

The Mental Health Law Project

Summary of Activities

Volume III, No.1

SUMMER 1977

1220 Nineteenth Street NW Washington DC 20036 (202) 467-5730

84 Fifth Avenue New York NY 10011



In a legitimate effort to stem mounting mayhem on the nation's roads, every state tries to screen out potentially unsafe drivers through the licensing process. Eye examinations are given to make sure a driver can see where he's going, road tests to make sure he can maneuver a vehicle and written tests to make sure he knows the rules. But there's another kind of screening that is less specific, less reliable and perhaps less relevant: questions about an applicant's medical history. Sometimes the question on a permit application is in terms of "any physical or mental disability which might affect your driving ability." In other states, concrete information is sought about "mental defects," commitment to a mental institution, seizures and/or medication. In many states, the applicant who checks "yes" finds himself arbitrarily labeled as unfit to drive.

Is such discrimination substantiated by facts? Does a history of "mental disorder" or epilepsy in itself predict accident-prone behavior behind the wheel? A recent study conducted by social-work student Judith Carter, under the supervision of Gail Marker (former MHLF social worker), suggests that available evidence does not support such a prediction and that in many states both the cri-

continued on page 18

THE DOCKET

Test-case litigation is a primary tool of MHLF in defining and establishing the legal rights of mentally handicapped and developmentally disabled persons (and those so perceived by society). THE DOCKET lists new MHLF cases and ongoing actions in which there has been recent progress. Full details on continuing and closed cases appear in previous issues of this newsletter, of which limited numbers are available on request.

Intrusive Questions Removed from Blue Cross Report Forms

Under threat of a lawsuit, the Blue Cross-Blue Shield Federal Employees Program, which insures over 6 million people nationwide, agreed to delete three questions from a new mental health report form it was using in the national capital area. In a draft complaint prepared by Paul Friedman, Jane Yohalem and Robert Plotkin on behalf of five patients representing the class of Federal employees in outpatient mental health treatment, MHLF claimed that the form violates patients' constitutional right to privacy and is illegally discriminatory. Under agreement reached after extensive negotiations between MHLF and Blue Cross, three questions were deleted from the outpatient reimbursement forms: No. 6, asking therapists to list a patient's degree of impairment in job,

continued on page 2

IN THIS ISSUE

Regular Sections

The Docket: MHLF test-case litigation...	1-8
Editorial: Driver Screening.....	1, 18
Viewpoint: Least Restrictive Alternative..	9
MHLF Outreach.....	14
Books Received	16

Special Features

New Legislation: New Mexico.....	8
MHLF Staff.....	12
Project Policy Meetings.....	13
Foundations Support New MHLF Programs....	19
Comments on New Legislation.....	20

THE MENTAL HEALTH LAW PROJECT

is an interdisciplinary public-interest organization devoted to protecting the legal rights of the mentally handicapped (and those so labeled) and improving conditions for their care, treatment, education and community living.

Paul K. Friedman, *Managing Attorney*
Margaret Farrell Ewing Robert Plotkin
Christopher Hansen Norman S. Rosenberg
Jane Bloom Yohalem
Attorneys

Bruce J. Ennis Charles R. Halpern
Of Counsel

Lee A. Carty, *Development/Information*
Linda Barnes, *Assistant*
Phillip A. Christopher Robert R. Moon
Diane Johnson Judy Smolen
Susan Winders, *Office Manager*
Noel Dennis Key Rigling
Bill Reedy Kathy Wilde
Law Students

Board of Trustees

Orville Brim Jr. PhD Charles R. Halpern Esq.
June Jackson Christmas MD Jay Katz MD
James D. Clements MD Marion F. Langer PhD
Bruce J. Ennis Esq. Peter Lockwood Esq.
Francis T. Farenthold Esq. Aryeh Neier
Leonard Roy Frank Philip Roos PhD
Janet Gotkin David Rothman PhD
Harold Visotsky MD

Development Committee

Mrs. J. Skelly Wright
Chairperson
Mildred Bateman, MD Aryeh Neier
Victor Bussie Betty Ann Ottinger
The Hon. Ramsey Clark Alvin F. Poussaint, MD
Lorraine W. Frank Jonas Robitscher JD, MD
The Hon. Arthur Goldberg Scottie Fitzgerald Smith
Mrs. J.J. Hickey Rt. Rev. John T. Walker
Jeannette Hopkins The Hon. Earl Warren Jr.
Geri Joseph Henry Weihofen JSD

MHLP's Summary of Activities

is published quarterly by the Mental Health Law Project, Suite 300, 1220 Nineteenth Street NW, Washington DC 20036. Telephone (202) 467-5730. Copyright Mental Health Law Project 1977. Editor, (Ms.) Lee A. Carty; associate, Linda Barnes.

Quarterly? Well, periodically. . .

Originally we designed this "newsletter" to replace a typed report on Project activities, scheduled for mailing to some 600 people. Our staff was small and very busy, so updating meant adding pages with current information. The result was 35 pages and growing, and a quarterly schedule that had stretched to an 11-month gap. So in 1975 we revamped.

The Project's staff is still small and at least as busy doing the work reported herein. All this is by way of explanation and apology for the gap (no 11 months, however) between the belated "Winter" issue and this first number of Volume III--expanded in format to bring you up to date on MHLP's landmark litigation and other work since March.--LAC

THE DOCKET (continued)

family and social relationships; No. 7, which grades "degree of subjective distress" and No. 8, requesting ratings of such specifics as thought disorder, alcohol and drug abuse, phobia and manic behavior.

A number of therapists as well as patients had expressed concern to the Project that retention of such information by Blue Cross--under dubious security--could prejudice the careers of persons in treatment and might prevent government employees from seeking needed mental health services. Simultaneously with settlement of the case, former Maryland Representative Gilbert Gude reported receipt of a routine copy of a letter from Blue Cross to a doctor, assuring him of the confidentiality of patient records. The names of three patients appeared on the copy sent to the Congressman. The Project is continuing efforts to have information obtained in response to the intrusive questions deleted from the microfilm records of patients who have complained.

