

# The Lawsuits

*In fifty years, The Arc of Massachusetts has accomplished more than most organizations could dream about. We could not have done as much without the efforts of lawyers, judges and scholars who affirmed the legal rights of individuals with disabilities, primarily through federal court. The results of these landmark cases have created a new world for people with disabilities.*

## 1972 Ricci vs. Greenblatt

Following the death of four people at the Belchertown State School, parent Ben Ricci - in cooperation with The Arc of Massachusetts - filed the first lawsuit in federal court challenging that the constitutional rights of the residents at Belchertown were being violated. Charlotte Aladjem, Gunnar Dybwad, and Beryl Cohen - who became the lead attorney in the case - filed the papers in federal court. This case was expanded to include the Monson Developmental Center and the Fernald State School. Joseph Tauro was the presiding judge in this and the other consent decree cases, which were eventually consolidated under one decree.

## 1973 Massachusetts Association for Retarded Citizens vs. Dukakis

Along with local Arc parent groups from the Wrentham and Paul A. Dever State Schools, The Arc of Massachusetts filed this case in federal court, challenging that the constitutional rights of residents in these facilities had been violated. Hill and Barlow agreed to represent the class on a pro bono basis. Attorneys Bo Jones and Nonnie Burnes were the attorneys of record, and partners Richard Renehan and John Vincent invested thousands of hours representing the men and women at these facilities.

## 1975 Consent Decree

A Consent Decree is signed by Governor Michael Dukakis agreeing to bring these five facilities - Belchertown, Dever, Fernald, Monson, and Wrentham - up to Federal Title 19 Medicaid status.

## 1976 Brewster vs. Dukakis

At the request of the Center for Public Representation (CPR), The Arc of Massachusetts filed an amicus brief on behalf of the individuals with mental retardation living at Northampton State Hospital. Hill and Barlow attorneys Richard Renehan and John Vincent prepared the amicus brief for The Arc. The case resulted in a consent decree which mandated the creation of a comprehensive system of less restrictive alternatives for all residents of the Northampton State Hospital, resulting in the closure of the institution.

## 1977 Superintendent of Belchertown State School vs. Joseph Saikewicz

This was the first Massachusetts case, and the second major case in the nation, to discuss whether a legally incompetent person has a right to die. Joseph Saikewicz, a man with profound mental retardation living at Belchertown, was diagnosed with a fatal type of leukemia and given a 50% chance of temporary remission with chemotherapy. A court-appointed guardian recommended that treatment not be administered; a probate judge concurred, and an appellate court upheld this decision. The court decided that incompetent patients should not be denied a right to refuse treatment, and established the standard of substituted judgment - the right of a court to determine what decision the patient would have made, if competent.

## 1995 Mahoney vs. Weld (Healey vs. Weld)

This case began in 1994 to address legislative language which prevented individuals from leaving state institutions to move into the community. This language placed the continued existence of the institutions and staff positions above the residents' civil rights. The Center for Public Representation played a key role in this case. Attorneys Michael Boudett and David Geiger of Foley, Hoag & Eliot and Frank Laski filed the case. Massachusetts Superior Court ruled that the state statute prohibiting discharges from certain institutions (which were targeted for closure) was unconstitutional.

## 1998 Olmstead vs. L.C. and E. W. (United States Supreme Court)

At risk in this landmark case were the substantial gains of the Americans with Disabilities Act (ADA). In 1998, during his work on the Boulet case (see below), Neil V. McKittrick was asked to represent 58 former state commissioners who were supporting the rights of individuals with disabilities in this case through an amicus brief. Ms. Deborah Hesford DosSantos assisted Neil as counsel. Ultimately, the Supreme Court ruled in favor of community settings over institutions, stating that unnecessary institutionalization constitutes discrimination and segregation, and violates the ADA's integration mandate, which requires community placement of people with disabilities.

## 1999 Rolland vs. Cellucci

The Arc of Massachusetts was one of two organizational plaintiffs in this case, which was filed by Steven Schwartz and Cathy E. Conzanzo of CPR; Christine M. Griffin, Stacie B. Siebrecht, and Matthew Engel, Disability Law Center; Frank Laski of Mental Health Legal Advisers Committee; and Richard Belin of Foley, Hoag & Eliot. The case argued that individuals with developmental disabilities who resided in nursing homes had a right to community services, and to specialized services within nursing homes. 1,600 individuals were positively affected by the settlement in this case, with 750 people slated to move into community settings over seven years.

## 2000 Boulet vs. Cellucci

This case was filed on behalf of eight individual plaintiffs, who had been waiting for services from the Department of Mental Retardation (DMR) for up to 20 years. Lead counsel Neil V. McKittrick argued the case in U.S. District Court, assisted by Carol V. Rose and David S. Friedman of Hill & Barlow. Prior to the settlement, Judge Douglas Woodlock released an order affirming certain rights to Medicaid-funded services. The *Boulet* settlement provided \$114 million to serve 2,445 people on the DMR waiting list over a five-year period.