

Public Service Initiative *2010 Annual Report*

LETTER FROM THE PROJECT DIRECTOR

2010 was the first full year of operation for the Squire, Sanders & Dempsey Public Service Initiative (PSI), and this is the first annual report on PSI activities. As you will see, we had a very busy and successful year.

Squire Sanders PSI is a unique undertaking. The PSI team is composed of Squire Sanders lawyers who devote a majority of their time to important and challenging pro bono matters and also assist on complicated Squire Sanders institutional client appellate and litigation matters. Our pro bono docket is comprised of tough and demanding matters, usually from impoverished areas of the country where citizens have no access to counsel. In 2010, PSI members committed over 6,300 hours to pro bono efforts, and more than 1,000 hours to private client work.

As the following pages show, we made significant contributions to victories in the United States Supreme Court, progressed toward winning relief for several of our project clients, and participated in several major public education initiatives.

Our PSI colleagues could not have worked harder. We are very proud of

the work of each of our lawyers – Sam Spital, Corrine Irish, and Carine Williams.

Each provided stellar service to our pro bono and private clients. Their efforts were expertly aided by the very dedicated services of paralegal Shakeer Rahman and project assistant Lynn Cirrincione-Boccia. Communications consultant Laura Burstein made numerous important contributions to increasing the public's understanding of deficiencies and flaws in our public justice system. Our work was also significantly supported by several other talented Squire Sanders colleagues, including Rebecca Worthington, Rachael Harris, and Daniel Mazanec.

We are most grateful for the support of Jim Maiwurm, Tom Stanton, Jim Thomas, and Ricky Gurbst, and the able and sage advice we received throughout the year from Howard Nicols, Brian Starer, Pierre Bergeron, Phil Calabrese, Jeff Levin, and Richard Mattiaccio.

Our PSI clients, and their families, are most thankful for our efforts on their behalf.

George Kendall

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"Thanks again for the incredible help you provided us on *Graham* and *Sullivan*."

Bryan Stevenson
Sullivan's lead counsel and
Executive Director of Equal Justice Initiative

Joe Sullivan was sentenced to life without parole for a non-homicide offense that happened when he was 13. In May 2010, the Supreme Court ruled that his sentence was cruel and unusual.

In 2010, Squire Sanders' PSI team was involved in 13 cases at the Supreme Court. We were significantly involved in advocacy in six cases before the Court. We worked extensively with counsel of record on their briefs and arguments; we coordinated the filing of amicus briefs; and, in three cases, submitted an amicus brief on behalf of a significant party.

DECIDED CASES

Graham v. Florida & Sullivan v. Florida

These cases raised a very important question under the Eighth Amendment to the Constitution: whether a sentence of life without the possibility of parole is cruel and unusual punishment when imposed upon juvenile offenders who did not take a life. George Kendall, at the request of counsel of record for both

Graham and Sullivan, coordinated the amicus filings in support of the petitioners. In all, 14 supporting briefs were filed from a broad range of professional and medical organizations. Corrine Irish wrote an important amicus brief on behalf of juvenile parole and corrections officials, and Carine Williams performed essential editing on other briefs. In May 2010, the Court ruled in favor of Graham and Sullivan.

Holland v. Florida

This capital habeas case from Florida raised the important question of whether gross negligence by appointed counsel in failing to file Holland's federal habeas petition within the statute of limitations period could justify equitable tolling, so that the federal courts could review the constitutionality of Holland's death sentence. George Kendall coordinated the filing of three important amicus briefs. In June, 2010, the Court agreed with Holland and held that equitable tolling applied to the federal habeas statute of limitations.



CASES PENDING JUDGMENT

Skinner v. Switzer

This case raised the question of whether condemned prisoners may use the general civil rights statute – 28 U.S.C. 1983 – rather than the more specific habeas corpus statute, to pursue access to DNA material for testing. George Kendall worked closely with counsel of record for Skinner during the preparation of both the certiorari petition and motion for stay of execution, and once certiorari was granted, the merits briefing.

Schwarzenegger v. Plata & Coleman

These cases concern the very severe California prison overcrowding that has made it impossible for the state to deliver constitutionally adequate medical and mental health care to prisoners. The Court will determine whether a three judge federal court order requiring state officials to reduce the prison population from 195% to 135% over capacity complies with a 1996 law that regulates federal judicial remedies in the penal setting. PSI was asked by the American Bar Association to file a brief in support of the prisoners. Carine Williams was the principal author of a very solid and helpful ABA amicus brief. A decision in this case is expected in the spring of 2011.

CASES AT THE CERTIORARI STAGE

Weis v. Georgia

This case concerned an indigent Georgia pretrial detainee's request that the Court consider whether the trial court violated the Sixth Amendment in removing appointed and qualified counsel and appointing overburdened public defenders to represent him at his capital trial. Counsel of record for Weis asked that PSI draft an amicus brief in support of the petition for review. George Kendall was the principal author of this brief and Sam Spital provided essential editing. Amici included Norman Fletcher, the former Chief Justice of the Supreme Court of Georgia and several other prominent state legislators and attorneys. Regrettably, the Court denied review in June.

