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Local

ANSWERING THE HOWLS OF INJUSTICE ACTIVIST, EX-NUN BATTLE GOLIATHS TO WIN LEGAL  
RIGHTS FOR DOWNTRODDEN

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Headline p.1A - RESPONDING TO THE HOWL OF INJUSTICE.

In a comfortably cluttered office in a red-brick Victorian building, a man who specializes in human suffering, misery and hopeless cases is talking rapidly on the telephone, perpetually alert for the howl.

In a bright and tidy office just a lawbook-lined meeting room away, a no-nonsense ex-nun with an acute sense of outrage is reluctantly dispensing dollops of personal information, when all the time she'd rather be talking about the victims she represents.

While John Holland and Kathleen Mullen are not partners, they frequently join forces, uniting energies, intellects and their passion for justice. And in the process they have become, arguably, the pre-eminent legal advocates for Colorado's have-nots.

The legal soulmates have employed what virtually everybody who has worked with them - and against them - calls a tenacious and zealous style of litigation. Their relentless pursuit of what Mullen calls "social justice" has led them to sue Colorado's governor and its Supreme Court, to say nothing of a U.S. Cabinet secretary or two. They've made the private sector ante up as well.

This month, the two wrung a \$30 million settlement out of O'Hara Regional Center for Rehabilitation, a Denver-based nursing home charged with a litany of substandard care and abuse that led to the deaths of six patients.

The O'Hara victory builds on earlier Holland and Mullen class-action lawsuits that have: played a part in the rewriting of federal nursing home regulations; catalyzed the creation of the Americans with Disabilities Act; and ensured that Colorado's chronically mentally ill have better access to care.

"The thing about John and Kathleen is they don't just see people with disabilities as having rights. They truly see people with disabilities as people," says Michael Auberger, executive director of

Atlantis Community, an assisted-living center and activist group for the disabled.

"Maybe that's why they end up taking the cases of folks who are forgotten about; the cases nobody else wants," he adds.

The cases that sometimes only they can hear.

"Our work is born in the howl of the people whose rights have been stomped, who have suffered indignities so great words can't describe them," says Holland.

"Something in my spirit is triggered by the howl, and once I hear it, I have to take a case."

Wheels of justice

The pursuit of justice can move at a glacial pace. So when Holland says the 22-month O'Hara case was completed in the "blink of an eye, compared to other stuff we've done," he isn't kidding.

Once, he spent 12 years shepherding a precedent-setting suit through the courts. Meanwhile, Mullen is into the 21st year of a case she is waging against the city and the state.

"It's maddening, absolutely," says Mullen, 58.

"There are some problems that require years, even generations to go away," says Holland, 54. "You've got to be in it for the long haul."

You've also got to be vigilant.

"Somebody once said that evil is like energy," says Holland. "It can't be destroyed. The best you can hope for is to hold it in check. Maybe that's what we do."

And when you're stalemating evil, you have to play for keeps.

"They're formidable, they're tenacious, they work hard and they're very, very aggressive," says Tom Quinn, an attorney who has opposed both in court.

But their advocacy isn't reserved exclusively for the disabled. A brief look at their roster of past clients reveals:

\* A black miner who was victimized by his neighbors and by the law enforcement officials who should have been protecting his rights.

\* A dying mother who wanted to be able to care for her son in the waning months of her life.

\* Poor families intimidated and threatened by a public hospital over unpaid medical bills.

These aren't just the clients that Holland and Mullen serve, they are the clients they crave.

The only question is why.

Shaping values

Holland arrived in Colorado by way of Chicago and then California, the youngest of two children born to Milt and Estelle Holland. His father was a fine arts appraiser; his mother a former ballerina who once danced at the White House for President Harding when she was a young woman.

Holland came of age in the tumult of the 1960s and early '70s, no stranger to the protests of the era, including the free speech movement at Berkeley. He graduated from the University of California at Santa Barbara in 1968. A few years later, the school awarded him a master's degree in religious studies, his thesis being a study of conscientious objections in America.

