively participate in this program. The impact they have in providing assistance to those in need—whether working with individuals to overcome barriers to justice, or becoming actively involved in larger cases—is as gratifying as it is significant.

This newsletter details recent victories for clients who were either denied their rights or ready to give up their legal fight until our lawyers took up their cause. To our way of thinking, the ability to make a positive difference in the lives of others is a reward shared equally by our lawyers and the pro bono clients we serve.

As I step down from my executive position, I want to call attention to Dykema's continued dedication to pro bono. Here are some of our accomplishments in the past decade:

- As Dykema has expanded its national footprint with the opening of three offices—Los Angeles (2003), Dallas (2007) and Charlotte (2011)—so, too, has the firm's ability and willingness to provide assistance in those markets to those for whom access to justice is not always easily attained. We seek to become an unparalleled pro bono resource in each of the communities in which we live and work.
- Having served as co-chair of the Legal Aid Defender Association of Southeast Michigan, Dykema not only made a meaningful monetary pledge, but enlisted financial support from many others. The result: a brand-new facility for this agency, whose mission is to extend a legal lifeline to its constituents, the disadvantaged residents of metropolitan Detroit.
- Our firm has achieved national recognition with the Beacon of Justice Award in the area of immigration (2010); the American Bar Association Death Penalty Representation Project "Exceptional Service Award" (2009); and the American Bar Association National Public Service Award (2011), among others.
- Our dedication to pro bono remains consistent and strong. Each year for the past decade, Dykema was ranked by *American Lawyer* among the top 125 U.S. law firms for pro bono.

To me, there are few things as meaningful, as gratifying and as enduring as the firm's efforts to provide access to our legal system to those who may otherwise be denied. As you read this issue of *The Dykema Difference*, join me in celebrating those who have given of themselves to help others in need.

Rex E. Schlaybaugh, Jr.
Chairman and Chief Executive Officer

U.S. Supreme Court Hears Arguments Prepared by Dykema Attorneys

Two Dykema attorneys, Mark Magyar (ADR, Grand Rapids) and Jill Wheaton (Litigation/Appeals, Ann Arbor), were instrumental in preparing an *amicus* brief in two cases that were both argued before the U.S. Supreme Court on October 31, 2011.

Magyar and Wheaton assisted Valerie Newman, of the State Appellate Defenders Office (SADO), in the case of *Lafler v. Cooper*. A companion case, *Missouri v. Frye*, was being appealed on similar issues. Dykema was chosen to assist in writing the ABA *amicus* brief submitted for these two cases.

Both cases involved the question of whether ineffective assistance of criminal defense counsel at the plea bargain stage constituted a violation of the defendants' Sixth Amendment rights, even if there were subsequent error-free trials. And, if there was such a violation, what was the proper remedy to correct the constitutional violation.

The cardinal principle at stake in each case was what information an attorney must convey to their client so that the client is able to make an informed decision about whether to accept the plea offer. The ABA *amicus* brief advanced a remedy of "specific performance"—a repeat of the plea offer so that a defendant would be given an opportunity to consider the offer on a fully informed basis.

"That is the point that the case turned on," Magyar said. "The justices grilled the attorneys on that matter [the remedy]."

A written opinion by the Court is expected in June 2012.

Death-Row Inmate Has Sentence Vacated Based on Work of Dykema Team

A Georgia death row inmate received a reprieve from his death sentence based on the extraordinary work of Dykema's Pat Hickey (Employment, Detroit) and Claire Harrison (Employment, Ann Arbor).

In 1997, David Aaron Perkins was found guilty of murder and sentenced to death. However, the defendant's trial team failed to perform a sufficient investigation to uncover evidence that Perkins had severe cognitive deficits brought on by prior child abuse, alcohol abuse and trauma that would have affected his sentencing.

Faced with this new evidence, the Georgia Supreme Court ruled that Perkins had received "ineffective assistance of counsel" and required that Perkins' death sentence be vacated.

Additionally, the Dykema attorneys argued that Perkins may be entitled to a new trial on his murder conviction if a note from the jury that was previously undiscovered was found to have been written before the jury reached its guilty verdict. The note, which stated that the jurors were concerned for their safety, was not revealed to the prosecution or defense attorneys during the initial trial.

Following extensive oral argument, the Georgia Supreme Court ruled that if the note was written before the jury reached its guilty verdict, the failure of the trial court to advise the parties of the note and any judicial response would constitute a denial of Perkins' constitutional right to be present at all material stages of his case.

Hickey and Harrison were both involved in a subsequent trial court hearing where all available jurors were subpoenaed and testified as to their recollection of the note. The Dykema team heads back to Georgia next month to depose one final juror who is ill. Once all testimony is in, the trial court will issue a final ruling on the petition for a new trial on the conviction and sentencing.

"There are lots of moving parts to this case, both legally and factually," Hickey said. "It involves complicated areas of the law, not only criminal law but also constitutional law."

Based on the diligent efforts of the Dykema team, Perkins has already earned the opportunity to present this mitigating evidence to a jury during the re-sentencing and he remains hopeful that he will soon earn a right to new trial as to guilt or innocence.



Pat Hickey making the winning argument to the Georgia Supreme Court

Dykema Lawyer Aids Katrina Victim with Appeal to Restore Home

A native of New Orleans, Dykema attorney Greg Lacey (Litigation, Chicago) was pleased to help a victim of Hurricane Katrina when he signed on with the Pro Bono Project, a New Orleans-based legal aid agency.