Banks v. Quarterman

In this PSI project case, Sam Spital, Corrine Irish and Carine Williams wrote a strong petition for writ of certiorari seeking review of a sharply-split Fifth Circuit panel decision that had overturned a district court order granting Banks a new trial. They also wrote a reply to the state's brief in opposition. This petition was supported by an amicus brief from retired federal judges, drafted by Peter Buscemi at Morgan, Lewis & Bockius. Unfortunately, certiorari was denied in April.



From left, Tess Bolder, PSI attorney Corrine Irish, George Kendall, and PSI communications consultant Laura Burstein outside the Supreme Court following oral arguments in Graham and Sullivan.



A former California Department of Corrections official noted in 2009 that "the risk of catastrophic failure in a system strained from severe overcrowding is a catastrophic threat... this level of overcrowding is unsafe and we are operating on borrowed time."

Boyd v. Allen

Finally, in this capital case where one of our colleagues is counsel of record, Sam Spital drafted the key portion of a certiorari petition seeking review of a decision by the Eleventh Circuit. Notwithstanding Mr. Boyd's trial counsel's unquestionable failure to provide even minimally adequate representation at sentencing, the Eleventh Circuit, by a vote of 2-1, overturned the district court's grant of sentencing relief and reinstated Mr. Boyd's death sentence. Unfortunately, the Court denied certiorari in November.

"I wanted to thank you for all your help with *Holland*, was nice to see the Court refer to the Legal Ethicists amicus in the opinion!"

Todd Scher
Holland's Supreme Court counsel

"I wanted to tell you how much I appreciated having you to work with... on balance we made a contribution. Thanks so much."

Margaret Love
Chair of ABA Criminal Justice Standards drafting committee, describing the amicus brief authored by PSI attorney Carine Williams

"This is a beautiful piece of work. I never expected it to be this extensive. Thanks so much."

Stephen Bright
Weis's appellate counsel, praising an amicus brief authored by PSI

ORAL ARGUMENT PREPARATION

In eight cases heard by the Court, PSI rehearsed arguments or participated in moot courts, bringing together leading practitioners and law professors, specially arranged for counsel of record in New York. Those cases were:

Smith v. Spisak, 130 S. Ct. 676 (2010)

Wood v. Allen, 130 S. Ct. 841 (2010)

Graham v. Florida, 130 S. Ct. 2011 (2010)

Berghuis v. Smith, 130 S. Ct. 1382 (2010)

Holland v. Florida, 130 S. Ct. 2549 (2010)

Magwood v. Patterson, 130 S. Ct. 2788 (2010)

Harrington v. Richter, ___ S. Ct. ___ (2011)

Skinner v. Switzer, 130 S. Ct. 3323 (2010)

In eight cases heard by the Supreme Court, PSI coordinated or participated in moot court arguments.



*PSI was involved
in 13 cases at
the United States
Supreme Court
in 2010.*



Clockwise from top left: Danial Williams, Joe Dick, Eric Wilson and Derek Tice. In 2009, Virginia Governor Tim Kaine noted substantial evidence of their innocence. All four have been released.



In November, PBS's award-winning FRONTLINE program aired Ofra Bikel's *The Confessions*, an 80 minute documentary focused upon the process which led these young men to confess falsely, and looking at their lives now as convicted felons and registered sex offenders. The story is largely from the mouths of our clients and their parents, and the lawyers who were involved with the cases at the time of the trials. We have heard only wide praise for this piece.

2010 has been a very busy year for our docket. We take demanding and tough cases for worthy, indigent clients. The docket divides into five general areas:

- *Vindicating Innocence*
- *Remedying Purposeful and Harmful Constitutional Violations*
- *Remedying Cruel & Unusual Punishment*
- *Wrongful Infliction of the Death Penalty*
- *Enforcing the Right to Vote*

VINDICATING INNOCENCE

Joseph Dick & The Norfolk 4 (Virginia)

After a five-year clemency campaign that demonstrated that Mr. Dick, and three co-defendants, were completely innocent of a horrible 1997 murder in Norfolk, Virginia Governor Kaine commuted their sentences and ordered them released in August 2009. Although the Governor determined that a very strong showing of innocence had been made, he refused to overturn the convictions because innocence beyond any doubt had not been demonstrated. Mr. Dick has worked very hard to restart his life after eleven years in maximum security prisons. Despite very tough odds – a very poor economy, and his status as a convicted felon and registered sex offender – he has made impressive progress. He is mid-way through a demanding machinist training program.

PSI continues efforts to overturn his wrongful convictions. During the past year we filed petitions for writs of habeas corpus in both

the Virginia state trial court where Mr. Dick was originally convicted, and the United States District Court for the Eastern District of Virginia. Despite the compelling evidence of innocence, the Attorney General of Virginia continues to defend these convictions and has urged both the state and federal courts to dismiss the habeas petitions as untimely. Those petitions remaining pending. Associate Rebecca Worthington has played a significant role in these efforts.

