

Judge David L.

BAZELON CENTER
for Mental Health Law

NEWS

U.S. Supreme Court to Review Crucial Decision for Inclusion of People with Disabilities

Of 26 States that Supported Georgia Appeal, 15 Have Withdrawn

On April 21, 1999, the U. S. Supreme Court will hear a case that could determine whether parochial concerns bureaucratic inertia, neighborhood resistance and the job concerns of state hospital workers take precedence over the civil rights of people with disabilities who could otherwise live and receive needed services in the community.

The case, *Olmstead v. L.C. and E.W.*, is the court's first review of the "integration mandate" of the Americans with Disabilities Act (ADA), which bans discrimination on the basis of mental or physical disability. The mandate requires public agencies to provide services "in the most integrated setting appropriate to the needs of qualified individuals with disabilities." Advocates have used it, claiming unwarranted "segregation" in state institutions, to obtain community services for people with mental disabilities.

The case reached the Supreme Court, when the Georgia Department of Human Resources appealed a decision that it had violated the integration mandate by segregating two women with mental disabilities in a state psychiatric hospital long after the agency's treatment professionals had recommended their transfer to community care.

Both women, Lois Curtis, 31, and Elaine Wilson, 47, have mental disabilities. Each was hospitalized repeatedly over two decades, with periodic discharges to inappropriate settings--including a homeless shelter--followed by return to the hospital. Only after Atlanta Legal Aid attorney Susan Jamieson brought a lawsuit in 1995 were they moved to a small group home and enrolled in a life-skills program.

Curtis and Wilson, along with a former hospital nurse who operates the group home and a staff member of the day program Wilson attends, will be in Washington D.C. on April 20-21 for the Supreme Court argument. The women's biographies and photos, the legal brief on their behalf and various "amicus" (friend of the court) briefs are on the web site of the Bazelon Center for Mental Health Law:

<http://www.bazelon.org/olmstead.html>.

"This case could be the *Brown v. Board of Education* for people with mental disabilities, integrating mental health and human services the way *Brown* did public education," points out Ira Burnim, legal director of the Bazelon Center, who coordinated the various amicus briefs for the women. "By affirming the lower court's ruling, the court could end the shameful and still far too common practice of needlessly segregating people in institutions."

"On the other hand," Burnim added, "a reversal by the Supreme Court would encourage recalcitrant state officials, NIMBY ['not in my back yard'] opponents, and business and labor interests that profit from institutions to continue resisting the inclusion in communities of people with mental disabilities."

States Withdraw Support for Georgia's Appeal

When Georgia asked the Supreme Court to review the decision of the U.S. Court of Appeals for the 11th Circuit, 22 state attorneys general, led by Florida's, filed a supporting brief. They contended that the ruling would lead to lawsuits forcing closure of all state hospitals and disrupting states' funding of services for people with mental disabilities.

However, by the deadline for filing on Georgia's behalf, 12 of the 22 states had withdrawn their support for Georgia's appeal. The 12 are Alabama, California, Delaware, Florida, Maryland, Michigan, Nebraska, New Hampshire, Pennsylvania, South Dakota, Utah and West Virginia, plus the territory of Guam. Four new states joined the remaining 10 backing Georgia, but three of them (Minnesota, Massachusetts and Washington) have since written to the court to withdraw their support. The state of Oregon, which did not take a position earlier, has signed onto a brief supporting the integration mandate.

To refute the argument made by the remaining 11 states, Oregon's director of human resources and 57 former commissioners of mental health and directors of developmental disabilities, representing 36 states and the District of Columbia, have submitted a brief on behalf of the women. They point out that at least three quarters of the states are already reorganizing their systems to provide most services for people with mental disabilities in the community, at less than half the cost of institutional care. Therefore, their brief asserts, Georgia and the states supporting its appeal are wrong to contend that the lower courts' decision would unreasonably burden states or result in "careless deinstitutionalization."

The commissioners' brief and another, filed by 30 national and seven Georgia organizations, document the cost differential between institutional and community care. For example, the daily cost of care in the mental retardation unit at Georgia Regional Hospital-Atlanta, where the women were confined, was \$283 in 1996, compared to the daily cost for community services of \$118 to \$124. National studies cited in the briefs show a similar pattern. For example, one compared community costs, including housing, of \$60,000 per year for a discharged psychiatric patient to \$130,000 for institutional care.