

“THE MOST INTEGRATED SETTING
APPROPRIATE . . .”

A Nevada Legal Services, Inc. Presentation
Alex Cherup, Esq. and Christena Georgas-Burns, Esq.



Offices in Las Vegas, Reno,
Carson City, and Elko

WHO WE ARE

- NLS is a statewide, nonprofit, public interest law firm funded by grants from the Legal Services Corporation, the Nevada Law Foundation, the Nevada Attorney General's Office and District Court filing fees, among other sources of funding. Equal Language Access.
- Nevada Legal Services provides free legal services to low-income Nevadans. To be eligible for assistance through Nevada Legal Services you must qualify as low income under the federal government poverty standards or meet our other grant based qualifications.



SERVICES

- We provide a range of services, from telephone advice to representation in court. The level of representation depends on the type of problem, the merits of the case, and staff availability.
- We also have a variety of workshops, educational seminars, Law Fairs and Ask A Lawyer events



And today . . .

. . . We are going to talk about
disability rights as civil rights.

DISABILITY RIGHTS
ARE CIVIL RIGHTS



HISTORY,
FEDERAL LAW,
REGULATIONS
&
A SUPREME COURT
DECISION



UNNECESSARY
SEGREGATION IS
DISCRIMINATION BASED
ON DISABILITY



DISABILITY HISTORY IS AMERICAN HISTORY



Section 504 of the Rehabilitation Act of 1973

“No otherwise qualified handicapped individual in the United States shall solely on the basis of his handicap, be excluded from the participation, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance”

ALL PERSONS WITH DISABILITIES ...

**The Fed. Govt. is trying to STEAL our Civil Rights!!
DEMONSTRATE!
to Demand Signing of 504 Regulations**

SECTION 504 OF THE REHAB ACT OF 1973 WAS DEVELOPED BY CONGRESS TO PROTECT THE RIGHTS OF ALL PERSONS WITH DISABILITIES IN ANY PROGRAM RECEIVING FEDERAL FUNDS. FOR FOUR YEARS WE HAVE WAITED FOR REGULATIONS TO BE SIGNED. WE CAN WAIT NO LONGER. OUR RIGHTS TO EDUCATION, JOBS, ACCESSIBLE BUILDINGS, DAY CARE, MEDICAL SERVICES, HOUSING, TRANSPORTATION, ETC. ARE BEING WITHHELD BY THE CARTER ADMINISTRATION.

WHO SHOULD JOIN US? ALL PERSONS WITH DISABILITIES AND SUPPORTERS OF DISABLED RIGHTS.

Tues. April 5
ALL DAY FROM 10 AM, RALLY AT NOON

**HEW Office 50 Fulton St., S.F.
United Nations Plaza, (Off BART - Civic Center**

504 Emergency Coalition 2139 SELLERSHIP AVE., BERKELEY 94704
PHONE KITTIE OR JONATHAN: SALES 841-3790 RIGHTS 429-2284

INTERPRETER FOR PERSONS WHO ARE DEAF WILL BE PROVIDED.

Courtesy Ken Stein



- Longest Sit-In in American history because the regulations were not promulgated.
- Lasted 28 days and took place in San Francisco.
- Sit-In began April 5, 1977.



“Historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem.”





THE AMERICANS WITH DISABILITIES ACT

31st Anniversary on July 26, 2021

- The Americans with Disabilities Act was signed by President George H. W. Bush on July 26, 1990.
- A Civil Rights accomplishment for people with disabilities granting equal opportunity. The law creates the standards for:
 - Title I: Access to employment through reasonable accommodations in the workplace.
 - Title II: Public Accommodations: Access to programs, activities and services that are run by the local and state governments.
 - Title III: Accessibility of commercial spaces and private places within the public.
 - Title IV: Telecommunications for telephone and Internet.



“Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”

42 U.S.C. Section 12132.7



THE INTEGRATION MANDATE

- The regulations of the *Americans with Disabilities Act*.
 - 8 C.F.R. § 35.130(d)
- “A public entity shall administer services, programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.”
- Important Concepts:
 - “A public entity”
 - Receives State and local fund.
 - Section 504 of the Rehabilitation Act applies to those entities that receive federal funds.
 - “The most integrated setting”



THE MOST INTEGRATED SETTING

- Enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible . . .”
 - 28 C.F.R. Pt. 35, App. A (2010) (addressing § 35.130).



SEGREGATED SETTINGS

- Settings that may have the following characteristics:
 - Living arrangements for primarily individuals with disabilities.
 - Employment and day programs that are offered to individuals with disabilities.
 - A group setting for individuals with disabilities that limits choice and privacy.



THE LAW AND THE DECISION

○ THE FEDERAL LAW.

- Title II of the *Americans with Disabilities Act (ADA)*
- Most notably, the “**Integration Mandate**” of the *ADA*.
- Based on the regulations from Section 504 of the *Rehabilitation Act*

○ THE DECISION:

- *Olmstead v. L.C.* (119 S. Ct. 2176).
- Decision authored by Justice Ginsburg in 1999.
- Referred to as the *Brown v. Board of Education of Topeka County*.
- Has been applied to a variety of different programs funded by state and federal government.
- Ultimately, right to community based supports rather than unnecessary segregated settings.