There were two major developments in 2010. In May, the chief investigator for the Commonwealth, now retired detective Robert Glenn Ford, who procured Mr. Dick's false confession, as well as ones from the other innocent defendants, was indicted on federal corruption charges. In late October, a Norfolk federal jury convicted him of all charged counts.

Mr. Dick and his family are most grateful for PSI's continuing efforts to exonerate him. Our co-counsel in these cases are Skadden Arps, Hogan Lovells, Troutman Sanders, and Holland & Knight.

Gary Tyler (Louisiana)

This is another case where there is very grave doubt about guilt. Mr. Tyler was tried and convicted as an adult for a shooting that took place when he was 16 years old, when a school bus in which he was riding was set upon by a large mob after racial tensions erupted at his high school. He was originally sentenced to death; that sentence was subsequently vacated at the direction of the United States Supreme Court. Witnesses later recanted their testimony implicating Mr. Tyler, and there is significant evidence that police beat Mr. Tyler while he was in custody. Nevertheless, Mr. Tyler's conviction was upheld. Now 50 years old, he is the rare prisoner who is widely admired by both the inmate population and administrators at Angola prison. We hope to be able to report substantial progress on vindicating Mr. Tyler in 2011.

Chris Barbour (Alabama)

Preliminary DNA evidence has already conclusively rebutted the only theory the State relied on to convict Mr. Barbour of capital murder two decades ago and send him to Alabama's death row. A Montgomery-based federal judge has had our request for further DNA testing, which would allow us to prove that the State's newfound theory of multiple assailants is similarly false and that Mr. Barbour is innocent, and other motions under submission for over three years. The State has refused our repeated requests for access to the DNA evidence so we can perform testing on our own. As in the Tyler case, we hope to report significant progress in 2011.

REMEDYING PURPOSEFUL AND HARMFUL CONSTITUTIONAL VIOLATIONS

In three more Squire Sanders PSI cases, there is very grave doubt about our clients' guilt, and ample evidence that their convictions were brought about by purposeful prosecutorial misconduct.

Delma Banks (Texas)

In 2003, Mr. Banks was minutes away from execution when the U.S. Supreme Court intervened. The Court ultimately held that prosecutorial misconduct clearly rendered Mr. Banks' capital sentence invalid, and remanded so the lower courts could determine whether his conviction should also be vacated. On remand, a federal district court judge concluded, as the law required, that the state prosecutor's suppression of important impeachment evidence regarding its key witness, and later urging of the jury to believe testimony of that witness that the prosecutor knew to be false, denied Mr. Banks a fair determination of his guilt. On the state's appeal to the Fifth Circuit, a split 2-1 panel overturned that ruling and reinstated Mr. Banks' conviction over a lengthy and powerful dissent. Squire Sanders' PSI team wrote a terrific petition for certiorari, which attracted the support of an amicus brief from highly regarded retired federal judges and prosecutors. However, in April, the Supreme Court denied review.



Gary Tyler was 16 when sentenced to death for a 1974 shooting that took place when his school bus was surrounded during violence at his high school.



After preliminary DNA evidence rebutted the State's theory underlying his conviction, Chris Barbour has pressed for further testing to exonerate him.



The Supreme Court overturned the death sentence of Delma Banks, pictured above in 2004. A retrial has been scheduled for 2011.



Albert Woodfox and Herman Wallace

(Continued from previous page)

We are now back in a state trial court for further proceedings. Substantial evidence supports Mr. Banks' innocence; he has been a model prisoner for 30 years; and, given the age of the case, many witnesses who would have testified on his behalf have passed away. Nonetheless, the prosecution has announced its intent to again seek the death penalty, and the judge has already set a tentative October trial date. There will be much activity in this case in 2011.

Albert Woodfox & Herman Wallace (Louisiana)

Mr. Woodfox and Mr. Wallace were convicted of a prison guard's murder entirely on the basis of shaky prisoner witness testimony, notwithstanding contrary testimony by alibi witnesses, and physical evidence contradicting the State's case. Prosecutors repeatedly

suppressed highly significant impeachment material, including that the State's linchpin witness was promised a pardon in exchange for his testimony.

In 2008, a Louisiana federal judge overturned Woodfox's conviction. Persuaded by Woodfox's exemplary record, and possibly based on evidence of Woodfox's innocence, the judge took the extraordinary step of granting bail. A Fifth Circuit panel in 2009 reversed the bail order, and in 2010, a split panel reinstated the conviction. The case has returned to district court, and this year a meritorious jury discrimination claim will be litigated. There is much hope that, once again, the district court will overturn this questionable conviction.

PSI filed a habeas corpus petition for Herman Wallace in late 2009. His case also contains strong claims that warrant full relief. We hope to win relief in the district court in 2011.