Then, thinking "it was important to become socially involved and be useful," he entered UCLA's law school. Law school he disliked, mostly because "the rules applied regardless of their fit. Law school's fatal flaw is you study instead of do."

He spent his second year of law school working for the Legal Aid Society on the Zuni reservation in New Mexico, getting a firsthand view of the legal needs of the poor. The rebel returned to UCLA and got his law degree, an accomplishment so unexpected that as he walked across the stage to get his diploma, the dean whispered, "I never thought you'd make it."

Degree in one hand, Holland held a fellowship in the other. It was from the Legal Aid Societies and it charged him with "doing good, raising hell and challenging illegalities that had broad impacts on poor people." He hated L.A., but liked the West. So . . .

He arrived at Denver's Legal Aid office in 1974, full of energy and conviction. Eventually his zeal and skill would make him chief of litigation. But that was a few years after he met a dying man named Michael Patrick Smith.

Humble beginning

Kathleen Mullen's route to Denver was a bit more parabolic.

She was born in Marshalltown, Iowa, one of four children raised by their mother when an alcoholic father more or less vanished from their lives. A good Catholic girl growing up, Mullen became a better one at 18, taking a vow of poverty and joining an order of nuns known as the Congregation of the Humility of Mary. She would remain a member for 25 years.

After receiving a bachelor's degree from Marycrest College and a graduate degree in philosophy from Notre Dame, Mullen returned to Iowa to teach college. What her friend - and fellow nun - Mary Boland called her "real passion for social justice" manifested itself in a number of ways. There were the civil rights demonstrations in Davenport, as well as a summer trip to Washington, D.C., chaperoning a group of students doing volunteer work for anti-Vietnam war groups.

In 1972, Mullen took her social conscience to law school at Catholic University with the intention of going into poverty and public-interest sectors.

She spent time working for the National Council of Senior Citizens, advocating for the poor and the elderly. But Mullen, a competitive tennis player who, according to Boland, "always liked a good challenge" wanted to do more. She wanted to litigate.

Mullen arrived in Colorado in 1978, doing legal work for the campaign to convert Rocky Flats from a nuclear bomb facility into something more benign.

From there the move to Legal Aid seemed natural. One of her first cases arose when a stream of poor people began fearfully telling how

Denver General Hospital was threatening to take their homes, their cars, over nonpayment of medical bills.

Mullen found that while the city-owned hospital claimed to be owed \$16 million in unpaid bills, it had failed to factor the ability-to-pay into its computer billing system.

The resulting class-action suit was the first time she and Holland worked together.

"He kept saying, 'You should do this, this and this (for the case).' I said, 'I ain't gonna do it all, so you better step up.' And he did."

An emerging legal whirlwind had begun to kick up dust.

Captive to cruelty

Michael Smith was 21 and wasting away from Muscular Dystrophy in the Heritage House nursing home in Lakewood when he contacted Legal Aid.

Not only was the home forging his name and cashing his Medicaid checks, but even worse to the disabled poet was that no one at the home was willing to write down the poems swimming around his head. Unable to use his arms, he could only lie there, his creativity turning to dust.

To Holland, both acts were unspeakably cruel and outrageous, but as he investigated further, the howl became deafening: residents in danger of infection because colostomy bags were not being regularly emptied; a girl in a full-body cast tormented by flies buzzing near her face; wheelchair patients shoved into cold showers; cockroaches lurking in breakfast cereals.

These abuses tore open a personal wound. Years earlier, his mother had been confined to a nursing home in California. When he went to visit, he bent down to hug her and discovered a "pie-sized bedsore on her back. All she had a need for was basic attention, basic dignity and she wasn't getting it.

"That ----- me off permanently."

Holland sued the owners of Heritage House. And the state of

Colorado. And the U.S. Department of Health and Human Services. A class-action suit on behalf of 18 patients, Smith v. O'Halloran became Smith V. Heckler, as in the U.S. Secretary of Health and Human Services Margaret Heckler.