Lacey served as pro bono counsel to an elderly male resident in the greater New Orleans area who had been denied funds from The Road Home, a federal program that aids homeowners in repairing damage caused by the 2005 hurricane. Ironically, the client was one of the first defenders who offered assistance to other victims of the storm.

The client, who lived alone in a FEMA trailer after his home was destroyed, had submitted an application to obtain an appointment with the agency, but couldn't keep it due to health issues associated with cancer. His application was then summarily denied.



Lacey went to New Orleans to help the client. "It was important to meet face to face," Lacey said. "I didn't want to be just another voice on the phone to the client. Also, I thought an in-person appearance at The Road Home office was warranted."

Back in Chicago, Lacey talked with one of The Road Home representatives by phone just prior to the close of business on a Friday in order to re-open the client's application. The next Monday, he learned that the federal agency agreed to reconsider the client's application.

With Lacey's assistance and guidance, the client's application was given full consideration, and the client was eventually awarded \$112,000 to repair his home.

The case has had a profound and lasting effect upon Greg Lacey. "Even though Chicago is now my home, I will always be a part of the New Orleans community. I have many family and friends who were affected by Katrina, so it felt really good to help out a storm survivor in a small way. The hurricane was devastating, and took 'the fight' out of so many people to the point where their needs were not being met."

Chicago Lawyer Helps Kenyan Businessman Gain Asylum

With the assistance of Dykema attorney, Greg Wright (Corporate Finance, Chicago), a middle-aged Kenyan businessman sought asylum in the United States after experiencing torture and death threats in his native country after he exposed government corruption over a business deal.

A successful entrepreneur, the client had a contract to build a hotel in Nairobi. However, a government official who was "fronting" a bogus company wrested the contract away from the client. After the client told reporters about the corruption, police officers arrested, beat, interrogated and tortured him during his two-week detention. At one point, he was taken into the woods and shown the body of a dead man and later told that this would be his fate if he didn't stop talking to reporters.

Once he was released, the client flew to Detroit. There, he learned that the National Immigration Justice Center (NIJC) in Chicago could assist in seeking asylum in the United States. Dykema attorney Greg Wright volunteered to represent the client.

"He was well prepared," Wright said of his client. "He had a 3-ring binder with reports and evidence to support his case. He was familiar with the legal standards here and was fully prepared for an adversarial interview."

With Wright present, the U. S. Immigration Services interviewed the client and subsequently determined that he was indeed eligible for asylum. The client is now gainfully employed in Indiana and is working to bring his children to the United States.

"He is extraordinarily well qualified to work, but currently has a low-level job," Wright observed. "He is glad to be safe in the U.S. and plans to start a business here to provide for himself and his family."

Dykema Co-authors *Amicus* Brief in Opposition to a Graduate Student's Refusal to Counsel Gay and Lesbian Students

Earlier this year, Dykema attorneys assisted Lambda Legal in filing an *amicus* brief in the U.S. Court of Appeals for the 6th Circuit, on behalf of four gay and lesbian organizations.

Lambda Legal, a national law firm based in Chicago, advocates for the civil rights of lesbians, gay men, bisexuals, transgender people (LGBT) and those with HIV through impact litigation, education and public policy work. Jill Wheaton (Litigation/Appeals, Ann Arbor) and former associate, Lauren London, assisted Lambda Legal in preparing the brief.

The case involved Julea Ward, a graduate student pursuing a degree in counseling at Eastern Michigan University (EMU). While doing a practicum course in high school counseling, she learned that one of the high school students she would be counseling was gay. Ward demanded that she be able to refer the gay student to another counselor and refused to counsel any gay or lesbian clients, stating that it was against her religious beliefs as a Christian to do so.

Following a formal review of her continued refusal to counsel gay and lesbian patients, EMU dismissed Ward from the graduate program.

Ward sued EMU, asserting that her First Amendment rights had been violated. The federal district court ruled in favor of EMU, and Ward appealed to the Sixth Circuit, which recently heard oral arguments. A decision is expected in 2012.

The Dykema Difference

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As part of our service to you, we regularly compile short reports on new and interesting developments in our pro bono program. Please recognize that these reports do not constitute legal advice and that we do not attempt to cover all such developments. Rules of certain state supreme courts may consider this advertising and require us to advise you of such designation. Your comments on this newsletter, or any Dykema publication, are always welcome. © 2011 Dykema Gossett PLLC.

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Farmer's Market Extends Its Season and Services with Help from Dykema

The Allen Neighborhood Center (ANC), a nonprofit that promotes the use of locally grown food and healthy diets, now has greater stability in its location and room to grow thanks to a new long-term lease obtained through the pro bono efforts of Dykema attorney, Bill Perrone (Government Policy, Lansing).

ANC holds a popular seasonal farmer's market in an East Lansing parking lot, which enables residents in this low-income neighborhood to purchase fresh produce. The nonprofit also helps area residents eat better through its community gardens and food preparation programs.

The nonprofit's vision was to bring the farmer's market indoors during the winter by moving it to a 5,000 square foot vacant warehouse space. ANC also received grants to add a "green" heating system, an "incubator community" kitchen (for market farmers, families and food entrepreneurs) and a food storage area for urban and rural growers.

ANC's vision is now becoming a reality with a new 10-year written lease that began November 1, which replaces the former verbal, month-to-month lease. In order to make the vision a reality, ANC needed an attorney. That's where Dykema stepped in.

ANC told Perrone, "You have been an extraordinarily generous and discerning guide throughout this process. We can't imagine having done it without you."

Perrone observed, "It was very gratifying to assist ANC and its staff in fulfilling their mission through the development of legal documents and rights that ensure a more stable base for conducting and expanding their charitable operations."

