Spectrum E News

Video Blog
by Thomas F. Coleman
April 26, 2021

Department of Justice Investigation of Alameda County Has Implications for Conservatorships

THE UNITED STATES DEPARTMENT of JUSTICE

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JUSTICE NEWS

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE — Thursday, April 22, 2021

Justice Department Finds that Alameda County, California, Violates the Americans with Disabilities Act and the U.S. Constitution

The Justice Department concluded today, based upon a thorough investigation, that there is reasonable cause to believe that Alameda County is violating the Americans with Disabilities Act (ADA) in its provision of mental health services, and that conditions and practices at the county's Santa Rita Jail violate the U.S. Constitution and the ADA.

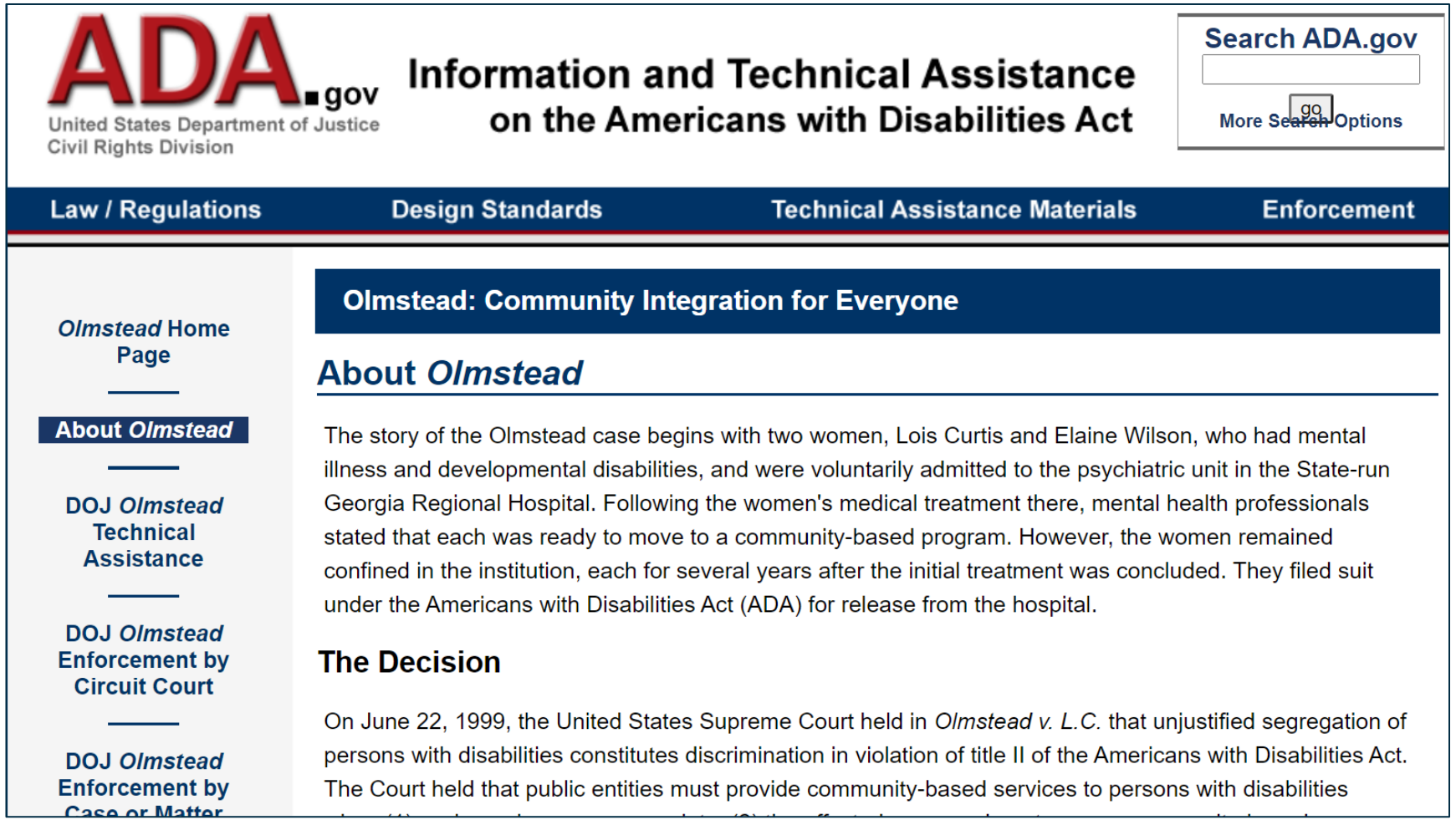
The department's investigation found that the county fails to provide services to qualified individuals with mental health disabilities in the most integrated setting appropriate to their needs. Instead, it unnecessarily institutionalizes them at John George Psychiatric Hospital and other facilities. In *Olmstead v. L.C.*, the U.S. Supreme Court held that Title II of the ADA requires public entities to provide community-based services to persons with disabilities when appropriate services can reasonably be provided to individuals who want them. However, on any given day in Alameda County, hundreds of people are institutionalized for lengthy stays at one of several large, locked psychiatric facilities in the county or are hospitalized at John George Psychiatric Hospital, while others are at serious risk of admission to these psychiatric institutions because of

DOJ investigation found reasonable cause to believe that Alameda County is violating the "integration mandate" of the ADA.