REMEMBER . . .

OLMSTEAD IS A SUPREME COURT
CASE NOT A LAW.

THERE IS NO “OLMSTEAD ACT”



OLMSTEAD V. L.C. (119 S. CT. 2176).

SUPREME COURT OF THE UNITED STATES

No. 98-536

TOMMY OLMSTEAD, COMMISSIONER, GEORGIA
DEPARTMENT OF HUMAN RESOURCES, ET AL.,
PETITIONERS v. L. C., BY JONATHAN ZIMRING,
GUARDIAN AD LITEM AND NEXT FRIEND, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH CIRCUIT

[June 22, 1999]

JUSTICE GINSBURG announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II, and III-A, and an opinion with respect to Part III-B, in which O'CONNOR, SOUTER, and BREYER, JJ., joined.

This case concerns the proper construction of the anti-

- Olmstead v. L.C.: A Supreme Court case that increased integration in 1999.
- Interprets Title II of the ADA to require public entities to provide a community based services when: "(a) such services are appropriate; (b) the affected persons do not oppose community-based treatment; and (c) community-based services can be reasonably accommodated taking into account the resources available to the entity and the needs of others who are receiving disability services from the entity."
- Ultimately, unnecessary segregation by public entities violates the ADA.

Plaintiffs
Elaine
Wilson
(left) &
Lois Curtis
(right)



THE CASE BEGAN WHEN MS.
CURTIS CALLED A LAWYER AND
SAID “I WANT TO GET OUT!”
FROM AN INSTITUTION.



Sue Jamieson first meeting Lois Curtis

Film footage donated by Peter Grosz to the Atlanta Legal Aid Society, Inc. (c)

Peter Grosz and Atlanta Legal Aid Society, Inc.



OLMSTEAD V. L.C. (119 S. CT. 2176). AT 600-601

- Supreme Court identified:
 - “Institutional 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.”
 - “Confinement 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.”





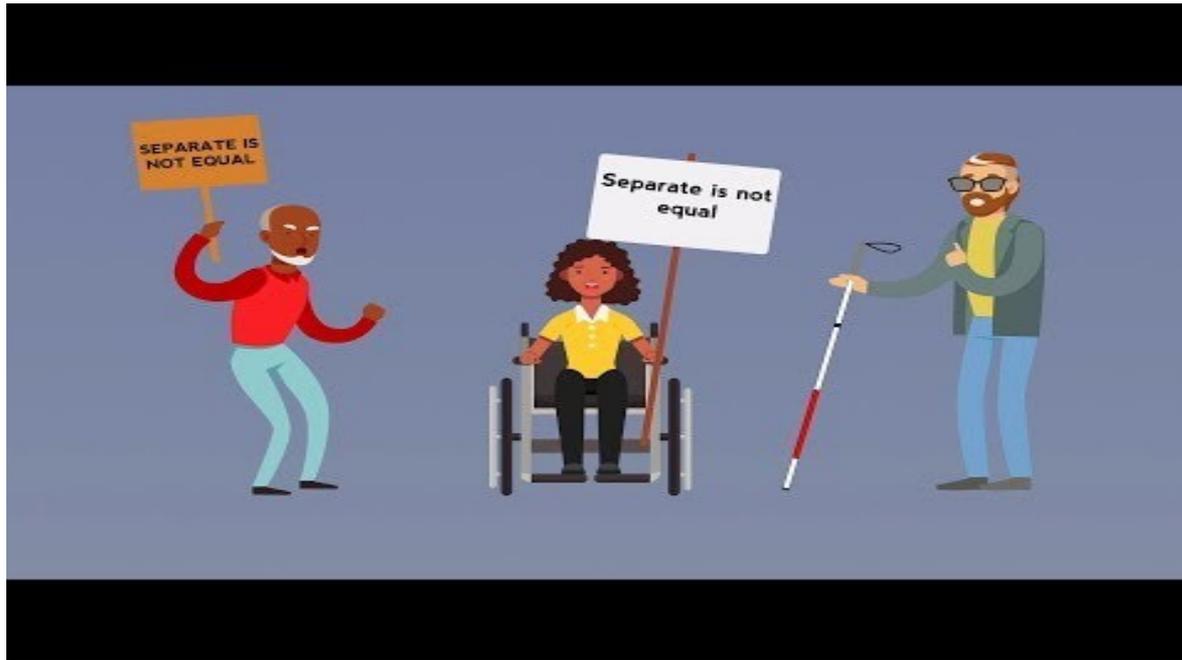
Lois Curtis's Story from One Law For All: The Story of the Atlanta Legal Aid Society
A film by John Duke and David H. Duke



OLMSTEAD V. L.C. (119 S. CT. 2176).

