

**THE
NIMBY
REPORT**



***THE OLMSTEAD FACTOR:
INTEGRATING HOUSING
FOR PEOPLE WITH
DISABILITIES***

Spring 2002

**NATIONAL LOW INCOME
HOUSING COALITION/LIHIS**

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From The Editor

Jaimie A. Ross

The Not In My Back Yard syndrome, as used in this report, is opposition to siting affordable housing within a particular neighborhood. This community opposition is often bottomed on fear and ignorance, the sort of fear and ignorance that breeds discrimination against persons based upon their disabilities.

Olmstead, a recent United States Supreme Court decision, requires the integration of persons with disabilities into residential neighborhood settings when there is no medical need for institutionalization. But where will people with disabilities live once released from institutions? This raises a number of issues, including that of NIMBYism: community opposition to siting housing for persons with disabilities within the traditional residential neighborhood.

The discussion begins with a comprehensive overview of the *Olmstead* decision written by Michael Allen of the Bazelon Center for Mental Health Law. In his article, he explains the legal framework of *Olmstead* and likens its impact for persons with disabilities to *Brown vs. Board of Education*, the landmark civil rights case which ended the legal segregation of races in public schools. Mr. Allen also explains the substantial and long-term shift in policies needed to make supportive housing for persons with disabilities a national reality.

Ann O'Hara from the Technical Assistance Collaborative and freelance writer Nancy Ferris each cover the status of *Olmstead* implementation throughout the country. The results are mixed. While some states have housing initiatives targeted to persons with disabilities, many do not. Ms. O'Hara and Ms. Ferris survey these efforts and provide an explanation of the barriers and challenges to implementing the *Olmstead* decision, as well as positive recommendations for meeting the *Olmstead* challenge.

A local case study is provided by Gladys Schneider of the Habitat for Humanity of Lee County, Florida. She describes the partnership between the Florida Housing Coalition and the Florida Developmental Disabilities Council formed to develop housing for persons with disabilities in a fully integrated setting. This partnership has been enabling community-based nonprofits to move persons with disabilities into single-family houses and into full membership in the "mainstream" residential lifestyle, avoiding NIMBYism completely by providing housing opportunities that are virtually identical to those of the community at large.

But the road to inclusive housing for persons with disabilities looks long and steep. Reed Colfax of the Washing-

ton Lawyers' Committee for Civil Rights and Urban Affairs recounts the story of "Zeke's House," a single family house in a Washington, D.C., residential neighborhood that is home to six formerly homeless men with mental disabilities. They have an uncertain future in their new home as neighborhood opposition has led to a protracted legal battle.

Disability Rights activist Darrell Price of Access Living of Metropolitan Chicago, in an interview with The NIMBY Report, asserts that the road is so steep for persons with disabilities that they must overcome several preliminary obstacles before they ever get to the problem of NIMBYism. First they must overcome the failure of government to adequately budget needed monies. Next, they must overcome the opposition of those with financial interests in the institutions that stand to lose money when residents leave. And finally, they must overcome a paternalistic belief that it is in the best interest of persons with disabilities to have special needs housing in the form of services tied to housing, rather than to the person with disabilities.

The funding priorities set forth in state and local consolidated plans and in the local preferences of public housing authorities directly impact the implementation of *Olmstead*. Sheila Crowley of the National Low Income Housing Coalition provides us with advocacy tools in her article on addressing *Olmstead* at the local level through the consolidated plan process and the local preferences of public housing authorities.

It is our hope that this comprehensive coverage of *Olmstead* in the Spring 2002 edition of the NIMBY Report will bolster your efforts to address NIMBYism as you advocate for integrated and permanent supportive housing for persons with disabilities.

JAIMIE A. ROSS

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The *Olmstead* Decision: The Legal Framework

Michael Allen

On June 22, 1999, the United States Supreme Court announced its decision in the case titled *Olmstead v. L.C.*, and set in motion powerful forces that may reshape the way society thinks about housing for people with disabilities. This case, in which the Court held that the unnecessary institutionalization of people with disabilities is a form of discrimination prohibited by the Americans with Disabilities Act (ADA), has been hailed by some advocates as the equivalent of *Brown v. Board of Education*. To understand why, we need to review this nation's history of "housing" people with disabilities.

For the better part of a century, the official policy of the United States was to segregate people with disabilities from "normal" society.¹ Beginning in the late 1950s and early 1960s, a national policy of community living developed, inspired in part by notions of civil rights and human decency, and driven by concern about the huge costs of warehousing people in large institutions. The core principle of this "normalization" movement was that individuals with disabilities are entitled to the cultural opportunities, surroundings, experiences, risks, and associations enjoyed by people without disabilities. In housing, normalization means living in a typical-size home in a residential neighborhood that offers opportunities for social integration and interaction.