This year we actively litigated two significant cases that involve very lengthy and unjust incarceration.

CRUEL AND UNUSUAL PUNISHMENT

We have been very active this year in two significant cases that involve very lengthy and unjust incarceration.

The Angola Three (Louisiana)

Colloquially referred to as “the solitary confinement case,” or “A-3 case,” this suit concerns three clients who have served 28, 35 and 38 years in small, 23-hour-a-day lockdown cells. One of the three was released in 2001, when his conviction was overturned in habeas proceedings after he made a compelling showing of innocence. The other two clients – Albert Woodfox and Herman Wallace – remain in solitary today despite very positive behavior during the past two decades. After much discovery activity in late 2009 and early 2010, the case is now ready for trial. At a February 2010 pre-trial conference with the federal judge, the State asked that his case not proceed until the habeas case of Albert Woodfox was resolved on appeal. The court of appeals decided that appeal in June 2010, but the district court has not yet set the case for trial, and several important discovery and privilege matters are pending. We are looking forward to a favorable resolution of this case in 2011.

Robert Howard (Louisiana)

Robert Howard was only 15 years old when he was sent to the then notorious Angola State Prison. At the time, prisoners sentenced to life overwhelmingly were released after they could demonstrate a decade of peaceful behavior in prison. Accordingly, his defense attorney encouraged him to plead guilty to murder. Subsequently, Louisiana dramatically toughened its pardon and parole procedures. Now, more than 40 years later, Howard remains in prison. He is highly trusted and well regarded by prison administrators, having earned the most privileged classification status based on his exemplary conduct record. Nevertheless, Howard remains in prison because the very significant changes in pardon and parole rules have greatly lengthened prison sentences. Corrine Irish has been our lead attorney on this case, and through a mix of creative formal and self-help discovery, filed a very strong motion for summary judgment. We should receive a court ruling in this case in 2011.



*In March, 2010, British-based filmmaker Vadim Jean released *In the Land of the Free...*, a documentary that takes a comprehensive look at solitary confinement, and the many years our clients Robert King, Herman Wallace, and Albert Woodfox have spent in such confinement. The film is narrated by actor Samuel L. Jackson and has won strong reviews.*

Source: Gold Circle Films



WRONGFUL INFLICTION OF THE DEATH PENALTY

Herbert Williams (Alabama)

In 2008, the Eleventh Circuit ordered a new sentencing hearing for Herbert Williams on account of his trial counsel's unreasonably deficient representation. The court explained that counsel failed to fulfill their duty to investigate and presented "an incomplete and misleading understanding of Williams' life history" at sentencing. The court further held that, had counsel performed adequately, the sentencing judge would have learned of powerful mitigating evidence, which would have strongly supported the jury's 9-3 recommendation (rejected by the sentencing judge at trial) that life imprisonment, rather than death, was appropriate. Mr. Williams was 19 at the time of the crime and a first-time offender. George Kendall and Sam Spital played key roles in briefing the case, which has already become one of the leading Eleventh Circuit precedents on ineffective assistance of counsel claims in the capital context.

We continued to represent Mr. Williams after the Eleventh Circuit's decision. In late 2009, Mr. Williams was resentenced to life in prison. In 2010, he has enjoyed success after success in his new prison setting. His very positive behavior won him recognition by the Warden and a coveted place in the prison's honor dorm. He has also completed a challenging writing program and regularly assists illiterate prisoners with correspondence needs.

Richard Cooper (Florida)

Richard Cooper has been on death row for 27 years and is a model prisoner. He was sentenced to death for a crime he committed at age 18, following the orders of an older, domineering co-defendant. His capital sentencing was fraught with constitutional errors. In January 2011, his habeas appeal was heard by a three-judge panel of the United States Court of Appeals in Atlanta. Sam Spital took the lead in preparing the briefs and argued the case before the panel. A ruling is expected later this year.

Kenny Reams (Arkansas)

Kenny Reams was death-sentenced in Arkansas two decades ago. Even the state attorney general's office is of the view that if anyone should not be on death row in that state, it is Kenny. We spent a good part of 2010 attempting to settle this case; it now looks like we will have to move forward in 2011 with an evidentiary hearing in state court. We are confident that we will win relief for Mr. Reams.

Eddie Finney & Willie James Wilson (Georgia)

Eddie Finney and Willie James Wilson have served more than 30 years on Georgia's death row. Years ago, in each case, we persuaded state judges that each likely is mentally retarded, and thus ineligible for a capital sentence. The State has taken no action in either case to have a trial on the issue of mental retardation. We hope we can settle both cases in 2011 for life sentences due to their ineligibility for a capital sentence.

Even the state attorney general's office is of the view that if anyone should not be on death row, it is Kenny Reams.