- The breakdown:
 - **Setting is Appropriate:**
 - Need not be an objective assessment by the Public Entity and a person has the ability to identify their own evidence.
 - **Persons do not Agree:**
 - Individuals must be given an “informed choice.”
 - Public entity should take steps to educate, provide visits and options to talk to individuals with disabilities in integrated settings.
 - Public entity should address concerns of individual.
 - **Reasonably Accommodated and the needs of others:**
 - “Fundamental Alteration” of the public entity’s system may excuse the public entity.
 - Burden is on the public entity to prove “that, in the allocation of available resources, immediate relief for plaintiffs would be inequitable, given the responsibility the State [or local government] has taken for the care and treatment of a large and diverse population of persons with [] disabilities.” at page 604.
 - Generally not just budget shortages.
 - See *Statement of the DOJ on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v L.C.*





OLMSTEAD PLAN

- Like all states, our state has an Olmstead Plan.
 - Has “specific and reasonable timeframes and measurable goals for which the public entity may be held accountable and there must be funding to support the plan.”
 - The plan should include commitments for each group of persons who are unnecessarily segregated, such as individuals residing in facilities for individuals with developmental disabilities, psychiatric hospitals, nursing homes and board and care homes, or individuals spending their days in sheltered workshops or segregated day programs.”
 - The Plan “must have demonstrated success in actually moving individuals to integrated settings in accordance with the plan.”

Department of Justice: Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v. L.C.:
https://www.ada.gov/olmstead/q&a_olmstead.htm#_ftnref19



OLMSTEAD V. L.C. (119 S. CT. 2176).

Initial Application

- Initially, the Department of Justice (DOJ) applied the decision to residential settings, like an institution, Intermediate Care Facility (ICF) or nursing home.

Examples of the Application of the Olmstead Decision.

- As time has progressed, the DOJ has expanded to non residential settings:
 - A sheltered workshop
 - Day programs
 - Public schools
 - Psychiatric hospitals
 - Prisons



ADDITIONAL RESOURCES:

- Department of Justice: Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.*: https://www.ada.gov/olmstead/q&a_olmstead.htm#_ftnref19
- ADA.gov: *Olmstead*: Community Integration for Everyone:
 - Be sure to review what is new.
 - <https://www.ada.gov/olmstead/>
- ADA.gov: Faces of *Olmstead*:
 - “The personal stories of a few of the thousands of people whose lives have been improved by the *Olmstead* decision and the Department's *Olmstead* enforcement work.
 - https://www.ada.gov/olmstead/faces_of_olmstead.htm
- ADA.gov: Filing an *Olmstead* Complaint:
 - “You can file an Americans with Disabilities Act complaint, including any complaint alleging *Olmstead* violations, alleging disability discrimination against a State or local government by mail or email. To learn more about filing an ADA complaint, visit www.ada.gov/filing_complaint.htm”
- Bazelon Center for Mental Health:
 - *I Am Olmstead*: <https://secureservercdn.net/198.71.233.254/d25.2ac.myftpupload.com/wp-content/uploads/2019/07/Olmstead-Narratives-Combined-2-1.pdf>
- Disability Integration Project at the Atlanta Legal Aid Society, Inc.
 - *Olmstead* Rights: <https://www.olmsteadrights.org/about-olmstead/>



OLMSTEAD V. L.C. (119 S. CT. 2176)

AND VIOLATIONS

Potential Actions

- A lawsuit can be filed by an individual based on Title II of the ADA. Unnecessary segregation is discrimination based on disability.
- Can contact the Protection and Advocacy Center (Nevada Disability Advocacy and Law Center)

Complaint with Department of Justice (DOJ)

- A complaint can be filed with the Department of Justice at ADA.gov.
- SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE STATE OF NEVADA EX REL. NEVADA DEPARTMENT OF CORRECTIONS DJ NO. 204-46-176
 - Feb. 11, 2021





U.S. Department of Justice
Civil Rights Division

Special Litigation Section
4 Constitution Square – 150 M Street, NE
Washington, DC 20002
Telephone (202) 514-0212

January 29, 2021

The Civil Rights Division of the U.S. Department of Justice is investigating whether the State of Nevada unnecessarily relies on institutions (such as psychiatric hospitals and residential facilities) to treat children with behavioral health conditions.

The Department is investigating this matter under Title II of the Americans with Disabilities Act and the United States Supreme Court's decision in *Olmstead v. L.C.* (1999).

If you have information about the State of Nevada's behavioral health system for children that you would like to provide to the Department, please contact Outreach Coordinator Sarah Louise Malks, at 202-598-5344 or Sarah.Malks@usdoj.gov.

CURRENT DEPARTMENT OF JUSTICE INVESTIGATION

“The Civil Rights Division of the U.S. Department of Justice is investigating whether the State of Nevada unnecessarily relies on intuitions (such as psychiatric hospitals and residential facilities) to treat children with behavioral health conditions.”

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THE END
PLEASE FEEL FREE TO ASK QUESTIONS



Nevada Legal Services

Las Vegas, NV

(702) 386-0404

Reno, NV

(775) 284-3491