Other Confidentiality Cases

Recognizing a legitimate need for information by third-party payers (to justify claims and control costs) and by researchers studying the causes and treatments of mental illness and developmental disabilities, MHLP seeks to limit the undue maintenance and dissemination of psychiatric and psychological diagnostic and treatment records.

Womeldorf v. Gleason

In a victory for individual privacy, a Federal district court denied the county-government defendant's motion to dismiss a social worker's claim of loss of prospective county employment because she refused to complete an intrusive questionnaire and sign a blanket release of all her medical records. Robert Plotkin represents the plaintiff and the National Association of Social Workers seeking suitable county employment and back wages for Bonnie Cox Womeldorf as well as revision of the pre-employment form used by Montgomery County (Maryland). At trial, the county would have to prove that disclosure of the intimate personal information it requests is necessary and relevant to a prospective employee's ability to perform a specific job, and would also have to show it has effective safeguards against improper use or dissemination of information already in its files. Alleged abuses of county employees' personal files have been under investigation by the State's Attorney's office. [*Womeldorf v. Gleason*, Civ. Act. No. B-75-1086 (D.C.Md., filed August 6, 1975).]

Wolfe v. Beale

Seeking expungement of the hospital records of a woman illegally committed to a Pennsylvania mental institution, the Project has filed an *amicus* brief on behalf of the Pennsylvania Mental Health Association, the Pennsylvania Civil Liberties Foundation, the American Orthopsychiatric Association and the Alliance for the Liberation of Mental Patients. The brief prepared by Chris Hansen, assisted by Noel Dennis, argues that these records are likely to be unreliable and that, under the state's con-

fidentiality law, there is a strong possibility of their being released and used to the patient's detriment. [Wolfe v. Beale, No. 376, January term 1976 (Sup. Ct., E.D. Pa.)]

Volkman v. Miller

A challenge to the central computerization of mental health records by the New York State Department of Mental Hygiene. The New York Court Of Appeals affirmed the lower court's ruling against plaintiffs in a short opinion, relying on the U.S. Supreme Court's decision in *Whelan v. Roe*. [dismissed (Sup. Ct., Albany Cty., July 23, 1975), appeal filed (N.Y.S., August 20, 1975).]

Rights in the Community

A primary reason for concern about privacy is the history of discrimination by school systems, landlords, employers, insurers and others against those who are perceived as mentally "different." Project litigation attempts to protect the right to equal opportunity of persons who are labeled mentally handicapped.

Mills v. Board of Education

Five years ago, Federal District Judge Joseph C. Waddy ruled that all handicapped children in the District of Columbia have a due process right to receive suitable education at public expense. Together with *PARC v. Pennsylvania*, 334 F. Supp. 1257 (E.D. Pa. 1971), which established the same right for mentally retarded children, the *Mills* decree has had a far-reaching impact both locally and nationwide. The class action was replicated in many states and today every state has some kind of right-to-education statute. The Federal Education for All Handicapped Children Act of 1975 is largely based on the *Mills* order. And in Washington DC itself there is marked improvement: The number of handicapped children in school has risen from 3,000 to 14,000 and the special-education budget, from \$1.2 million to \$11 million annually. To this extent, *Mills* is one of the Project's most successful system-changing cases.

However, despite MHLP's five-year-long efforts--continual monitoring and repeated returns to court, contempt proceedings against the defendants, requests (granted) for a court-appointed special master to implement the decree--the District of Columbia has not yet developed the detailed plan requested by Judge Waddy. Furthermore, the city's special-education program remains fragmented by lack of coordination among defendants--notably the School Board and the Department of Human Resources, which is responsible for services to children, the handicapped and the elderly--with the result that most children in institutions receive little if any education. For an August 1977 hearing, the court had ordered defendants to complete a comprehensive plan to remedy deficiencies identified by the special master in his 1976 report to the court. Prior to the hearing, Robert Plotkin and Norman Rosenberg, representing the plaintiffs, found that

400 children are confined without access to education in DC institutions for the mentally disabled and for juvenile delinquents. At the hearing, Judge Waddy berated the defendants for submitting only "a statement of policy...vague and lacking in specificity" and gave them until October 15 to submit a detailed plan. [*Mills v. Board of Education*, 348 F. Supp. 866 (D.D.C. 1972).]

Lesniewski v. Balzano

For MHLP, Robert Plotkin represents a woman denied employment in a VISTA program where she had been serving as a volunteer, on grounds of her psychiatric hospitalization and treatment four years earlier. Depositions have been taken and discovery is complete pending a pretrial conference to be held in the fall. [C.A. No. 76-318CA4, U.S. District Court for the Western District of Michigan, June 30, 1976.]

Schönhorn v. Sopher & Co.

Noel Dennis for the Project's New York office represented six mentally retarded persons in a successful complaint to the New York State Division of Human Rights asserting a violation of state anti-discrimination laws. On their behalf, United Cerebral Palsy (UCP) had applied to lease two apartments on Roosevelt Island, a new New York City housing project supervised by the Urban Development Corporation (UDC). UDC refused to approve the application unless the complainants complied with a set of conditions not normally imposed on prospective tenants--e.g., examination and certification by a psychologist that each applicant "possesses the present capability to live and function in a residential apartment building...without nuisance to such individual or to the other individuals or to the community." Under a recent settlement, UDC has agreed to rent to UCP or its clients without restriction. [No. 18-AD-3222-77]

continued on page 4

PHILIP ROOS ELECTED TRUSTEE

At their June 10 meeting, the Project's trustees elected Philip Roos PhD to fill an unexpired term on the board. For the past eight years Dr. Roos has been executive director of the National Association for Retarded Citizens. He has been a practicing clinical psychologist with, among other agencies, the Texas Department of Mental Health and Mental Retardation, the Veterans Administration and the U.S. Public Health Service. From 1967 to 1969 he was Associate Commissioner of the New York State Department of Mental Hygiene, Division of Mental Retardation. Dr. Roos' publications number over 70 in the mental-disabilities field, his professional appointments over 30--including his current membership on the Executive Committee of the President's Committee for Employment of the Handicapped. A native of Brussels, Belgium, he was educated at Stanford University and the University of Texas.