ENFORCING THE RIGHT TO VOTE

The Voting Rights Act is widely recognized as the nation's most successful civil rights law. Section 5 of that Act provides specific protections for voters in states and localities where voting discrimination has historically been most rampant. In 2006, Section 5 was reauthorized by a near unanimous vote in the Senate, a wide bipartisan margin in the House, and signed into law by President Bush. A small utility district in Texas then challenged Congress's constitutional power to re-authorize Section 5, and the case ultimately reached the Supreme Court. Sam Spital worked closely with the NAACP Legal Defense Fund (LDF) representing minority voters who intervened to defend the constitutionality of Section 5, and this intervenor brief was cited prominently by Justice Kennedy at oral argument. Ultimately, the Court resolved the case on statutory grounds and avoided the constitutional issue.

Last year, a new constitutional challenge was brought by Shelby County, Alabama. Sam is again working with LDF to represent minority voters who intervened to defend the Act.



In 2007, PSI attorney Sam Spital (first from left) and a team from the NAACP Legal Defense Fund represented minority voters intervening to defend crucial aspects of the Voting Rights Act.

“Sam Spital is a lawyer of uncommon talent, commitment and efficiency, whose work in support of our defense of Section 5 of the Voting Rights Act, from the trial court all the way through the oral argument before the Supreme Court, was extraordinary.”

Debo Adegbile
Director of Litigation, NAACP LDF

PSI provides assistance throughout the year to see that the justice system is better able to deliver just results to indigent litigants. In 2010, this assistance took the following forms.

PARTICIPATION IN CLE PROGRAMS

Throughout 2010, we participated in several regional and national training programs. They include the following:

June 2010: Administrative Office of the United States Courts, Defender Services Division
CHICAGO, ILLINOIS

George Kendall, with two other capital habeas corpus expert attorneys, led a hands-on trainer for United States district court and circuit judges about the Defender Services Committee of the Judicial Conference and budgeting for capital habeas corpus matters.

July 2010: NAACP Legal Defense & Educational Fund, Inc., Annual Capital Litigation Conference, Airlie House
WARRENTON, VIRGINIA

Sam Spital gave one of the most important plenary talks: a review of the 2009 Term of the Supreme Court. George Kendall, together with experienced Supreme Court litigant and LDF Director-Counsel John Payton, gave plenary talks on litigating before the Supreme Court.

October 2010: NYC Bar Association, Annual Capital Habeas Trainer
NEW YORK, NEW YORK

Sam Spital gave another plenary discussion of the 2009 Supreme Court term.

November 2010: Federal Capital Defense National Trainer
AUSTIN, TEXAS

George Kendall, with University of Texas School of Law Professor Rob Owen, gave plenary discussions on the 2009 Supreme Court term. George and Laura Burstein, our media consultant housed in the DC office, gave talks on working with media.



PSI attorneys participated in several training initiatives in 2010. In October, Sam Spital presented at the Annual Capital Habeas Trainer held by the New York City Bar Association, above.

CASE MOOTING AND CONSULTATION

PSI staff hosted a number of federal courts of appeal moots at the Squire Sanders NYC office. These moots included:

- *Wilson v. United States*, the first direct appeal of a federal capital case before the United States Court of Appeals for the Second Circuit in decades. (A Second Circuit panel later reversed Mr. Wilson's death sentence.)
- *Price v. Allen*, a capital habeas appeal to the United States Court of Appeals for the Eleventh Circuit handled by an associate in the Boston office of Ropes & Grey.
- *Mathis v. Texas*, a capital habeas appeal to the United States Court of Appeals for the Fifth Circuit handled by an associate in a New York-based firm.
- *Boyd v. Allen*, a capital habeas appeal, then pending before the United States Court of Appeals for the Eleventh Circuit.

Moreover, throughout the year, we have edited petitions for writs of certiorari, briefs in habeas corpus matters to be filed in federal courts of appeal, and discussed tactical and legal matters with counsel handling cases in trial courts in more than a dozen states.

ADMINISTRATIVE OFFICE OF THE U.S. COURTS – ADVISORY BOARD FOR FEDERAL CAPITAL REPRESENTATION

George Kendall is one of two non-federal defender or contract lawyers who sit on an advisory board to aid and increase the effectiveness of representation in all capital cases in the federal courts. This committee meets twice a year, devises policy recommendations for the Defender Services Committee of the Judicial Conference, and works throughout the year on projects to enhance capital defense representation.



BOARD MEMBERSHIP ON THE SOUTHERN PUBLIC DEFENDER TRAINING CENTER

George Kendall also serves on the Southern Public Defender Training Center board. This organization is dedicated to aiding courageous young lawyers who take employment at small defender offices in the southern states and to increasing their capacities to provide clients with high quality legal representation. There is no other organization performing this important service.

In 2010, the Southern Public Defender Training Center graduated its inaugural class of public defenders.

“The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but is in ours.”

In 1963, the Supreme Court unanimously ruled that the accused deserve adequate counsel. Nearly a half century later, many state public defender programs are alarmingly overburdened and understaffed.