Despite this revolution in thinking, the legal protections to ensure equal housing opportunity were slow to develop. Congress passed the Rehabilitation Act in 1973, decreeing that recipients of federal funds could not discriminate on the basis of disability, but few people understood how these protections should be applied to the housing market. The U.S. Department of Housing and Urban Development (HUD) did not even issue the regulations required to implement the law until 1988. In the meantime, discriminatory policies remained firmly in place in public and subsidized housing.²

In the private and public housing sectors, housing discrimination against people with disabilities remains a major national problem that closes off large segments of the housing market. The persistent problem of NIMBYism ("Not In My Back Yard") has dramatically limited the number of units of housing available. Housing choice for people with disabilities has been "severely limited, often regardless of the individual's financial resources. In many states, people with mental disabilities have been, and continue to be, restricted to the least attractive parts of a community—to neighborhoods where housing is relatively inexpensive and often unsafe."³

¹ See Timothy M. Cook, *The Americans with Disabilities Act: The Move to Integration*, 64 TEMP. L. REV. 393, 401 (1991) (noting that people with severe disabilities were considered, in the view of one state agency, "a defect...[that] wounds our citizenry a thousand times more than any plague." See also *City of Cleburne v. Cleburne Living Center*, 473 U.S. 423, 460-63 (1985) (Marshall, J., concurring in part and dissenting in part) (noting that, as a result of Social Darwinism and other forces which led many experts to consider people with mental disabilities as menaces to society, "[a] regime of state-mandated segregation and degradation soon emerged that in its virulence and bigotry rivaled, and indeed paralleled, the worst excesses of Jim Crow.")

² One rather typical restriction imposed by public housing authorities (PHAs) was the requirement that people with disabilities demonstrate that they were "capable of independent living." As that policy was implemented in Rochester, New York, for example, it disqualified people who relied upon personal care attendants, visiting nurses and chore aides from living in public housing. This policy was not struck down until 1990,

when advocates brought suit under the Rehabilitation Act and the Fair Housing Act. See *Cason v. Rochester Housing Authority*, 748 F.Supp. 1002 (W.D.N.Y. 1990). Another, more recent example, is federal legislation in 1992 that permits PHAs and private owners of subsidized housing to designate certain buildings as "elderly only," and exclude people with disabilities. In the past ten years, these policies have resulted in the loss of over 300,000 units of the nation's most affordable housing for people with disabilities. See "What's Wrong With This Picture? An Updated on the Impact of Elderly Only Housing Policies on People with Disabilities," *Opening Doors*, Issue 15, September 2001, available at <http://www.tacinc.org/housingframe.html>.

³ Arlene S. Kanter, *A Home of One's Own: The Fair Housing Amendments Act of 1988 and Housing Discrimination Against People with Mental Disabilities*, 43 AM. U. L. REV. 925, 993 (1994), citing Nancy K. Rhoden, *The Limits of Liberty: Deinstitutionalization, Homelessness, and Libertarian Theory*, 31 EMORY L.J. 375, 388 (1982).



The *Olmstead* Decision

The *Olmstead* case involved two women who were unnecessarily detained in a state psychiatric hospital long after their treating professionals determined they were prepared to live in the community. When the state of Georgia refused to move them out of the institution, citing the lack of community-based housing and supports, the women sued under the Americans with Disabilities Act (ADA). In determining that the ADA required such housing and supports, the Supreme Court said: “[I]nstitutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life. . . . [C]onfinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment.”

The same principles apply not only to people who are currently institutionalized unnecessarily, but also to people at risk of unnecessary institutionalization because of the lack of community-based housing and supportive services.

The court ruled that integration is fundamental to the purposes of the ADA, and that states may be required to provide community-based services rather than institutional placements for individuals with disabilities. The decision has far-ranging consequences for how states provide housing for people with all kinds of disabilities who are currently institutionalized, or at risk of being institutionalized.

The Meaning of *Olmstead* for Housing Policy for People with Disabilities

While the *Olmstead* case involved a state psychiatric hospital, its principles apply equally to any other institution, like a residential school or intermediate care facility for people with mental retardation, a nursing home, a homeless shelter (to the extent that a state or local government unduly relied upon such shelters to house people with disabilities), treatment programs or a group home.

Poverty is an all-too-frequent corollary with disability in the United States. Nearly four million people with disabilities depend on Supplemental Security Income (SSI)

disability benefits for their sole source of income. Unless supplemented by states, SSI payments amount to only \$545 per month, not enough to afford a modest efficiency or one-bedroom unit in any housing market in the country.⁴ Because they tend to be poor, people with disabilities often have to rely heavily on housing that is subsidized by federal and state governments. The *Olmstead* case, therefore, constitutes a special call on these resources to bring people with disabilities into the American mainstream.

