

## PUBLIC JUSTICE 2009 TRIAL LAWYER OF THE YEAR AWARD FINALIST

**Case:** *Kennedy v. City of Zanesville*

**Counsel:** Reed Colfax, John Relman, Jennifer Klar, Kerstin Sjoberg-Witt, Rachel K. Robinson, and Stefan Schmidt

### WINNING EQUAL ACCESS TO CITY SERVICES FOR AFRICAN AMERICANS

Most Americans take water for granted, but the residents of Coal Run, a predominantly African-American neighborhood in Zanesville, Ohio, didn't have that luxury. For 50 years, the city and county refused to connect water lines to their homes. The residents were forced to drink and bathe with ground water that was contaminated from coal mining or catch rainwater and store it in cisterns that would fill with bugs, worms, rodents and dead animals. Just yards away, African-American residents could see their white neighbors watering their lawns and sitting in hot tubs.

Today, the residents of Coal Run have running water and 67 of them are sharing a significant jury award. As a result of incredible advocacy by **Reed Colfax, John Relman and Jennifer Klar** of Relman & Dane, PLLC, in Washington, D.C.; **Kerstin Sjoberg-Witt**, then of Jones Day in Columbus, Ohio; **Rachel K. Robinson** of Equal Justice Foundation in Columbus; and **Stefan Schmidt** of the Office of the Attorney General of Ohio, the jury in *Kennedy v. City of Zanesville* awarded the Coal Run residents \$10.8 million in compensatory damages, one of the largest fair housing jury verdicts in history.

In 2003, Colfax's team filed suit in the United States District Court for the Southern District of Ohio against the City of Zanesville, Muskingum County, and the East Muskingum Water Authority, alleging that the denial of water service violated several civil rights laws, including the Fair Housing Act, Title VI, and the U.S. Constitution's Equal Protection Clause.

The case took over five years to litigate. One of the biggest challenges Colfax's team faced was re-creating the history of water service in the county and the evolving nature of the discrimination over a 50-year period. During discovery, over 100 depositions were taken and hundreds of thousands of pages of documents were reviewed and analyzed. In addition, coordinating 67 plaintiffs required a great deal of time and patience. Colfax alone spent more than 4,000 hours on the case.

Colfax and his colleagues litigated two issues that were especially novel and challenging. To get around the statute of limitations, the trial lawyers successfully argued that the suit was not time-barred because the defendants had engaged in an ongoing, continuing practice of discrimination against the neighborhood. Never before had a court allowed a continuing violation to extend over fifty years in a fair housing case. In addition, Colfax's team prevailed on the issue of standing when the court held that all the residents of Coal Run, whether black or white – and regardless of whether they had made an explicit request for water – could bring a claim if they had been injured.

At trial, Colfax's team put more than 60 residents on the stand to describe the hardships they suffered from being denied water for decades. Well into the 2000s, African-American residents were left to use outhouses, bathe in a contaminated river, and drink water that had turned red because of pollution from the mines. Defendants argued that they did not know about the need

for safe water in Coal Run, but Colfax's team showed that the residents had asked consistently for water for over 35 years. One county commissioner had said the only way Coal Run would ever get water was if then-President Bush dropped a bomb and struck good water.

Just before trial, as a direct result of the lawsuit, the defendants provided water to the Coal Run community. After a two-month trial in 2008, the jury in *Kennedy v. City of Zanesville* awarded the Coal Run residents \$10.8 million in compensatory damages. The massive jury award gave Colfax's team leverage to reach a settlement agreement in March 2009. The terms of the settlement included \$9.6 million in compensatory damages (which required the defendants to pay each resident as much as \$300,000), fair housing training for city officials for three years, and an affirmative marketing plan regarding the availability of community development funds.

This case provides a wake-up call to local governments that believe they can be selective about which constituents they serve and deny services to minority communities. It also demonstrates the important role played by creative and tenacious trial lawyers in putting a stop to discriminatory practices. ■