Holland contended that federal inspection guidelines were so poor officials couldn't gauge nursing home care efficiently. Surprisingly, his case was strengthened when the state of Colorado - one of the defendants - joined him, calling the federal nursing home regulation system "a national disgrace."

Nevertheless, Holland lost the first major battle in federal court. But - by now joined by Mullen - he took the case to the 10th U.S. Circuit Court of Appeals, and the war was on. That court ruled for him, and the battle was joined anew.

"Both John and I are tenacious," Mullen says. "It may take us years, but that tenacity wears down the other sides, and allows us to win."

In 1987, 12 years after it had begun, and 11 years after Michael Smith had died, Holland and Mullen did win.

But it wasn't just the \$2.6 million settlement that was important.

It was that the fallout from the Smith case led to the creation of the Atlantis Community, which helped create the national civil rights movement for the disabled.

It was that U.S. District Judge Richard Matsch struck down the entire national nursing home inspection system, and ordered the federal government to develop patient-centered standards that could withstand legal challenges by nursing home operators. In turn, this ruling led to the Nursing Home Reform Act of 1987.

Rights for disabled

And it was about justice.

Of course, as the O'Hara case - with its hauntingly similar instances of substandard care - would prove 14 years later, writing a law and enforcing it are two different things.

A more definitive conclusion awaited the disabled plaintiffs in a

1978 class-action suit against Denver and the Regional Transportation District over the need to outfit buses with lifts for wheelchair customers.

Ultimately, the disabled community prevailed, resulting in RTD buses being outfitted with lifts. The case played no small role in what Holland calls the "civil rights movement of the disabled."

What began in Denver as a local protest eventually led to the 1990 passage of the landmark Americans With Disabilities Act.

By this time, Holland and Mullen were out of Legal Aid, in part to earn a better living, in part because of their frustration with the federal government, which essentially stopped the publicly funded Legal Aid from filing class-action suits - which Holland called "the great equalizer."

But private practice didn't deafen them to the howl.

In 1988, Mullen and Holland filed a class-action lawsuit on behalf of Duc Van Le, a Vietnamese refugee. Le, a schizophrenic, wanted the government to pay his bills while he lived at an independent home served by Atlantis. State statutes mandated that services be provided only to the institutionalized.

Again, it was rocky going at first. In fact, all seemed lost when the Colorado Supreme Court threw out a lower-court ruling that sided with the plaintiffs.

Not to worry.

"Kathleen is never intimidated," says Boland.

"John is absolutely fearless," says friend and fellow attorney Dudley Spiller. "He's like an athlete at crunch time. You know, the one who wants the ball because he believes he can get it done."

In this case, crunch time dragged out until 1996 when, after many victories for the whirlwind - and just as many appeals by the state - the Colorado Supreme Court ruled for Duc Van Le.

One more howl quieted.

An endless litany

If the lawyers felt frustrated by the protracted Van Duc Le case, then how must they feel about the Goebel case, a tug-of-war that Holland, with his flair for the dramatic, calls "one of the most important lawsuits in state history"?

Mullen - who has led the case - filed a class-action suit in 1981 to force the city and state to offer housing, staffing and funding for the state's 1,600 chronically mentally ill, many of whom lived on the streets or in boarding "warehouses" unable to meet their needs. The suit was named for Ruth Goebel, a homeless woman who froze to death when the case was in its infancy.

Over the years, a pattern emerged. Mullen would win a hearing and the state would appeal. During its ever-lengthening history, the case has been appealed to the Colorado Supreme Court no less than four times.

In 1994, Mullen thought she had found a little justice when a settlement was finally reached. She was wrong.

In the intervening seven years, there has been endless wrangling over how the state and city would fund the facilities and services. Although the government has maintained it is operating in good faith, Denver District Judge Morris Hoffman last September said he was "on the brink" of finding the state in contempt over the way Colorado cares for the chronically mentally ill.

And so the Howl continues.