Above, Attorney General Eric Holder addresses a Constitution Project dinner honoring PSI's work (see page 19). Holder has repeatedly described his commitment to improving public defender systems around the country and, earlier in the year, convened a meeting of several defenders, including George Kendall, to discuss reform.

Some of the most pressing problems that interfere with the ability of our public justice system to administer even-handed justice to indigent parties can best be addressed through policy change rather than litigation. Therefore, PSI works with effective non-for-profit organizations that seek a fairer, more just system. During the past year, we have been involved in the following efforts.

IMPROVING STATE INDIGENT DEFENSE SYSTEMS

Department of Justice Initiatives

ATTORNEY GENERAL HOLDER: The Attorney General has repeatedly spoken about the dismal shape of many state public defense systems, and of the federal government's obligation to help improve and enhance them. George Kendall and a dozen other defenders and private attorneys met with the Attorney General in early 2010. Holder pledged to push for meaningful reform and said that improving indigent defense is one of his “legacy” issues.

ACCESS TO JUSTICE PROJECT: Harvard law professor Laurence Tribe headed up this new DOJ initiative for much of 2010. Its goal is to improve access to the courts for indigent and middle class litigants. George Kendall and four other attorneys met with Tribe and his staff in June 2010, and discussions regarding recommendations are ongoing.

Congressional Initiatives

HOUSE JUDICIARY: In June, a special meeting of the House Judiciary Committee – A Right to Counsel Summit – was convened to receive ideas and suggestions as to how Congress could aid and improve state indigent defense systems.

George Kendall was one of ten panelists to address the committee, along with DOJ's Tribe, state supreme court justices, trial judges, state prosecutors and defenders.

NATIONAL PROSECUTION/DEFENDER

TRAINING CENTER: In an effort to upgrade training for young state prosecutors and defenders, George Kendall has been working with a committee of nationally-recognized defender trainers, the National Association of District Attorneys, and the Utah School of Law to determine whether a joint defender-prosecutor training center – funded with federal money and located at the law school, is a solid idea that should be funded. This project should either receive a green light and go forward, or be tabled in 2011.

Protecting Defense Independence

One structural issue that plagues effective defense representation is judicial interference in the defense function. PSI has been asked to review whether exacting and highly detailed review of capital trial defense and capital habeas counsel expenses, combined with very sharp and unreasonable cuts in expert fees allowances by courts, are interfering with core defense decision and functions. PSI will likely team up with another firm or law school faculty member to conduct this review in 2011.

SAFE REDUCTION IN PRISON POPULATION

LEFT-RIGHT – CONSTITUTION PROJECT

INITIATIVE: During 2010, we have met on several occasions with a widely diverse group of advocates from the right, the center and left, to identify policy review that all can agree on to safely shrink our nation's prison population. No other democracy on the face of the earth incarcerates as many citizens as does the federal government and the states; no other country is even close. One goal is to depoliticize this issue and identify concrete proposals which, if adopted, would reduce prison population but not sacrifice community safety or security.

FAIRNESS IN JUVENILE SENTENCING

SENTENCING DISPARITY INITIATIVE OF TIME

BANKS USA & NAACP LDF: In 2010, PSI was invited to participate in a series of convenings with leading national civil rights and juvenile justice litigators to develop a litigation strategy for challenging egregious sentencing disparities among juvenile offenders that correlate with race. Today, minority youth are 35% of the US population yet comprise 65% of all youth who are incarcerated pre-adjudication. A federal statute explicitly requires jurisdictions relying on federal funding to administer juvenile justice programs to take steps to reduce the disproportionately large number of minority youth who come into contact with the juvenile justice system. One goal is to use this statute to vindicate the rights of minority youth who have been baselessly subjected to detention and the collateral consequences of detention.

Some of the most pressing problems of our public justice system can best be addressed through policy change rather than litigation.

*Another important function of PSI is to bring to the attention of policy makers and the public serious shortcomings in our justice system. Some of this media coverage grows from our own cases, and others receive broad attention because of the fine work of **Laura Burstein**, the communications consultant we host in Squire Sanders' Washington, DC office. 2010 was a very busy and successful year.*

An important function of PSI is to bring to the attention of policy makers and the public serious shortcomings in our justice system.



In July, The New York Times published a report on the Georgia indigent defense commission, citing an amicus brief in Weis v. Georgia written by George Kendall.

SUPREME COURT CASES

Graham v. Florida & Sullivan v. Florida

There was enormous public interest in these cases during three media cycles: when certiorari was granted, on the day of oral argument, and when the favorable decisions were announced in May 2010. There were hundreds of stories during each cycle. Laura coordinated the production of a three-inch thick briefing book about the cases and the numerous briefs filed in the Court, which, according to members of the press, was an enormously impressive and useful resource.

Weis v. Georgia

It is nearly impossible to secure the attention of the reporters who cover the Supreme Court on the mere filing of a petition for writ of certiorari or an amicus brief in support thereof. But Laura persuaded the Washington Post editorial board to write about this case just prior to the Court's conference on it.