THE DOCKET (continued)

Cherry v. Mathews

Regulations required by section 504 of the Rehabilitation Act of 1973 were published in the May 4, 1977 Federal Register, 42 Fed. Reg. 22675, thus mooted *Cherry v. Mathews*. In that case, Jane Yo-halem was co-counsel for handicapped individuals and a consumer organization seeking final promulgation of the long-delayed regulations.

The regulations, which went into effect June 4, 1977, implement section 504's prohibition against discrimination on the basis of handicap. Elementary and secondary schools, colleges, universities and graduate schools, hospitals, health clinics and many individual doctors, child-care programs, mental health centers, welfare programs and other programs receiving financial assistance from the Department of Health, Education and Welfare must therefore provide both full services and full access to handicapped individuals, making changes in building structure or in the program itself if necessary. For example, schools will have to provide suitable education for a mentally retarded child and may not simply place that child in a regular class without additional assistance. Also included are protections for individuals discriminated against merely because of a history of a handicapping condition such as psychiatric illness or psychiatric treatment, even though they are not in fact handicapped. [*Cherry v. Mathews*, 419 F. Supp. 922 (D.D.C. 1976).]

Civil Commitment & Guardianship

Most controversial are the laws which provide for a presumably incapacitated individual to be, in his own best interest, deprived by the state of his liberty and autonomy. Civil commitment is often seen as necessary to provide care or treatment to those who cannot recognize their need for help, guardianship to protect individuals from the outcomes of their own failings or excesses. But questionably broad criteria have turned well-intentioned laws into vehicles to gain social control over deviant behavior, to relieve families of the burden of intolerated members and to impose treatment on competent persons who would otherwise refuse it. Project cases seek a clear application of due process for persons subject to these proceedings and limitations to prevent their misuse or abuse--durational limits for commitment, limits on guardianship to areas of individual incapacity.

Bavis v. McKenna

Guardianship procedures exist, in one form or another, in every state. They provide a mechanism for court appointment of a guardian to make important decisions for persons who, because of severe mental disabilities, are unable to make decisions for themselves--the person in a coma following an accident, for example, or the profoundly retarded adult lacking in basic communications skills. But, just as it is essential to provide a mechanism for surrogate decision-making in extraordinary situations, it is equally vital to assure stringent safeguards for personal liberty and for the pre-

sumption that adult citizens have the right to autonomy and independence, even if their decisions may appear to others unwise or ill-advised.

Attempting to halt the current nationwide incidence of misuse of guardianship and commitment laws for the purpose of forcibly "deprogramming" adult adherents of religious groups, MHLF is representing Donna Seidenberg Bavis in a major federal damages action against a judge, a lawyer and a deprogramming team. The suit is the first in the country to seek damages from a judge for issuing a secret *ex parte* order finding an individual mentally incompetent without psychiatric testimony and without the bare rudiments of procedural due process. Robert Plotkin and Paul Friedman of the Project are serving as co-counsel with Barbara Mello of the Maryland Civil Liberties Union and attorneys for Americans United for Separation of Church and

On February 24, 1977 Montgomery County (Maryland) Circuit Court Judge Richard B. Latham found Ms. Bavis to be in need of a temporary guardian and authorized "lay persons" to counsel, examine and treat her. The complaint alleges that this secret proceeding violated state law. As a result of the order, Ms. Bavis was forcibly confined in a Baltimore hotel room for four days and then taken to a deprogramming center in New Hampshire. Several weeks later she was released after successfully feigning renunciation of her beliefs. She obtained dissolution of the guardianship and immediately returned to live at the Hare Krishna temple.

In a pair of cases undertaken by MHLF for similar purposes, Chris Hansen represented two adults, allegedly "kidnapped" by their parents for deprogramming, in New York State Supreme Court (Queens County). (See Winter 1976-77 MHLF Summary of Activities.) As the outcome of *People v. Murphy* and *People v. Conley*, criminal charges of "unlawful imprisonment through mind control" against Krishna temple members were dismissed as violating the First Amendment's guarantee of freedom of religion. The Bavis case, however, is a direct due process challenge to the abuse of court proceedings by well-paid professional deprogrammers. [*Bavis v. McKenna*, Civ. No. H77-793 (U.S. Dist. Ct. (D. Md.) (filed May 20, 1977).]

Kremens v. Bartley/Parham v. J.L. & J.R.

As reported in earlier newsletters, MHLF extensively briefed the issues surrounding the confinement of children in mental-health and retardation institutions for a consortium of *amicus* organizations in the Supreme Court's review of *Kremens v. Bartley*. In that case, five mentally ill children, ages 15-18, challenged the constitutionality of a Pennsylvania statute governing voluntary admission of children by their parents to state institutions. The district court held that the state law violated the due process clause of the Fourteenth Amendment. In July 1976, after the decision and after the Supreme Court had noted probable jurisdiction, a new state law was enacted, providing that children 14-18 who were subject to commitment by their parents under the former law are now to be treated essentially as adults. On May 16, 1977 the Supreme Court held that the new law moots the claims of the named plaintiffs, thereby avoiding consideration of the issues in the case.

Now, however, some of these issues are again before the Supreme Court. *J.L. & J.R. v. Parham*, a class action filed by two children, alleges that they and other children in the state mental institutions were deprived of liberty by Georgia state laws permitting voluntary admission of minors by parents or guardians.

On February 26, 1976, a three-judge Federal district court found that "to unnecessarily confine... a child in a mental hospital and thereby cause him to possibly suffer severe emotional and psychic harm, to demean himself, and to magnify social ostracism" deprives him of his constitutional right to liberty "just as much if not more so than a child is deprived of his freedom by being civilly committed as a juvenile delinquent." The Georgia law, the district court asserted, "supplies not the flexible due process that the situation of the plaintiff children demands, but, instead, absolutely no due process."

The Supreme Court has noted probable jurisdiction in the *Parham* case. Norman Rosenberg and Paul Friedman are preparing a brief jointly with Stephen Berzon of the Children's Defense Fund, which MHLF will file on behalf of several national organizations as *amici curiae*. [*Kremens v. Bartley*, 402 F. Supp. 1039 (E.D. Pa. 1975), reversed and remanded *U.S.*, 97 S. Ct. 1709, 1977.] [*Parham v. J.L. & J.R.*, 412 F. Supp. 112 (M.D. Ga. 1976).]

