

KENNETH JAY BARNES

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EDUCATION

Georgetown University Law Center, Institute for Public Interest Representation.
LLM (1977); Graduate Fellow. Litigation involving Administrative Procedure Act, FOIA.

Yale Law School. J.D. (1976).
Honors: LSCRRC Fellowship; Yale Law School Scholarship; Represented Yale at Sutherland Cup Moot Court Competition; Semi-finalist, Thurman Arnold Prize Comp. Graduate-Professional Student Senate, President; Yale Law Journal, Associate.

Yale Graduate School. M.A. (1972); M.Phil. (1976); Ph.D. cand. (Economics).
Honors: "Distinction" on two Comprehensive Exams; Yale University Fellowship.

King's College, Cambridge University, Cambridge, England (1970-71).
Diploma in Economics (1975).

Harvard College. B.A. (1970) in Applied Mathematics, magna cum laude.

LEGAL EMPLOYMENT EXPERIENCE

Upton & Hatfield, LLP, Concord, NH (2005-present).
General civil litigation, at trial and appellate levels, in state and federal court.

New Hampshire Legal Assistance, Manchester, NH (1999-2004).
Staff Attorney and Litigation Director. Provided civil legal assistance to the poor, through individual and class actions; responsible for managing all legal work in statewide program.

Hon. Hugh H. Bownes, U.S. Court of Appeals, First Circuit, Law Clerk (1996-99).

Hon. David A. Brock, Chief Justice, N.H. Supreme Court, Law Clerk (1995-96).

New Hampshire Public Defender, Concord, NH (1991-94).
Represented indigent persons accused of crimes in district courts; jury trials in superior court.

Bronx Legal Services, New York, N.Y. (1987-91).
Director of Litigation and program-wide Appeals Counsel.
Responsible for litigation of staff; co-counseled cases, including major impact litigation; hired, trained and supervised staff; served as a resource in all program appeals.

N.Y.C. Commission on Human Rights, New York, N.Y. (1984-1987).

Director, Equal Employment & Public Accommodations Division.

U.S. Department of Justice, Washington, D.C. -- Trial Attorney.

Civil Rights Division, General Litigation Section (1980-84).

Investigated and litigated school desegregation and housing discrimination cases.

Civil Division, Federal Programs Branch (1977-80).

Represented federal agencies and officers in litigation raising a broad spectrum of legal and factual issues.

Honors: Exceptional Performance Award; A.G.'s Special Commendation Award.

ADDITIONAL INFORMATION

Bar Memberships: U.S. S.Ct.; U.S. Courts of Appeals (D.C.Cir.; 2d Cir.); U.S.

District Courts (D.D.C., S.D.N.Y., E.D.N.Y.); New York; New Hampshire.

Bar Associations: NH Bar Ass'n (Comm. on Cooperation with the Courts; Ethics Comm.;

Professionalism Comm.); Council of New York Law Associates (Board of Directors; Chair, Community Development Comm.); Washington Council of Lawyers (Board of Directors).

Board of Directors: Disabilities Rights Center.

Languages: French, Spanish (fair reading, writing, speaking).

Hobbies include tennis, golf, skiing, photography, and jazz piano.

EXAMPLES OF CASES LITIGATED

Ayotte v. Planned Parenthood, 126 S.Ct. 961 (2006) (amicus brief on behalf of 153 legislators challenging constitutionality of act requiring parental notification prior to minor's abortion).

Bio Energy v. Town of Hopkinton, 891 A.2d 509 (2005) (worked on appeal briefs in Town's effort to prevent the burning of wood containing toxic substances).

Hawkins v. Comm'r, Dep't of Health & Human Services, 2004 DNH 023 (approving consent decree implementing many inter-related improvements to State's Medicaid dental program for children) (worked on highly contested litigation; led negotiating team in lengthy mediation).

Hawkins v. NH DHHS, 147 N.H. 376 (2001) (upholding, under Right-to-Know law, public's access to computerized records showing how State implements federal Medicaid dental program; rejecting State's defense that cost would be prohibitive; holding that State must maintain public records in a manner that makes them available to the public).

U.S. v. Yonkers, 624 F. Supp. 1276 (SDNY 1985), 518 F. Supp. 191 (1981)(won a landmark decision in the first combined school/housing desegregation case ever brought by the Justice Department; as lead counsel for housing aspects of the case, examined trial witnesses including Lt. Gov. of N.Y. State, County Executive of Westchester County, Yonkers Mayor, City Councilmembers, planning experts, and HUD officials).

