

# AgingToday

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## And justice for all: the law's role in helping elders

By **Scott L. Parkin**

**E**ven for professionals who have been in the aging services field for years, it can be challenging to fully grasp the crucial role the law plays in the health and well-being of the nation's older adults—especially those with limited income or resources.

A recent discussion with Paul Nathanson, who retired this past June as executive director of the National Senior Citizens Law Center (NSCLC), and Elias Cohen, who was Pennsylvania's first Commissioner on Aging and has been active in the field of aging and disability since 1956, illuminated the importance of elder law to advocacy, and the need to educate elders about the law.

“Even now, number one, most [elders] are embarrassed to have a legal question, and number two, they don't think of their problems as legal problems. When you ask them if they need a lawyer they think you are asking if they need help writing a will,” Nathanson said.

“If you ask the question differently, like ‘have you ever been evicted? Have you ever not gotten your Social Security check? Or, are you getting all of the healthcare services you need?’—you'd get a different answer.”

### **Cases that Made a Difference**

Certain well-known Supreme Court cases changed the landscape for older adults in the United States. In *Olmstead v L.C.* (1999), the Court held that states must eliminate unnecessary institutionalization and ensure that people with disabilities receive services in the most integrated setting appropriate to their needs. This case laid the legal groundwork for the current movement to fund Medicaid home- and community-based services (HCBS) as an alternative to nursing homes. Simply put, Cohen described *Olmstead* as the foundation in law that has promoted and developed HCBS.

Because of the Court's decision in *Goldberg v Kelly* (1970), poor elders were provided the right to due process and a fair hearing before access to entitlements like Medicaid benefits were terminated, reduced or denied. Nathanson said the case “showed the poor that they could go toe to toe with the man.”

Lawyers play an important role in administrative advocacy as well. In one case, NSCLC attorneys, with an outpouring of comments from advocates across the country, were able to convince the federal Centers for Medicare & Medicaid Services to adopt a rule requiring Medicare health and prescription drug plans to translate marketing materials into any language that is primary for 5 percent of the individuals in a plan area. That's in contrast to the 10 percent rule the agency had originally proposed.

### Legal Hurdles Remain

However, both Nathanson and Cohen believe recent Court decisions such as *Gross v FBL Financial Services*, which makes it very difficult to prove that age was the primary reason for an adverse employment decision in age discrimination cases, have made it progressively harder to win cases on behalf of older adults.

As over the past 20 years more conservative judges have been appointed to the federal bench, “it has become more difficult to use the courts to affect change when a process is blatantly harmful to poor seniors,” Nathanson noted.

Nathanson also says it took lawyers five years to litigate *American Council for the Blind v Astrue* (2011). In this national class-action case, a federal court found that the Social Security Administration must issue materials not just in print, but also in Braille and other formats easily accessible to the blind.

The lesson from this case is embedded in a message Nathanson frequently shares: “You can have a good statute, but if it isn’t administered well, such as when and if the blind can’t understand their Social Security benefits, or the appeals process doesn’t work anymore, that’s when you need lawyers to step up and make a difference.”

Nathanson spent his early years at NSCLC advocating that area agencies on aging offer legal services to elders, especially the poor. He and other leaders in aging were able to ensure that the Older Americans Act funds legal assistance for those in need. The Act, for example, continues to provide funding for local attorneys who help with issues such as income security, healthcare, long-term care, defense of guardianship, elder abuse and much more.

Sometimes the law is the only recourse for elders and their families. Professionals in aging services need to stay apprised of new legal findings and understand the significance and impact of the law on their clients, residents—even their own family members. ■

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