Wallace v. Chancery Clerk of Chickasaw County

Challenging the constitutionality of Mississippi's statutes for involuntary commitment of adults to state mental institutions, this case has been certified as a class action. Various motions to dismiss or abstain have been denied and discovery has begun. [Civ. Act. No. EC-75-92-S (N.D. Miss.).]

Donaldson v. O'Connor

With the issue of Kenneth Donaldson's constitutional right to liberty resolved by the Supreme Court's affirmation of that right and the matter of damages settled with payment to Mr. Donaldson of \$20,000 by the Florida state hospital doctors who infringed his right to freedom, the only area still in litigation in this landmark case is the matter of attorney fees. On May 6, the district court established the plaintiff's entitlement to reasonable attorneys' fees under the 1976 Civil Rights Attorneys' Fees Act, reaffirming the entitlement on August 11 with denial of the defendants' petition for reconsideration. The court gave the parties until September 30 to negotiate the amount of fees. [493 F.2d 507 (5th Cir. 1974), 422 U.S. 563 (1975).]

Chico v. NYC Transit Authority

Plaintiff's motion for summary judgment was denied without opinion. Settlement talks were unsuccessful and the case is being placed on the trial calendar, seeking damages and a declaration that the plaintiff's confinement was illegal. [No. 21366 (NYS Supreme Court, filed Dec. 3, 1976).]

Deinstitutionalization & Right to Treatment

Historically, commitment has been to state institutions--often understaffed, outdated and remote "human warehouses" where abuse of residents was common and suitable treatment scarce. Right-to-treatment litigation has opened the doors of the back wards to public scrutiny and established minimum standards to protect residents and to upgrade health and habilitation services. Backed up by public policy mandating deinstitutionalization and with studies showing that institutional living is in itself harmful over time, MHLF focused next on vindicating the right to treatment in the least restrictive setting consistent with a mentally disabled person's need. While sustaining our efforts to implement the system-changing decisions won over the past five years, the Project's work in these test cases is increasingly directed toward creating smaller, more homelike facilities and obtaining access for mentally handicapped persons to suitable mental health and developmental services in the community.

Wyatt v. Hardin

The constitutional right to treatment was first established by Federal District Judge Frank S. Johnson's 1971 order in his landmark decision on behalf of patients in Alabama's mental institutions and expanded as the "right to habilitation" for mentally retarded residents of Partlow State School and Hospital in 1972. In the Project's continuing efforts to implement court-ordered minimum standards for enforcement of residents' rights, Jane Yohalem is now lead attorney representing the participating *amicus* organizations: The American Association on Mental Deficiency, American Civil Liberties Union, American Psychological Association, American Orthopsychiatric Association and the Mental Health Association.

In February 1977, following extensive discovery, the plaintiffs, the U.S. Justice Department (as *amicus*) and the Project filed a joint report to inform the court about the extent of defendants' compliance with the standards relating to mentally retarded residents at Partlow and two other developmental centers. Despite improvement in conditions at these facilities, the report concluded, serious shortcomings still exist both at the institutions and in community programming. MHLF and the Justice Department filed a joint motion based on the report's findings, asking the judge to appoint a master and a panel of experts to help obtain full compliance. Recently, defendants have responded at length to the report and the motion; the Project is preparing a reply for submission to the court on September 12. [*Wyatt v. Hardin*, 325 F. Supp. 781 (M.D. Ala. 1971), (hearings on standards ordered), 334 F. Supp. 1341 (M.D. Ala. 1971), enforced, 344 F. Supp. 373, 387 (M.D. Ala. 1972), affirmed in part, modified in part sub nom. *Wyatt v. Aderholt*, 503 F.2d 1305 (5th Cir., Nov. 8, 1974).]

Wouri v. Rosser

This class-action suit challenges living conditions and lack of habilitation services in Pineland Center, Maine's retardation institution, together with

continued on page 6

THE DOCKET (continued)

the community boarding homes to which mentally retarded persons have been sent. Jane Yohalem and Robert Plotkin are co-counsel for plaintiffs.

At a conference in July, Judge Gignoux ordered the parties to attempt to reach agreement on standards for the institution and for community programs and on a compliance system, reporting to him by October 1, 1977. A trial date will be set at that time if agreement has not been reached.

The upcoming negotiations, in addition to covering most of the areas concerning institutional care addressed by the Willowbrook and *Wyatt* decrees, will also address requirements for developing and monitoring a system of community residential placements, programs and professional services. Improved placements and programs in less restrictive community settings are sought both for clients now living in inadequate community facilities and for clients currently institutionalized. [*Wouri v. Rosser*, Civ. Act. No. 75-80 S.D. (Maine, August 12, 1975).]

CHILD CARE CLEARINGHOUSE

The National Coalition for Children's Justice, a nonprofit advocacy group, is building files on private residential child-care facilities which will be shared with concerned agencies and individuals. The information, including licensing and inspection reports, Federal tax forms, news clippings and litigation records, will be used for referral, not "blacklist" purposes. Increased availability of Federal funds to treat troubled children, the trend toward deinstitutionalization and the resulting increase in private child-care institutions has prompted the coalition to monitor this expanding industry. Child advocates in all states are asked to share their knowledge of local facilities. Inquiries and information should be directed to: Kathleen Lyons, Child Care Clearinghouse, 1028 Connecticut Avenue NW, Suite 1023A, Washington DC 20036.

NYSARC v. Carey (the Willowbrook case)

Two years after settlement of this class action, a new consent judgment and a recent court order have overcome obstacles to implementation of the right to protection from harm for all residents of Willowbrook Developmental Center in New York. As defined by the late Federal District Judge Orrin B. Judd in ratifying the 1975 consent decree, this right includes affirmative programming for residents as well as protections against neglect and abuse "because harm can result not only from neglect but from conditions which cause regression or which prevent development of an individual's capabilities." Therefore, the consent decree set forth "steps, standards and procedures" for institutional services and mandated a schedule for development of community outplacements and services, establishing a seven-member review panel to oversee implementation. However, compliance fell so far behind that the Project, representing plaintiffs, in early 1977 filed a contempt motion against defendants. On March 10 that motion was settled by a new consent

judgment setting, for the first time, a schedule of community placements: increasing to 50 per month until October 1, 1977, to 75 per month until April 1, 1978 and to 100 monthly until April 1, 1979. New staffing patterns are also set up to assure individually suitable outplacements and the agreement forbids transfers to other institutions, with the exception of the new \$25-million Bronx Developmental Center. In another significant step, the consent order provided for a contract between Willowbrook and a nonprofit corporation, United Cerebral Palsy of New York, to operate five of the center's buildings.

