

Pro Bono – Law Firms

Holland & Knight's George Kendall On Access To Justice For Everyone

The Editor interviews George H. Kendall, Senior Counsel in the New York office of Holland & Knight LLP.

Editor: For starters, would you tell us about Holland & Knight's Community Service Team?

Kendall: This is a distinct team of ten litigators within the firm that is made up of partners, senior counsel and associates who are Chesterfield Smith Fellows. The fellows are five first- and second-year associates who devote all of their time to pro bono work, principally within the Community Service Team. The head of the team is Stephen Hanlon, who has been the firm's pro bono partner for 15 years.

Editor: I gather that you draw on the talents of the firm's other attorneys.

Kendall: Yes. In this office there are at any time dozens of lawyers who are handling pro bono matters on their own. We call upon them and, indeed, on all of the firm's practice groups as a matter of course. We are a separate team, but in no way do we do all or even a majority of the pro bono work for the firm.

Editor: Obviously, you cannot take on all of the matters you would like to. How do you go about selecting the cases you will handle?

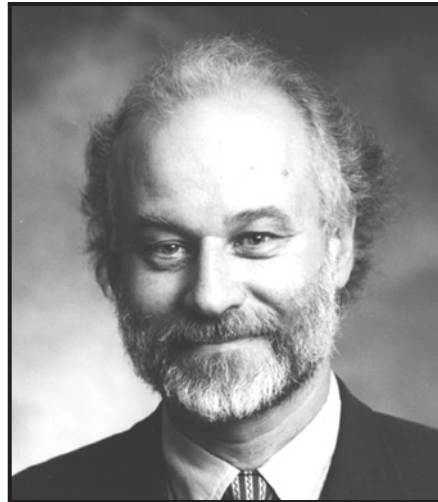
Kendall: The Community Service Team looks for cases that could address a serious problem in the judicial system and lead to systemic reforms. We recently filed an action in Massachusetts challenging the inadequate fee structure for court-appointed lawyers that is driving away scores of talented attorneys. Those cases require the commitment of major resources. We also look for cases involving individuals with a compelling claim who are unable to hire a lawyer.

Editor: Holland & Knight has provided you and the team with a great deal of support. Can you tell us something about the culture of the firm in this regard?

Kendall: The firm is very supportive of the efforts of the Community Services Team as well as of all of the lawyers here taking on pro bono matters. It was made clear to me from the beginning that the firm leadership believes that lawyers have a special role in our society, and that if our social contract is going to work, persons who cannot afford counsel must have meaningful access to justice.

Editor: Since we last spoke, the case of Delma Banks has been front-page news. Can you give us some of the background of this case and bring us up to date on developments?

Kendall: This is a capital case in Texas



George H. Kendall

that we had been involved in for a number of years. In 2000 the Federal District Court in East Texas found two very serious constitutional errors that required the death sentence to be overturned. The state appealed that decision, and in August of 2002 the Fifth Circuit, in an unpublished opinion, overturned that decision and reinstated the death sentence. Shortly thereafter, the state of Texas set an execution date of March 12, 2003.

We petitioned the U.S. Supreme Court to review the case. On March 12th, just ten minutes before the execution, the Supreme Court clerk's office called and indicated that the full Court had issued a stay of execution.

A month later, the Court granted our petition for certiorari. We briefed the case last summer and in December of 2003 we orally argued the case. On February 24, 2004, the Supreme Court, by a vote of 7-2, reinstated the decision of the district court and vacated the death sentence. The Court also remanded the case to the Fifth District to determine the meritorious issue that concerns the conviction. Both parties have submitted letter briefs to the panel and we await its decision.

Editor: Do you think Delma Banks will one day be a free man?

Kendall: There is little evidence left to suggest that Delma Banks is guilty of this crime for which he has spent 24 years on death row in Texas. I am hopeful that he will be freed. Having said that, I note that the prosecutor in Texas is determined to prosecute Mr. Banks again and to ask a jury to again impose the death penalty. In light of the fact that most of the evidence used by the state to convict in 1980 has been discredited, we are hopeful that a jury will reject the State's case. We still have a long way to go.

Editor: Do you think that efforts like yours will ultimately have a positive impact on our justice system?