Small minds

Of all his cases, Holland says his favorite is the one involving Roy Smith, a case that "exposed the sorry interiors of people's minds."

Smith, a black gold minder living in the hills near Central City, became the frequent target of attacks by neighbors, ranging from attempted hit-and-runs to being stripped naked and hung upside down.

When he went to the authorities with proof, he wasn't just ignored, he was ridiculed. In the officials data base of the Gilpin County Sheriff's Department, he was termed "Nigger Roy." The attacks continued.

Which brought him to Holland's office in 1994.

"What John had to do was puncture through a largely dubious legal system," says Steve Miller, a friend who served as a co-counsel on the case. "Roy was a poor person, not well-educated. So, to people who are educated and prosperous, he wasn't very credible." It was crunch time, and Holland wanted the ball.

The case, which U.S. District Court Judge Wiley Daniel called "the most appalling and reprehensible record I've ever seen," never made it to trial. Instead, Smith settled for \$700,000. And justice.

Threshold for outrage

Sitting in an office dominated by photographs (mostly of his family, a few clients and one of Clarence Darrow) and a clutter of files, John Holland is wincing. One of the few subjects he doesn't like to talk about has come up: money.

"All our practice is contingent on fees (often one-third of a settlement)," he says. "That's pretty standard in this business. But if we lose, we don't get anything.

"I run sort of a Robin Hood law firm here. Take from my private practice to help pay for the pursuit of the real legal issues."

Then, as quickly as he can, Holland segues from money to topics he prefers to talk about. Which means pretty much anything else. - his collection of baseball books (numbering close to 400), lyrics to Bob Dylan songs, his Palm Pilot, his wife, Linda, and three kids.

"John is a very engaging conversationalist," says Miller. "In a social setting people are attracted to John because he's a personality, a character. He's fun to have at a party."

He's not so bad to behold in court, either.

"John is clearly more flamboyant than Kathleen," says Auburger. "It's like he's constantly moving; working with him sometimes is like trying to hit a moving target. Kathleen has this quiet directness about her, this quiet tenacity. "

Sometimes not so quiet.

"A district court judge once told me my threshold of outrage is the lowest he had ever seen," she says.

In a couple of months, all that outrage will be put on hold as Mullen takes an open-ended hiatus from law.

Part of her decision is rooted in frustration.

"Look at the cases for the mentally ill," she snaps. "We've won every legal point. But do we have the system of care in place? No. Maybe it's time to look at other strategies."

Chances are she'll be back eventually. There's a big case looming, a class-action suit against the Colorado Mental Health Institute in Pueblo. Patients at the hospital's forensic unit claim they are being warehoused without effective treatment. They're looking for justice.

For his part, Holland plans to keep plugging away. There's just too much work to be done, and finite energy left to do it.

"You only have so many fights in you, ask any boxer, so pick your fights carefully," he says.

But he's also learned that "In our business, the fights pick you."

He smiles, but then, all of a sudden, he appears distracted. His gaze turns inward. Maybe he's just thought of some strategy he can use in a case. Maybe there's something he needs to discuss with Mullen.

Or maybe he just heard the Howl.

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Color Photo, Photo (2); Caption: Denver attorneys Kathleen Mullen and John Holland recently won a \$30 million settlement against O'Hara Regional Center for Rehabilitation, a Denver nursing home charged with substandard care and abuse that led to the deaths of six patients. By Marc Piscotty / News Staff Photographer. HARD COPY: PISCOTTY - SHOOT DATE 2001: 2/ 22 CAPTION: Roy Smith, who became the target of racist attacks by neighbors in Gilpin County,

turned to John Holland for help in 1994. The gold miner was awarded \$700,000 in a settlement. Courtesy of John Holland. CAPTION: John Holland, front row with eyeglasses, sits with the Lara-Otoya family in 1975. The lawyer represented Nester Lara-Otoya, seated left of Holland, in an immigration case against the U.S. government. Courtesy of John Holland.

---- INDEX REFERENCES ----

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