While viewing the March agreement as a success, Chris Hansen and Bruce Ennis, as the Project's attorneys for plaintiffs, were still concerned that transfers to the Bronx Developmental Center would impede residents' progress toward more normal community placements. On June 10, following a two-day trial, the court agreed with recommendations of the Willowbrook Review Panel and with plaintiffs that such transfers "would delay [residents'] placement in the community and thus frustrate one of the chief purposes of the consent judgment." Judge J.R. Bartels emphasized the concepts affirmed by Judge Judd, stating: "The goals of normalization and development of the mentally retarded cannot be met until every effort is made to physically and socially integrate the class members into the mainstream of the community."

Plaintiffs have also filed a motion asking the court to declare the defendants liable for attorneys' fees and to order the parties to negotiate an amount. [*New York State Association for Retarded Children v. Carey*, 393 F. Supp. 715 (E.D.N.Y. 1975), 357 F. Supp. 752 (E.D.N.Y. 1973).]

Welsch v. Likins

In its *amicus* brief on appeal of implementation issues in this right-to-habilitation case, the Project supported the district court's power to enjoin state statutes which prevent allocation of funds to bring institutions into conformity with constitutionally minimum standards to protect residents. On March 9, the U.S. Court of Appeals for the Eighth Circuit remanded the case for further consideration after the Minnesota legislature had completed its current session, simultaneously suggesting that the district court might well have such a power under appropriate circumstances. The appellate court noted the delicacy of the issues raised by the appeal, of conflicts between Federal judicial power and the state and local governments:

"Primarily, it is the function of the state to determine whether it is going to operate a system of hospitals that comply with constitutional standards, and, if so, what kind of a hospital system it is going to operate. And it is the function of the federal court to determine whether the plans and steps taken or proposed by the state satisfy constitutional requirements."

In remanding the case, the court sought "to make it clear to the present Governor and the current Legislature that the requirements" of the lower court's right-to-habilitation orders "are positive, constitutional requirements and cannot be ignored." Thereafter, "[d]epending on legislative response to the needs of Cambridge and the other hospitals,

the district court may consider that its requirements should be modified in certain respects or that time schedules for compliance with the requirements should be altered. Or the district court may deem it necessary to adhere to present requirements."

However, during its last session the Minnesota legislature refused to increase funding to meet the court-ordered standards at Cambridge. Plaintiffs' attorneys are once again seeking suspension of state statutes which prevent allocation of funds to the institution in a motion to be heard by the district court in November. [*Welsch v. Likins*, 373 F. Supp. 487 (D. Minn. 1974).]

Dixon v. Weinberger

Margaret Ewing is the new lead counsel for plaintiffs in this class action, seeking implementation of the district court's December 1975 order which established the right of patients in Washington DC's St. Elizabeths Hospital to treatment in the least restrictive setting. Consistent with the order, defendants (NIMH and the local government) submitted a joint outline of a plan to create suitable alternative facilities. In May 1976 the Project responded with a critique of defendants' outline and proposed an alternative which itemizes key components for any future plan, such as a timetable for budgeting and for outplacements, standards for and definitions of programs and provisions for effective monitoring. To date the court has made no decision regarding either outline, although it has denied defendants' petition to certify a legal question for appellate review.

In the context of this case, there has been recent Congressional activity regarding St. Elizabeths Hospital, the Federally operated psychiatric institution serving the capital city. The General Accounting Office is producing a report which, in a present draft, documents an "ineffective management system" at the hospital. The draft report also cites lack of cooperation between District of Columbia health authorities and hospital administrators, leading to "no effective system" for outplacement of patients in suitable community-based facilities and services. A legislative proposal to transfer the hospital to a government corporation was the subject of Congressional hearings in the late spring (see Paul Friedman's comments, excerpted on page 20). [*Dixon v. Weinberger*, 405 F. Supp. 974 (D.D.C. 1975).]

Morales v. Turman

In 1974 a Federal court in Texas ruled for the right to treatment of juveniles institutionalized for delinquent or antisocial behavior. The landmark decision was vacated last year when the Fifth Circuit held that trial of the case should have been before a three-judge court. In support of plaintiffs' petition for *certiorari*, the Project submitted an *amicus* brief to the U.S. Supreme Court arguing that the Texas Youth Council "policies" which had permitted abuses of children's rights in the state's facilities were ad hoc administrative interpretations rather than official statutes or orders, and were therefore appropriately challenged in the single-judge court.

On March 21, 1977 plaintiffs and *amicus* groups won a major victory. The Supreme Court, in a *per curiam* opinion, distinguished the "generalized, unwritten practices of administration" which were involved in *Morales* from official or statutory policies covered by 28 U.S.C. §2281, which required three-judge courts to hear certain suits which seek to impose the Constitution against the enforcement of a state policy. (Public Law No. 94-381, August 12, 1976, prospectively repealed 28 U.S.C. §2281, but under this law §2281 still governs jurisdiction for cases such as *Morales* which were pending at the time of the repeal.) Accordingly, the high court remanded the case to the Fifth Circuit for further proceedings on the merits.

On June 15 the Project filed an *amicus* brief in response to a request from the appellate court asking whether changed facts and law necessitate a remand to the district court. The brief urges the court to decide the appeal on the merits and then remand for a hearing relating solely to relief. [*Morales v. Turman*, 364 F. Supp. 166 (E.D. Tex. 1973), 383 F. Supp. 53 (E.D. Tex. 1974), 535 F.2d 864 (5th Cir. 1976), 97 S. Ct. 1189 (1977).]