The underlying principles declared in *Olmstead* will require states to think carefully about how to provide community-based housing and supports. Many will fall back on the familiar (and flawed) assumption that group homes or other congregate housing models are most appropriate for people returning to the community. While some people with disabilities may need the intensive services and supports available in such a setting, many more are ready for

(and would benefit more from) more integrated settings, such as independent or supportive housing in apartment buildings that house people with and without disabilities.

While new models have evolved to provide these same services in more integrated settings, states have been slow to embrace them, preferring to

rely on familiar policies and existing procurement practices that support institutional type settings. Over the past ten years, supportive housing has emerged as a promising alternative to group homes. Both forms of housing are permanent rather than transitional. Supportive housing is linked to a range of voluntary support services that enable people with disabilities, formerly homeless people and others to live independently and to become integrated into the community. Unlike group homes, which often have institutional qualities, independent and supportive housing look and operate like other rental housing. Research has demonstrated the success of these models, in terms of increasing housing and employment stability and in decreasing reliance on over-

(continued on next page)

⁴ See *Priced Out in 2000: The Crisis Continues*, by Technical Assistance Collaborative and Consortium for Citizens with Disabilities Housing Task Force (June 2001), available at <http://www.c-c-d.org/poin2000.pdf>



burdened public health facilities and costly institutional care.

Life After *Olmstead*

The search for truly integrated housing models is driven both by concerns over legal liability, and by a growing body of research demonstrating the advantage of such alternatives. Liability may arise under the ADA (or the Fair Housing Act). Disability and civil rights advocates have mobilized in virtually every state to press for better efforts to prevent unnecessary institutionalization, including comprehensive planning and the dedication of new resources to *Olmstead* implementation.

In the nearly three years since the Supreme Court's decision, 40 states and the District of Columbia have established task forces, commissions or state agency work groups to assess current long-term care systems. Some of these are developing housing plans to support people in integrated settings in the community, but few are very explicit about the steps they will take to bring more housing on-line. A handful of states—including Mississippi, Missouri, Ohio and Texas—stand out because their plans “contain a clear vision for systems change, specific strategies and goals, agencies responsible for each strategy, timelines and budgets.”⁵

The litigation that has taken place in the wake of the *Olmstead* decision has focused not on housing, but on core concerns such as freeing people from institutions and pro-

viding nondiscriminatory benefits under Medicaid and other similar programs. Without adequate housing, however, states will soon find they cannot meet the *Olmstead* mandate to avoid unnecessary institutionalization. These states have already been sued on these broader claims, and all

states will face this potential liability as more and more people seek to move from state hospitals, nursing homes and other institutions.

In the immediate future, it is more likely that *Olmstead* will be used to influence housing policy decisions at the federal, state and local level rather than as a litigation tool. At the federal level, the Bush Administration issued an Executive Order 13217 in June 2001, requiring HUD and other federal agencies to “evaluate the policies, programs, statutes, and regulations of their respective agencies to determine whether any should be revised or modified to improve the availability” of housing for people with disabilities, and to assist states in meeting their *Olmstead* obligations. While HUD's initial efforts in this direction have been modest,⁶ there will be continu-

ing pressure on the agency to devote substantial resources from its large housing programs to help states fulfill the requirements of *Olmstead*.

State and local recipients of federal Community Development Block Grant and HOME funding are now re-

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⁵ See *The States' Response to The Olmstead Decision: A Work in Progress*, published by the National Council of State Legislatures in January 2002. Full text of the report is available at <http://www.ncsl.org/programs/health/forum/olmsreport.htm#findingsbot>

⁶ See *Delivering on the Promise: Preliminary Report of Federal Agencies' Actions to Eliminate Barriers and Promote Community Integration*, Presented to the President of the United States, December 21, 2001. Available at <http://www.hhs.gov/newfreedom/prelim/>



quired to:

(1) make affirmative outreach to disability advocates in the development of the annual Consolidated Plan, which prioritizes the use of federal funds;

(2) evaluate whether people with disabilities actually participated in the development of the Plan; and

(3) determine whether the uses of federal funds match the needs of people with disabilities identified in the Plan.

Conclusion

While laying out clearly what state obligations are under the *Olmstead* decision, the Supreme Court did not set any particular deadline for compliance. It silently adopted the remedy it granted in *Brown v. Board of Education*, that is, that its decision should be carried out “with all deliberate speed.” Like *Brown*, the remedy of *Olmstead*, at least with respect to housing, is more likely to be achieved over a period of many years, rather than overnight. While it is a *necessary* condition to fulfilling the ADA’s promise of community integration, it is not a *sufficient* condition. Disability and housing advocates will have to work together, and use many other tools, in order to achieve this promised land.

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