Long Road to Justice: Settlement for Nursing Home Residents Followed a 23-Year Battle by the William and Mary Foster Elder Law Clinic

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Long road to justice
Settlement for nursing home residents followed a 23-year battle by the William and Mary Foster Elder Law Clinic

Everyone connected to Conrad v. Perales has a war story, and most of them mention the SUNY Buffalo Law professor who was there from the beginning to the end two decades later.

The stories about Professor Anthony Szczygiel revolve around the Law School clinic he founded and the work it did during a 23-year legal battle that ended with an $11 million settlement from New York State.

Jorien Brock '03 was part of the clinic in 2001 when word came that the state had finally agreed to hand over documents Szczygiel considered important to his lawsuit on behalf of 16,000 nursing home residents. The documents were buried in a truckload of boxes being deposited in the basement of the old federal courthouse. She and Szczygiel would spend hours in that basement going through the boxes. “It was truly a needle-in-a-haystack process,” says Brock, now director of the Pride Center of Western New York. “Tony and I would go down there and spend hours sifting through those boxes looking for relevant documents. And we found some.”

Forty to 50 Law School students worked with Szczygiel over the years as he pursued his 1991 complaint accusing New York State of cheating old, sick and poor nursing home residents. The class-action suit charged the state with double-billing nursing home residents who received both Medicaid and Medicare. Not only was the federal government billed twice for the same services, residents were forced to pay twice for their so-called “client share” of nursing home costs billed to the two programs.

It took decades, but Szczygiel and his army of volunteers at the William and Mary Foster Elder Law Clinic, as well as lawyers from Legal Services for the Elderly, would eventually win. “At some point, it became something of a cause, to right a wrong,” Szczygiel says of the state’s actions. “To me, it was just an egregious breach of their obligations.”

Nan Haynes '92 remembers thinking that her early work on the lawsuit marked the start of something important. She saw the lawsuit as correcting a wrong, a way to use the court system to fix an injustice. It also provided her an invaluable opportunity to help research and write the original complaint.

“It was a thrill to be on the ground floor of such an important case,” says Haynes, now a lecturer at the Law School. “I also remember very clearly my reaction to what the state was doing. I was appalled by what was going on.”

The 16,000 nursing home residents who took part in the lawsuit were, by all accounts, the sickest people in their nursing homes. They also were poor and either elderly or disabled. Even now, years after winning his case, Szczygiel finds it hard to imagine why the state targeted them...
"At some point, it became something of a cause, to right a wrong. To me, it was just an egregious breach of their obligations."

Professor Anthony Szczygiel, talking about the state's actions

What followed was a protracted legal battle over what defendants should be part of the case and whether the courts should certify the victims as a class.

Frustrated by the slow pace of the suit, U.S. District Judge John T. Curtin '49 encouraged the two sides to move the case along. Both plaintiffs and defendants filed motions for summary judgment. Curtin denied both motions, and the case entered litigation.

With a trial looming, Szczygiel realized he needed the help of an experienced trial attorney and a law firm with a litigation fund big enough to handle the costs of preparing for a major trial. That's when Henry W. Killeen III '75, a Buffalo lawyer with a reputation for aggressive tactics, and Peter Dellinger, an experienced litigator at the Empire Justice Center in Rochester, joined the case.

"It was extremely frustrating and very disheartening," Szczygiel says of the state's legal strategy. "I was perhaps too naive to think we might succeed early on."

When the time came to again talk settlement, the plaintiffs were suddenly talking from a point of strength, not weakness. The plaintiffs, who had sought $30 million, settled in 2006 for $11 million.

By that time, all of the original plaintiffs had died, one of the sad consequences of the protracted legal fight. None of them had lived to hear about their court victory or spend their settlement checks. The money would instead go to their children or grandchildren.

"They didn't have much, and they could have had more," Szczygiel says of his clients. "It was disappointing they didn't get their money back."

The next five years were spent tracking down heirs, an effort that officially ended in October when Curtin finally closed the case.

For Szczygiel, Conrad v. Penak became the commitment of a lifetime. He spent more than two-thirds of his 33 years as a lawyer working on this one case.

"It was qualitatively different than any other work we've done," he says of how the suit compares to the routine Medicaid and Medicare appeals normally handled by the clinic. "This one certainly mushroomed well beyond that, and it was satisfying to see it to the end."

"For me, he's an inspiration," says Haynes. "When there are roadblocks that pop up unnecessarily, the tendency is to throw up your hands and say enough is enough. Not Tony."

— Nan Haynes '92