This finding is based on the county's practices of institutionalizing mentally ill jail inmates rather than finding appropriate treatments that would avoid such confinement.

Similar reasoning applies to the way that state courts and county agencies are not seriously exploring less restrictive alternatives to conservatorship for adults with cognitive disabilities.

DOJ Press Release



The integration mandate of the ADA is based on a1999 Supreme Court decision. *Olmstead v. L.S.*

Information about the *Olmstead* ruling is found at ada.gov/olmstead

Olmstead

University of St. Thomas Journal of Law and Public Policy

Volume 13 | Issue 2 Article 4

March 2019

Guardianship: A Violation of the American with Disabilities Act and What We Can Do About It

Alexus Anderson

This journal discusses how the ADA and the integration mandate of *Olmstead* should apply to adult guardianship proceedings, which are called conservatorships in California.

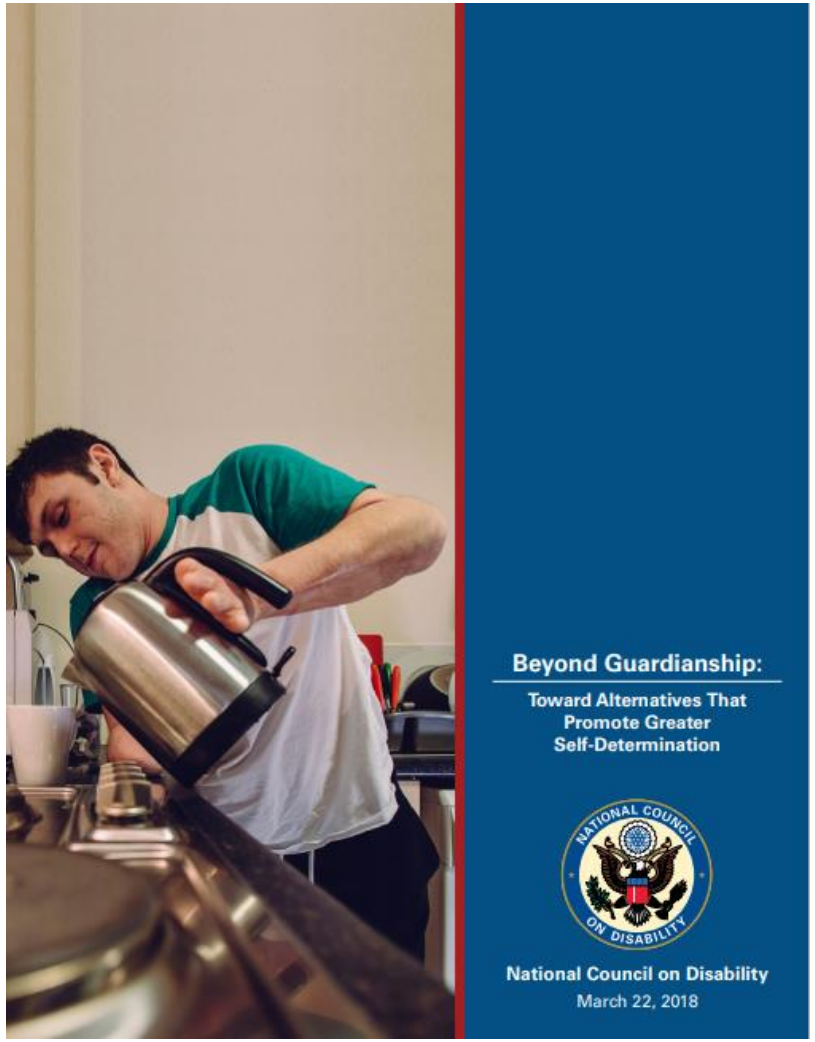
V. GUARDIANSHIP AND THE INTERSECTION WITH THE AMERICANS WITH DISABILITIES ACT

Olmstead v. L.C. has been pivotal in rethinking guardianship in correlation with the ADA.[79] The *Olmstead* decision arose when two mentally disabled women were confined to psychiatric treatment.[80] Evaluations from doctors determined that the women could both be cared for in community based programming, yet the women remained segregated and institutionalized.[81] The Supreme Court determined that those with mental disabilities should be placed in community settings when it is appropriate: where the placement can be reasonably accommodated and there are resources available to meet those needs.[82]

While this ruling directly impacts those with disabilities, it did not directly address guardianship. The conclusion that leads toward guardianship can be inferred through the court's interpretation of Title II of the ADA.[83] Undue guardianship may even be equated to an *Olmstead* violation because if someone is unable to live where they want or do what they want, the effect is isolating.[84]