LAURA'S SIGNIFICANT EFFORTS

There is not sufficient space in this report to detail all of Laura's impressive and critical work. But efforts in three cases are representative of what she and her colleague, Tess Bolder, accomplished last year.

Kevin Keith

Ohio death-row inmate Kevin Keith long protested his innocence, but won no relief in either the state or federal courts. In September 2010, he faced a very real execution date. Laura worked closely with Keith's legal team, and was largely responsible for conveying to the media that many Ohioans who support the death penalty – including a former Republican state attorney general – had grave doubts about Keith's guilt in this case. Even after a very aggressive prosecution presentation persuaded the clemency board to recommend to Ohio Governor Ted Strickland that clemency be denied, in the heat of the election battle, Strickland commuted Keith's sentence to life.



Ohio Governor Ted Strickland commuted Kevin Keith's death sentence to life in 2010. Source: *The Chronicle-Telegram*

Hank Skinner

Like Keith, Skinner also had long protested his innocence, but had won no judicial relief. He also faced a very real execution date in the spring of 2010. But unlike Keith, Skinner resided on Texas' death row, where stays of execution are nearly impossible to come by. Skinner had also repeatedly sought DNA testing, but these requests had also been repeatedly rejected. Just prior to his scheduled execution, the Supreme Court granted a stay, and later agreed to hear Skinner's case. Nearly all of the media coverage of this case was positive, and was coordinated by Laura.

Charles Dean Hood

This is an unusual case, also from Texas, in which, after years of review and several stayed execution dates, Hood finally proved that his trial judge and prosecutor were having an affair at the time of his trial. There was considerable regional and national media coverage about this case, and whether Hood was entitled to a new trial. To much criticism, the Texas Court of Criminal Appeals agreed to overturn Hood's death sentence (on an unrelated instruction issue) but denied a new trial on the grounds that Hood should have discovered and pleaded the affair claim sooner than he did. Much of the coverage of this extraordinary case was generated by Laura.

"An unlikely array of Republicans and Democrats, attorneys general and federal and state judges and prosecutors has lined up to fight the execution of a death row inmate many believe to be innocent. Dozens of former officials have joined death penalty opponents to appeal to Governor Ted Strickland of Ohio, a Democrat, to spare the life of the inmate Kevin Keith."

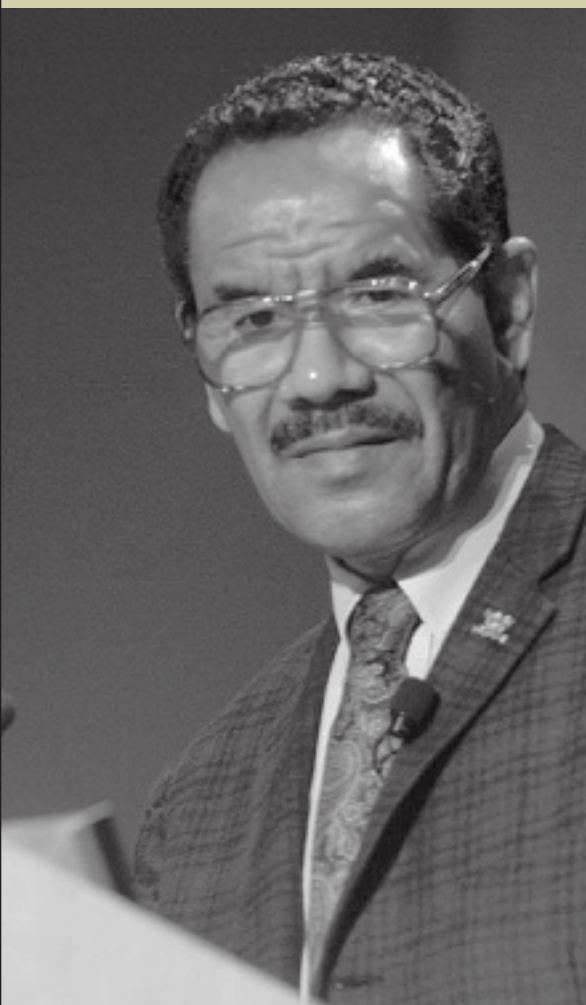
New York Times, August 10, 2010

"I'm not an advocate for Hank Skinner. I'm an advocate for the truth. If DNA tests could remove the uncertainty about Skinner's guilt – one way or the other – there's not a good reason in the world not to do it. Before we send a man to his death, shouldn't we do everything in our power to be certain of his guilt?"

