

OLMSTEAD ALERT #1
National Long Term Care Ombudsman Resource Center
Prepared by Hollis Turnham, Esquire
February 2001

Why is *Olmstead* so Important?

Long Term Care Ombudsman programs (LTCOP) have new tools to respond to the most frequent complaint of nursing home residents and their families, AI do not want to be here. I want to go home.≡ The *Olmstead* decision and resulting guidance from DHHS construct a federal legal foundation for the creation of nursing home alternatives, a process for building an expanded non-institutional service system, and new advocacy avenues to serve nursing home residents and other long term care consumers. The decision supplies LTCOP programs, through a state initiated *Olmstead* planning process, a forum to work with consumers and other advocates to create a long term care system that works.

For some persons with disabilities and their advocates, the ADA is one more piece of critically important civil rights legislation and the *Olmstead* decision is comparable to the 1954 landmark Supreme Court case that declared segregated public education unconstitutional.

A... in a real sense, the [*Olmstead*] decision can be thought of as a *Brown v Board of Education* for institutionalized persons with disabilities. In *Brown*, the Supreme Court determined that legal segregation by race violated the U.S. Constitution, and ordered the integration of schools. Similarly, in *Olmstead* the Court declared unnecessary institutional segregation to be unlawful discrimination and ordered integration. Writing for the Court, Justice Ginsberg articulated what is essentially an Aall deliberate speed≡ standard (i.e., the *Brown* standard) for eliminating inappropriate institutionalization from the design of state programs. The decision also recognizes a series of important interests that must be taken into account in measuring what constitutes adequate state movement and underscores the need to balance competing interests in a manner that takes the needs of all persons with disabilities into account.≡ Sara Rosenbaum, A*Olmstead v. L.C.: Implications for Older Persons with Mental and Physical Disabilities*,≡ November, 2000, page 4-5.

While not based on constitutional guarantees, *Olmstead*, like *Brown*, says that governmental separation of people or different opportunities for services based on a factor beyond individual control (race and disability) does not conform to the values of this country.

Every Ombudsman has heard resident after resident complain of the isolation and feelings of abandonment associated with living in isolated facilities. Many residents and families have us for better. The *Olmstead* decision, built on the ADA, offers an historic opportunity to integrate facility-based long term care with home-based long term care creating a rational system of real consumer choices. The opportunity is too important to miss.