"Right to Refuse" Treatment

Among the standards to enforce the right to treatment are safeguards to prevent arbitrary administration of hazardous, intrusive or experimental procedures--electroconvulsive therapy, psycho-surgery and aversive conditioning, for example. And there is clear evidence of institutional misuse and overuse of powerful tranquilizers, drugs which have detrimental and often irreversible side effects. The Project's goal in its research and in test cases is to establish protections for individuals subject to such procedures--their legal "right to refuse" these treatments--while at the same time safeguarding the proper use of professional discretion.

Okin v. Rogers

On appeal to the First Circuit, this case seeks the right of both voluntary and involuntary patients to refuse forcibly administered psychotropic drugs. The Project has filed a brief for *amici curiae*: the Mental Health Association, the Massachusetts Civil Liberties Union and the Mental Patients Liberation Front.

Plaintiffs are inpatients at Boston State Hospital who have not been adjudicated incompetent. They contend that powerful psychotropic drugs are often given for nontherapeutic purposes--to punish patients for behavior objectionable to staff--and are forcibly administered to both voluntary and involuntary patients, often by decision of nonmedical personnel. On April 30, 1975, they obtained a temporary restraining order in the Federal district court which prevented further administration of these drugs over patients' objections "except where there is a serious threat of, or as a result of extreme violence, personal injury or attempted suicide."

continued on page 8

THE DOCKET (continued)

On December 30, 1976, the defendants--hospital officials--moved to dissolve the portion of the temporary order which concerns the forcible use of psychotropic medications in nonemergency situations. Their motion denied, on March 29 they filed an appeal.

In the Project's *amicus* brief, Chris Hansen and Robert Plotkin argue that plaintiffs have a right to refuse these powerful drugs which is grounded in a number of constitutional guarantees: the right to treatment; the right to procedural and substantive due process; the right to protection from cruel and unusual punishment; the right to generate ideas pursuant to the First Amendment; the right to privacy; and the right to equal protection of the law. [*Okin v. Rogers*, Pending No. 77-1201, 1st Circuit Court of Appeals (Appeal filed March 29, 1977).]

Nelson v. Hudspeth

In a 12-page opinion, the Federal district court denied defendants' motion for summary judgment in this case challenging involuntary administration of electroconvulsive therapy to competent patients. Further discovery is under way. [*Nelson v. Hudspeth*, Civ. No. J75-40(R), (S.D. Miss.).]

Risley v. Coombs

Discovery has been completed in this case but a jury trial has been postponed until early 1978. [*Risley v. Coombs*, Case No. N-76-234 filed February 17, 1976.]



New MH/DD Legislation: New Mexico

Even before its pending serial publication in the *Mental Disability Law Reporter* of the ABA Commission on the Mentally Disabled, the MENTAL HEALTH LEGISLATIVE GUIDE prepared by MHLP for the National Institute of Mental Health is contributing to the improvement of state legislation affecting mentally and developmentally disabled persons. Its confidentiality proposals, for example, have been incorporated into a privacy bill for the District of Columbia (see OUTREACH) and into major legislative revisions in Illinois and New Mexico, giving clients of the mental health system access to their own records, absent a court determination that such access would harm the client, while limiting third-party access to need-to-know grounds.

In New Mexico, former MHLP staff attorney Jim Ellis--now teaching at the University of New Mexico Law School--assisted the legislature in adapting the GUIDE's models for a new state Mental Health and Developmental Disabilities Code. Passed this spring by a vote of 61-1, House Bill 472 replaced the bulk of existing mental health and retardation codes, bringing New Mexico into compliance with recent court decisions and giving greater protection to the civil rights of mental patients and developmentally disabled persons. An important feature is the distinction it draws between institutional-admission proceedings for mentally ill and developmentally disabled persons on the basis of their differing needs, while establishing due process protections in both areas, mandating individual treatment/habilitation plans and setting durational limits on confinement after a limited evaluation period, with the client entitled to a hearing prior to any extension. All commitments in either area must be to the least restrictive alternative consistent with the client's need. The statute declares group homes to be residential for zoning purposes.

Other provisions of the code, which is cited as Chapter 279 of the 1977 Session Laws, State of New Mexico, mandate due process protections for minors admitted by parents or guardians--a hearing and durational limits on confinement--and strictly limit the use of electroconvulsive therapy and psychosurgery on children. The law also contains safeguards

for the rights of residential clients, including informed-consent requirements for extraordinary or hazardous treatment, legal representation and freedom from certain physical and psychological harms, including unnecessary or excessive medication.

MHLP publications

THE RIGHTS OF MENTALLY RETARDED PERSONS by Paul R. Friedman is one of the American Civil Liberties Union handbook series (Avon 1976). A paperback designed for the lay advocate, it takes up in Q&A format the specific rights of institutionalized persons and of mentally retarded persons living in the community. *To order:* Send \$1.50 to the American Civil Liberties Union, 22 E. 40th Street, New York City, New York 10016.

LEGAL RIGHTS OF THE MENTALLY HANDICAPPED, published by MHLP and the Practising Law Institute, is a three-volume coursebook containing otherwise unavailable primary source materials, outline essays and selected mental health-law issues and an annotated bibliography. *To order:* Send \$20.00 per set to the Practising Law Institute, 810 Seventh Avenue, New York, NY 10019.

BASIC RIGHTS OF THE MENTALLY HANDICAPPED, published by MHLP, is a consumer handbook featuring discussions of right to treatment, right to compensation from institution-maintaining labor and right to education. *To order:* Send \$1.25 per copy to National Association for Mental Health, 1800 North Kent St., Arlington VA 22209.

Mental Retardation and the Law: A Report on the Status of Current Court Cases: quarterly summary of all litigation relating to the rights of the mentally retarded, prepared by Paul Friedman of MHLP. Free. *To order:* Write to Mrs. Nancy Borders, President's Committee on Mental Retardation, 7th and D Sts. SW, Washington DC 20201.



THE LEAST RESTRICTIVE ALTERNATIVE

VIEWPOINT

Project lawyers, in their speeches and writing, often discuss issues from the viewpoint of personal philosophy rather than in expression of any MHLF policy. VIEWPOINT offers some of these positions. Collectively, they represent an important phase in development of Project strategy: review of many theories in the search for a responsible balance of rights, equities and practical solutions to the problems of mentally handicapped persons. Here, two staff attorneys engage in dialogue about the validity of test cases to enforce the right to treatment in the least restrictive setting.