Canales v. Sullivan, 936 F.2d 755 (2d Cir. 1991)(case of first impression extending doctrine of equitable tolling of the statute of limitations; held that tolling may be warranted where a pro se SSI disability claimant fails to seek judicial review in a timely manner because of her mental impairment, since a "colorable due process claim" is raised in such circumstances. Court rejected argument that government misconduct is necessary to invoke equitable tolling; carved a significant exception into 1988 decision which held that mere illness did not justify tolling.)

Union of City Tenants v. Koch (challenge to City's Private Ownership Management Program, by which the City gives grants and sells in rem buildings to private landlords without ascertainable standards and without properly promulgated rules; co-counsel in NY S.Ct. and Appellate Division; testified before City Council).

Donaldson v. New York (challenge to the state court system's failure to provide counsel to indigent tenants in eviction proceedings; co-counsel with large team of lawyers).

State of New York v. Sullivan, 906 F.2d 910 (2d Cir. 1990)(struck down Social Security Administration practice of giving excessive weight to the treadmill exercise test, to the exclusion of other medical evidence, in determining disability due to ischemic heart disease; worked on appeal).

U.S. v. South Park Ind. School District (Beaumont, Tx) (evidentiary hearing to determine relief to eradicate vestiges of dual school system; plan aff'd, 699 F.2d 1291 (5th Cir. 1983)).

Davis & U.S. v. Bd. of Sch. Comm's of Mobile Cty (Ala.) (prepared for evidentiary hearing to determine whether school district had attained unitary status; wrote trial brief).

U.S. v. Arizona Fuels Corp., 638 F.2d 239 (TECA 1980); 681 F.2d 797 (1982)(enforcing oil refiner's obligations under the Department of Energy's entitlements program; won \$40 million judgment, including the largest civil penalty ever obtained by DOE's enforcement unit; also obtained contempt citation against oil refiner and its president; defended two appeals).

Bernardi v. Block (Title VII class action challenging alleged sex discrimination in Forest Service; negotiated comprehensive Consent Decree on the eve of trial).

Matthews v. Alexander, 20 EPD ¶ 30,268 (M.D.Ala. 1979)(settled this Title VII class action involving Army civilian employment).

Holy Spirit Association v. Hon. Donald M. Fraser (defended former Congressman and his staff members in a \$30 million Bivens-type action for alleged violation of the Unification Church's First Amendment rights, in connection with a Subcommittee investigation of Korean government activities in the U.S.).

Liberty Mutual Ins. Co. v. Friedman, 485 F.Supp. 695 (D.Md. 1979)(upholding OFCCP's application of the anti-discrimination provisions of Executive Order 11246 to companies which provide workers' compensation insurance to prime federal contractors).

Wamble v. Boyer (challenge, under First Amendment Establishment Clause, to HEW's expenditure of Title I funds to provide remedial reading and math services to children in parochial schools; worked on discovery, including many depositions).

School District of Beatrice v. HEW, dismissal rev'd in light of North Haven Bd. of Ed. v. Bell, 456 U.S. 512 (1982)(defended HEW's right, under Title IX, to cut off federal funds to school districts which discriminate against teachers on the basis of sex).

ACTWU v. Marshall (suit to require OSHA to publish regulations setting standards for permissible levels of cotton dust exposure in the work place; helped resolve dispute among OSHA, Labor Department, Council on Wage and Price Stability, and White House, resulting in publication of the regulations, which were aff'd, 449 U.S. 817 (1981)).

Chrysler Corp. v. Schlesinger, 565 F.2d 1172 (3d Cir. 1977), aff'd in part, rev'd in part, 441 U.S. 281 (1979)(filed amicus brief in "reverse FOIA" case).

Klaus v. CIA (obtained voluminous documents under Freedom of Information Act, despite CIA's national security objection; motion for attorneys' fees granted).

Merrill v. FOMC, 565 F.2d 778 (D.C.Cir. 1977); 443 U.S. 340 (1979)(under FOIA, successfully challenged 90-day delay by Federal Reserve Board in publicly releasing quarterly decisions regarding U.S. monetary policy, including basis of each decision, of Federal Open Market Committee; worked on appeal brief).