Title II of the ADA prohibits discrimination based on a disability for services, programs, and activities provided to the public by both state and local governments.[85] Programs need to be provided in the most integrated and least restrictive setting suited to individual needs.[86] The argument lies

Law Journal



Beyond Guardianship:

Toward Alternatives That Promote Greater Self-Determination

National Council on Disability

March 22, 2018

Chapter 8: Less-Restrictive Alternatives to Guardianship

Throughout this report, NCD has noted that guardianship law has evolved significantly over the past three decades. However, guardianship law, despite its reforms, has not kept pace with advances in civil rights over the past 40 years and remains a system that would be recognizable to the ancient Greeks. With that in mind, guardianship is not the only way to address some of the difficult issues that arise when a person's disability or age raises questions about his or her ability to make decisions concerning health and welfare or to manage his or her property.

Olmstead Necessitates Finding Alternatives to Guardianship

In 1999, in the *Olmstead* decision, the U.S. Supreme Court interpreted the ADA to give rise to an obligation to provide services to people with disabilities in the least restrictive environment that will meet their needs.[296] Such rights do not disappear when an individual becomes subject to guardianship. As one disabilities into the decision making process. Leslie Salzman, a law professor who is perhaps best known for advancing the proposition that guardianship can constitute a violation of the ADA's integration mandate, has called for society to radically rethink guardianship and the whole idea of surrogate decision making:

> Rather than focusing on how to improve the guardianship process, we will consider innovative ways to integrate [people] with diminished mental capabilities to the greatest extent possible into the management of their personal and property affairs. With the appropriate level of decision-making support, [people] with disabilities will be further integrated into the "theater" of human activity and guardianship will rarely be needed and will be utilized in only the most extreme circumstances.[297]

Introduction to Alternatives

Federal Agency Says *Olmstead* Requires States to Seek Less Restrictive Alternatives to Guardianships (& Conservatorships)

National Council on Disability

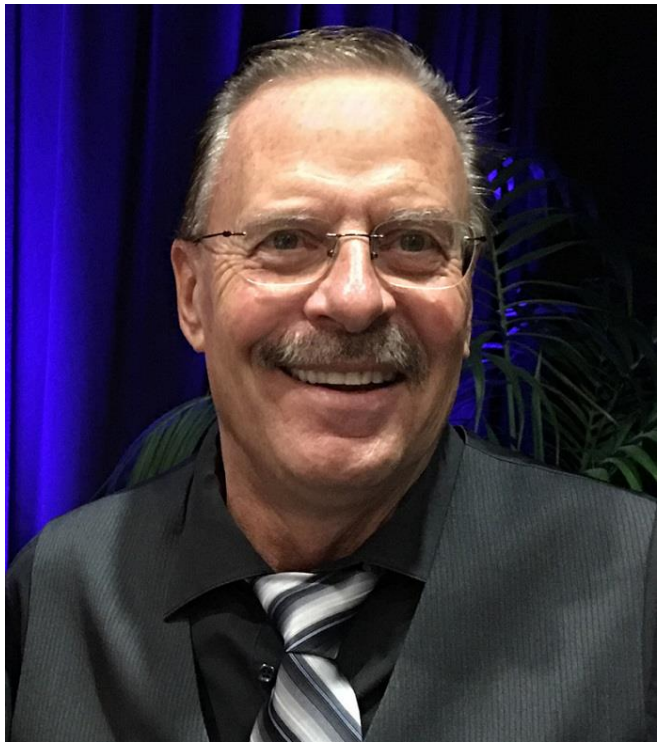
National Resource Center says unnecessary or overbroad guardianships or conservatorships are violations of the ADA's integration mandate.

Supported Decision-Making

The DOJ Should Investigate Conservatorship ADA Violations

- Does the **court investigator** routinely contact the county APS about the possibility of less restrictive alternatives to conservatorship?
- Does the **Public Guardian** have social workers and investigators routinely looking into supported decision-making (SDM) alternatives?
- Is the **Public Defender** asking the regional center to convene an IPP review process for each proposed conservatee so that an interdisciplinary team to investigate SDM options? The financial cost of an IPP review does not come out of the public defender's budget, or the court's budget, or even the county's budget. There should be a SDM/IPP review convened in each developmental disability conservatorship case as a matter of routine.
- Does **Legal Assistance for Seniors** ask for a social worker to be appointed in each of its cases in order to do a thorough analysis of SDM alternatives for seniors?

Olmstead Questions for Alameda Officials



This video blog of *Spectrum E-News* has been sent to state and local officials in Alameda County, California as an alert on the need to review current policies and practices in probate conservatorship cases to make sure they comply with *Olmstead's* less restrictive alternative mandate under Title II of the ADA.

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Producer and Host

https://spectruminstitute.org/enews/