Kendall: It is clear to me that our indigent defense system in many states is in dramatic need of repair. Even the most dedicated and talented public defender cannot competently handle 400 clients – even where prosecutors do *not* cheat or take advantage of the situation – and until that issue is addressed, we are going to have more Delma Banks cases. We were fortunate to have uncovered intentional misconduct on the part of the prosecutor before he was executed, and these systemic problems received considerable publicity. Indigent persons facing criminal charges are not able to defend themselves; by acknowledging their right to a competent defense, we protect those important rights for everyone in our society. Publicity about the system's shortcomings helps to create a climate for positive reform.

Editor: Your first major success after joining Holland & Knight concerned another death row inmate, Johnny Lee Gates. Please give us the background of this case.

Kendall: Johnny Lee Gates, like Delma Banks an African American, was convicted of a murder in Columbus, Georgia in the late 1970s in a brief, one-sided trial. Again, he was represented by a lawyer who had an overwhelming case load and no resources. He made no effort to investigate the case. We became involved rather late in the appeals process, and could not persuade a court to overturn his conviction or death sentence. Not long after his appeals had expired, however, Georgia became the first state in the country to prohibit the execution of the mentally retarded. We obtained a trial on that issue, and during our preparation, we turned up considerable evidence suggesting that he was not guilty of the crime at all. While it was too late to raise this evidence, the retardation trial mistried, but we were able to settle the case and bring Mr. Gates off of death row. He is now serving a life sentence which requires him to stay in jail another 12 years.

Editor: Another high profile case you've been handling involves Wilbert Rideau. Can you tell us about his case?

Kendall: This is a very unusual, and very tragic, case. Wilbert Rideau, another African American, was charged with murder in 1961. In 1961, 1964 and 1970 he was tried before Louisiana juries composed exclusively of white males and, each time, quickly convicted and given a death sentence. Each conviction was subsequently overturned for reasons relating to prosecutorial misconduct, including deliberate racial discrimination in the jury selection process. Today Wilbert Rideau has served 43 years in prison, and his prison record – acknowledged by the highest officials of the Louisiana Department of Correc-

tions – is one of great accomplishment. For many years, he edited a prison newsletter called *The Angolite*, and made it a widely celebrated publication. He has won several journalism awards, including the prestigious George Polk Award. He has written numerous articles on what works and does not work in prisons, and, at the request of the Department of Corrections, has spoken to hundreds of youth groups about doing something positive with their lives. He has also co-written textbooks used to train corrections officers. By all accounts, he has done some very good things. We had hoped that, when his third conviction was overturned in 2000, he might be released – he has served the longest sentence of anyone in Louisiana history – but the local prosecutor is determined to keep him behind bars until he dies. Louisiana is sending a terrible message to the world in this case: it insists upon keeping a thoroughly reformed offender incarcerated while it has released virtually every other offender of this generation. There is much reform work to do in criminal justice.

Editor: George, these cases obviously mean a great deal to you. Please share with us, if you will, what it is that has drawn you to this work.

Kendall: I was drawn to be a lawyer because I felt compelled to be a part of one of democracy's most fundamental promises: the right of access to competent legal representation in a fair and impartial system of justice. Society wins if that promise is fulfilled because it engenders trust and legitimizes the system. If it is not fulfilled, we are left with two very different justice systems running along parallel but very different tracks, one for those with access to competent representation and one for those without such means. The deck is very much stacked against the latter group. Access to a fair shot at justice in our courts should not depend upon the size of one's bank account.

Holland & Knight's commitment to its Community Service Team and pro bono obligations is necessary to bring about necessary reform. It brings issues of fundamental access to the court to our courts. As other large firms follow Holland & Knight's lead in the future – by making a greater commitment to provide direct legal services to those who cannot afford them or provide substantial financial support to organizations that provide such services – the momentum of such a development will become irresistible and, in time, will lead to a better, and fairer, system of justice. Today our large firms have access to enormous power and wealth, and their influence is felt throughout our society. I am very grateful to be part of a firm which recognizes so clearly its responsibilities in the pro bono arena.

Please email the interviewee at george.kendall@hklaw.com with questions about this interview.