2

Nobody Promised Us a Rose Garden

by Margaret F. Ewing

In his article, Chris Hansen questions both the feasibility of creating adequate means to treat mental illness outside of large residential institutions and the wisdom of giving priority to litigation for the least restrictive alternative setting. I disagree with his reservations.

Of course, one should always be cautious before embarking on long, complex and costly lawsuits. But to suggest that LRA cases should not be high on the list of mental health law-reform efforts because they may pressure the commitment and the mental health systems into bulging in other places is to weigh too heavily the admittedly great resources these cases require against their potential benefits.

In my opinion, the test cases which should be brought are those which will have the greatest impact for the most people, which provide models for other advocates to follow, which create mechanisms for

continued on page 11

1

Thorny Problems with LRA Cases

by Chris Hansen

In Dixon v. Weinberger, MHLF successfully argued that the right to treatment includes a right to be treated in the least restrictive setting. The court ordered the Federal and District of Columbia governments to develop a variety of community-based facilities for the mentally

continued on page 10

VIEWPOINT 1 (continued)



Photo of Chris Hansen by Morton Broffman

Thorns

ill in the District. Project lawyers and other mental health attorneys have been under pressure to bring "least restrictive alternative" (LRA) cases in other jurisdictions.

Although I supported the *Dixon* case, I have come to believe that there are better and more important test cases to be brought, given the limited resources available in mental health law-reform advocacy.

The organized mental patient groups generally oppose LRA cases. They suggest that the mental health lawyers should not be creating more places where mental patients will be oppressed.

Most local communities oppose the development of community facilities such as halfway houses, group homes and supervised apartments. Although I have successfully challenged community opposition in several cases, it is relevant that LRA cases spin off zoning and housing-discrimination cases. For example, in the Willowbrook case, several such cases have had to be brought as part of the effort to create less restrictive alternatives.

Who supports LRA cases? Apparently only the "professionals." Mental health lawyers and treatment professionals are vocal supporters of LRA cases.

"LRA cases involve a massive expenditure of time and money."

Mental health professionals support them because, they argue, treatment in a good community facility is better than treatment in a good institution. That may be true. But I think it very unlikely that we will be able to force the development of a large number of "good" community facilities. Given the community opposition, the scarcity of qualified mental health workers, the enormity of the need, the inadequacy of court procedures to force the design of good mental health care systems and the proven inability of most governmental bureaucracies

to regulate or run mental health care systems competently, I think most "community facilities" will be poorly designed, poorly staffed and poorly run. Historically, bad institutions lead reformists to develop community facilities which turn out to be bad. New reformists then try to create institutions. I am not convinced that a poor community facility is better than a good institution. (And is a poor community facility really less restrictive than a good institution?) The number and separation of such facilities will make it impossible for lawyers in LRA cases to monitor the quality of care in all of them.


"Historically, bad institutions lead reformists to develop community facilities which turn out to be bad."

Additionally, the existence of a large number of community mental health facilities will lead to pressure that they be used. Problems which are not mental health-related may be defined as mental health problems by social workers or others seeking someplace to help clients. Other social systems which should solve the nonmental health problems will not be forced to do so.

Mental health lawyers have supported LRA cases in part as a means of reducing the number of persons subject to involuntary confinement. If I thought that would be the result, I would view these cases very differently. A poor community facility which is voluntary is, I think, better than a poor institution which is involuntary. However, I am afraid more people will be "committed." I think that judges, faced with a person who needs help but isn't really commitable, will be very tempted to "commit" that person to a community facility, either illegally or after a change in the legislation. I think it even more likely an informal plea bargaining system will develop. Community facilities will be used the way probation is now used in the criminal context: People will agree to get help in a community to avoid the possibility of institutional commitment after a hearing. In other words, many who might have won a properly held commitment hearing will find themselves involuntarily in a community facility because they were afraid to risk commitment.

"... there are better and more important test cases to be brought, given the limited resources available in mental health law-reform advocacy."

LRA cases involve a massive expenditure of time and money. Given the enormous number of civil commitment, forced-treatment and post-treatment disability cases to be taken, I wonder whether that expenditure is justified.

I am not opposed to the development of good community facilities such as Washington DC's Green Door. Nor am I opposed to the use of the LRA concept in other areas. (Many of these criticisms, for example, do not apply to the development of less restrictive retardation facilities.) It can be used creatively, I think, in many other ways. Nor am I ultimately opposed to LRA cases' being brought by anyone, anytime, anywhere. I merely suggest that the assumption on which LRA cases are based may be faulty and that, given other priorities, the few mental health test-case lawyers should contemplate with caution any further LRA cases. 

VIEWPOINT 2 (continued)



Photo of Margaret Ewing by Morton Broffman

Roses

future enforcement and which are likely to succeed. LRA suits strike at the heart of this country's historical attitudes and institutions dealing with the people whom society sees as mentally handicapped. Our misunderstanding of the nature of mental illness and the range of its manifestations, as well as our intolerance for the mentally different (including the developmentally disabled) has resulted in drastic and inappropriate responses, probably the worst of which is institutionalization. A suit to compel placement of involuntarily confined mentally disabled persons in settings which are least restrictive of their liberties fulfills the criteria for good test cases.

"... an LRA suit has an effect on a large number of persons."

First, if successful, such a suit will have a very great impact on the plaintiffs, for it will change the very quality of their daily lives. It does not seek to create more places in which to confine the mentally ill involuntarily, as feared by organized patient groups, but to eliminate and replace inappropriate and harmful placements. Some fear that LRA will result in more involuntary commitments because, according to the *quid pro quo* theory of a due process right to treatment, judges will find that less due process is owed to persons committed to less restrictive facilities. Or individuals may be threatened with institutional commitment unless they voluntarily accept less restrictive treatment. The answer to these fears must be in a reliance on future lawsuits to ensure due process in commitment procedures regardless of the mode of forced treatment.

"... it establishes a principle upon which all who encounter the involuntary mental health system must be treated."