Former Texas District Attorney Sam Millsap
Houston Chronicle, March 9, 2010

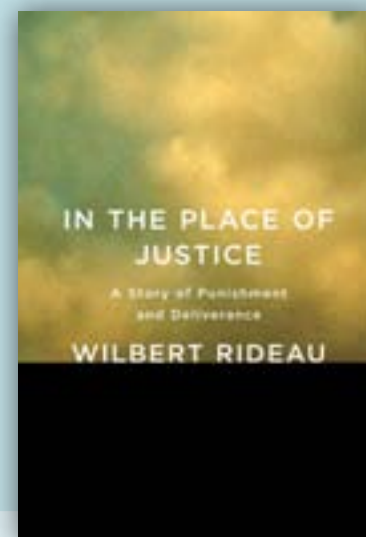
"I'm a longtime supporter of the death penalty, but what's happening in Charles Hood's case in Texas isn't right. If we are going to have the death penalty, we need to make sure that the process is fair and accurate... If the system fails to correct itself, it will deliver a blow to public confidence that cannot be easily remedied."

Former Texas Governor Mark White
National Law Journal, March 29, 2010



Wilbert Rideau has lectured nationwide on the role of the First Amendment in prisons.

In 2010, Knopf published the memoir of a longtime client of George Kendall, Wilbert Rideau. Rideau spent nearly 44 years in a prison for a 1961 homicide that was determined, in 2005 by a Louisiana jury, to have been manslaughter rather than murder. Rideau, who received national awards for his work on the Angola newspaper and was described in a 1993 Life magazine profile as “the most rehabilitated prisoner in America,” writes eloquently about his transformation from a nearly illiterate teen to a remorseful adult and award-winning journalist and writer.



I buried myself in books. Reading obscured the dismal future I faced. Initially, I read whatever was available on the black market – smuggled books – or those owned by other death row inmates. The more I learned, the more I sought; the more I reflected, the more I grew and matured. There were no lightning bolts, instant revelations, or overnight conversions; it was a long growth process in which I began to shed the ignorance, anger, and insecurities that had governed my previous life. I learned more from my reading on death row than I had from all my years of formal schooling, which had left me literate but uneducated. Eventually I came to see that there was so much to life and the world, so many options available that, as bad as things might have been, I was never trapped in my life as I had believed. I realized that my real problem had been ignorance and, as a result, I had thrown away my life.

Reading ultimately allowed me to feel empathy, to emerge from my cocoon of self-centeredness and appreciate the humanness of others – to see that they, too, have dreams, aspirations, frustrations, and pain. It enabled me finally to appreciate the enormity of what I had done, the depth of damage I had caused others.

Wilbert Rideau, In the Place of Justice (Knopf, 2010)

2010 was a banner year for recognition of Squire Sanders' Public Service Initiative. The project was celebrated at one New York City event, and at two large events in Washington, DC.

MARCH

Equal Justice Initiative – Equal Justice Champion Award

The Equal Justice Initiative, a widely respected and celebrated Human Rights organization based in Montgomery, Alabama, and led by MacArthur Genius Award winner Bryan A. Stevenson, honored Squire Sanders' PSI for our assistance in the juvenile Life Without Parole cases and other matters. Also honored was DuPont General Counsel Thomas L. Sager and the DuPont legal department. Firm chairman Jim Maiworm and other New York and Ohio-based partners attended the dinner.

APRIL

Constitution Project – Constitutional Champion Award

The Constitution Project is a highly respected DC-based organization that assembles bipartisan commissions to work toward sensible policy solutions to some of our toughest legal issues. Before a large DC audience, Squire Sanders and its Public Service Initiative were honored along with highly respected former Ambassador Thomas Pickering. Attorney General Eric Holder was the keynote speaker. Thomas Stanton, and several DC-based partners attended this event.

JULY

Mid-Atlantic Innocence Project – Defender of Innocence Award

The Mid-Atlantic Innocence Project honored the Norfolk Four legal team – made up of four firms including Squire Sanders – at its annual luncheon in Washington, DC. The clients and their parents were present, and awarded members of their legal team with the award. George Kendall spoke on behalf of the teams, thanked the project for the awards, and urged more firms to take on these cases.

DECEMBER

Relman Civil Rights Dinner

George Kendall gave the after-dinner address to this annual gathering of law firms and civil rights lawyers on December 8. He urged firms to become more involved in the growing problems that confront our justice system in many states. The pre-dinner speaker was Elizabeth Warren, Assistant to the President and Special Advisor to the Secretary of the Treasury.



In March, Thomas L. Sager (left), Dupont General Counsel was honored along with George Kendall with the Equal Justice Champion Award.

Source: The New York Times



In April, the Constitution Project honored George Kendall and former Ambassador Thomas Pickering with the Constitutional Champion award.

In the coming year, the Squire Sanders PSI team is committed to providing:

- top flight legal services to our indigent clients
- similar support to Squire Sanders institutional clients with complex litigation and appellate needs
- unique opportunities for Squire Sanders associates to acquire enhanced and superior advocacy skills
- sound advice to policy makers to improve our public justice system, and
- engaging public education materials to insure a better informed public about reform needs in the justice system

Squire Sanders & Dempsey refers to an international legal practice which operates worldwide through a number of separate legal entities. Please visit www.ssd.com for more information.



PUBLIC SERVICE INITIATIVE

Squire, Sanders & Dempsey
30 Rockefeller Plaza
New York, New York 10112