



## DON'T TREAD ON THE ADA Integration NOT Segregation!

By Nadina LaSpina

We are facing right now the worst threat yet to our civil rights: the *Olmstead* case. The outcome of *Olmstead v. L.C. and E.W.* will determine if we have the right to choose whether we live in our homes or in institutions - or if the states will make that choice for us. And it will determine if the ADA protects our right to integration - or if the states are free to ignore the ADA's mandate.

### *Olmstead v. L.C. and E.W.*

Who is Olmstead? Who are L.C. and E.W.? Olmstead is "Thomas Olmstead," Commissioner of Human Resources for the State of Georgia. L.C. and E.W. are two women from Georgia (Lois Curtis and Elaine Wilson). Both have mild retardation, and, in addition, carry the labels of psychiatric diagnoses. Like all of us, L.C. and E.W. wish to live in freedom, not be incarcerated for the crime of having a disability. So when they found themselves locked up in a state hospital, they sued the state, claiming that, under ADA /Title II, they had "the right to receive services in the most integrated setting" - in their homes, in the community. In April 1998, they won their case in the Northern Georgia U.S. District Court, and when the State appealed, they won again in the 11th Circuit Court. Then the state of Georgia appealed its case to the U.S. Supreme Court.

The Supreme Court has until now refused to hear appeals of cases based on the ADA integration mandate, indicating agreement with that interpretation of the law. The first such case was *Helen L. v. DiDario* in Pennsylvania. Helen L., a woman with physical disabilities, charged that placement in a nursing home violated her rights under the ADA, since the personal assistance services she needed could and should be provided in her home, in the community. Argued and won by attorney Steve Gold in 1995, the *Helen L.* decision was a landmark victory for the disability community. Since *Helen L.*, the argument that, under the ADA, we have "the right to receive services in the most integrated setting" has been used over and over to "free our people" from nursing homes and other institutions (170 times in lawsuits across the nation, according to Steve Gold).

But the Supreme Court has agreed to hear *Olmstead v. L.C. and E.W.* Why? Because the state of Georgia has been getting the support of the whole nation. State legislatures, governors, mayors, city and county officials have banded together to oppose our right to integration and to attempt to weaken our ADA. Two briefs have been filed arguing the states' right to decide what's best for us. One brief is signed by the Attorneys General of various states. The other by an all-inclusive list of organizations representing states, cities and counties. The *National Conference of State Legislatures*, the *National Governors Association*, the *U.S. Conference of Mayors*, the *National League of Cities* are some of the organizations on that list. They're all agreeing with the *Olmstead* position: the ADA was never "intended to cover institutionalization or in any way affect the pace with which states provide community care." "The state's choice of setting for an individual requiring public care," the *Olmstead*'s petition reads, "depends on the individual's mental condition, on the fact and extent of his dangerousness and inability to care for himself, and on fiscal and administrative considerations."

Lucy Gwin, editor of *Mouth* magazine says: "Here's what I believe. A who's who of vital state and local officials has sent a message not just to the Court but to us. Let's read it for what it is: They can't stand us running around loose. Their bigotry is usually polite, unspoken. Now it's out in the open. Ugly." Lucy is famous for her

bluntness. But her observation is the same one that Congress made when the ADA was passed. In *Sec.2, Findings of Congress*, it is stated that the ADA is necessary because "historically, society has tended to isolate and segregate individuals with disabilities." How can the states now say the ADA allows them to lock us up?

No doubt about it, our community is under attack, and a major mobilization is under way. The alerts have been circulating, handed out at meetings, sent through e-mail and snail mail, posted on webpages and bulletin boards. *Mouth*, "the Voice of the Disability Nation," has published two special issues dealing entirely with the *Olmstead* threat. ADAPT activists have been hunting down their states' attorneys general, demonstrating and sitting in their offices, demanding they take their names off the amicus brief. And quite a few attorneys general have buckled down under the intense pressure. As of today, 18 out of 26 attorneys general have taken their names off the brief. By the way, NYS Attorney General Eliot Spitzer never signed on.

Our community has also been filing *amici curiae* briefs. ADAPT, NCIL and TASH got together and filed one brief. In it we read: "Public entities have segregated people in institutions because historically that was the way people with disabilities were kept out of sight and away from the public.... [The states] want to reverse what Congress mandated [in the ADA] ... Rather than complying with the ADA and offering services and programs in integrated settings, Petitioners [Olmstead and the state of Georgia] attempt to eviscerate the ADA." Briefs have also been filed by organizations of psychiatric survivors and of mental health consumers, and by self-advocates and people-first organizations (people with mental retardation).

People with different disabilities have different needs and we have in the past all been guilty of putting our needs ahead of others' needs. Some of us with physical disabilities may still hold negative and stereotypical ideas about those of us with mental disabilities, and vice versa. But the threat this case poses to our civil rights has brought us all together. We know that if L.C. and E.W. lose their case, we all lose. No matter what our disability, no matter what label we do or do not carry today, we lose. Even those who don't think they could ever be institutionalized lose, if the ADA's integration mandate gets thrown out the window. This is one decision that will have repercussions in all areas where we now enjoy the ADA's protection. Bob Kafka of ADAPT says: "This decision will affect integration in housing, transportation, employment, you name it."

No doubt about it, we are under attack, and we're realizing we all better stick together. This may be wishful thinking on my part, but I believe we are coming to understand each other and each other's needs a little bit better because of this fight. It's good to see those of us with physical disabilities remembering that we're not just talking about attendant services but about all types of support services; and, remembering, also, the long battle against forced drugging being fought by psychiatric survivors, and therefore insisting that all services be freely chosen and never be forced upon us or be the price to pay for deinstitutionalization. It's good to see excerpts from *Dendron* (the magazine of psychiatric survivors) reprinted in *Mouth*, and *Justice for All* alerts on the *Mad Nation* website. It's good to see the disability rights movement, the psychiatric survivor movement and the self-advocates movement joining forces as never before and organizing for action - as one movement, as one community.

The date for the opening of the arguments is April 21st . A decision on the case is not anticipated until June. Our community is planning two events. An all-night candlelight vigil will be held at the steps of the Supreme Court starting at 8:00 pm on April 20th . We ask everyone who can get to Washington and has the stamina to stay up all night to be there. Then, on May 12th, at noon, again at the Supreme Court steps, there will be the biggest disability rights rally ever. ADAPT, Mad Nation, and Self Advocates Becoming Empowered will be in DC at that time. Thousands of disability rights activists from all over the nation will join them. Every disability rights organization will be represented. DIA is planning to have as strong a presence there as possible.

"Don't Tread on the ADA" is what we're calling the May 12th Rally. Our battle cry is "Integration NOT Segregation!" Echoing the words of Stephanie Thomas, one of our ADAPT leaders, we say: Lets make sure that *Olmstead* becomes the disability movement's *Brown v. Board of Education*, where school integration was determined to be the law of the land! Let's not let *Olmstead* be our *Dred Scott*, in which the Supreme Court ruled a slave could not sue for his freedom!

Let's all get to D.C. on May 12th and let the Supreme Court Justices know that we will never give up what we have fought so hard to attain: our freedom and our civil rights.

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Disabled In Action

ADAPT-NY