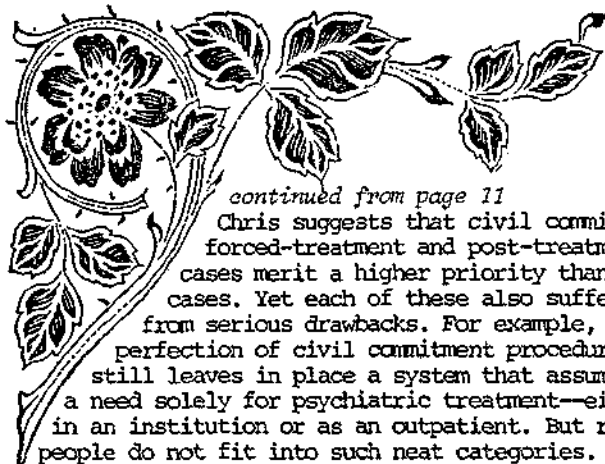
Secondly, an LRA suit has an effect on a large number of persons, not just a few who share similar factual situations, for it establishes a principle upon which all who encounter the involuntary mental health system must be treated. And, because the constitutional and statutory theories supporting the right to least restrictive alternatives should be applicable to different jurisdictions and institutions, the first LRA suits can provide models for others.

"A suit to compel the placement of involuntarily confined mentally disabled persons in settings which are least restrictive of their liberties fulfills the criteria for good test cases."

Finally, while success in these suits is not assured, the climate for them is right. LRA suits rest on the assumption that some mentally ill and developmentally disabled people, especially those who have long been institutionalized, need the kind of training in daily-living skills that can only take place in a community setting. Enlightened professional opinion is now and has been for some years in favor of least restrictive alternatives on therapeutic as well as civil-libertarian grounds and much deinstitutionalization and community acceptance has occurred without suit. Good test cases are brought to hasten and direct trends which exist independent of these suits, rather than to drag society kicking and screaming in directions it will ultimately refuse to go.

"Good test cases are brought to hasten and direct trends which exist independent of these suits, rather than to drag society kicking and screaming in directions it will ultimately refuse to go."

The most challenging criticism Chris raises is based on the practical problems of creating good community placements and care systems. To be sure, community opposition must be recognized, but it has been successfully dissipated in similar situations with planning, communication and complaint procedures. (In *Gaining Community Acceptance: A Handbook for Community Residence Planners*, Patricia Stickney describes various techniques which have smoothed the path considerably.) While traditional court procedures may be inadequate to force the design of good mental health systems, one of the major aims of such cases as *Dixon*, *Willowbrook* and current efforts in *Wyatt* is the development of new implementation techniques. Even if institutionally incapable of mandating systemic changes of the kind required to implement an LRA decree, the courts can at least advance the ball to a point where the legislature or administrative agencies are compelled to pick it up. And, while government bureaucracies are not noted for their competence in running mental health care systems, that's no excuse for not trying to improve their performance. Finally, effectively monitoring community residence facilities for the mentally disabled is admittedly a very great challenge when the residences are small and scattered. Yet one can hope that, in addition to better standards and inspection techniques, the actual involvement of mental patients and developmentally disabled persons in community activities will make their situation visible and that adequate formal and informal monitoring will thereby occur. *continued on page 12*



continued from page 11

Chris suggests that civil commitment, forced-treatment and post-treatment cases merit a higher priority than LRA cases. Yet each of these also suffers from serious drawbacks. For example, the perfection of civil commitment procedures still leaves in place a system that assumes a need solely for psychiatric treatment—either in an institution or as an outpatient. But real people do not fit into such neat categories. Instead they arrive with an infinite variety of needs which the system receiving them must be prepared to meet. Forced-treatment cases may be easier to bring and to win, but elimination of undesirable practices will require a system of private enforcement and day-to-day advocacy which does not now exist. Similarly, preventing discrimination against former

mental patients calls, in the long run, for re-education of society about the nature of mental illness and for soliciting its tolerance—a process without which test-case litigation in this area cannot be successful. While these kinds of cases are important and should be brought, I do not feel they supplant appropriate LRA suits.

"... while government bureaucracies are not noted for their competence in running mental health care systems, that's no excuse for not trying to improve their performance."

Like Chris, I believe the difficulties in successfully concluding an LRA suit should not be minimized and must be weighed before any such suit is brought. However, I do not believe the existence of those difficulties should dissuade mental health lawyers from bringing test cases which challenge such fundamental defects in the mental health system and which promise such profound changes in the lives of so many people.

MHLP STAFF

In recent months two new lawyers have joined MHLP to conduct special programs: Norman Rosenberg, to investigate the legal rights of mentally disabled children, and Margaret Ewing, to develop a model deinstitutionalization program in the Washington DC area. At the same time several staff veterans have moved to important new jobs in government and in nonprofit advocacy organizations.

EDWARD SCOTT has joined, as general counsel, the staff of the Senate Veterans' Affairs Committee after developing over the last four years, under contract with NIMH, the Project's MENTAL HEALTH LEGISLATIVE GUIDE. He was lead counsel in two major Project cases, *Wallace v. Chancery Clerk* and *Wyatt v. Hardin*. Scott's recent writings include "Civil Commitment Statutes in the Courts Today" (*Paper Victories and Hard Realities*, Health Policy Center, Georgetown University) and "The Right to Refuse Treatment: A Developing Legal Concept" (*Hospital & Community Psychiatry*, May 1977).

BRUCE ENNIS, one of MHLP's founding attorneys and since 1972 staff director of its New York office, was recently appointed Legal Director of the American Civil Liberties Union. A pioneer in the mental health law movement, he represented plaintiffs in the Willowbrook case and in *Donaldson v. O'Connor* and *amici* in *Wyatt v. Stickney*. While his popular account of cases, *Prisoners of Psychiatry*, is out of print, an updated version of the ACLU handbook, *The Rights of Mental Patients* (written with Richard Emery) will be published in February 1978. Ennis also coedited with Paul Friedman the three-volume sourcebook, *Legal Rights of the Mentally Handicapped*.

Also from the Project's New York office, DEBORAH STEAD, legal assistant, has become national coordinator of the National Committee to Reopen the Rosenberg Case. She participated as a lay advocate

in New York legal proceedings on behalf of persons labeled mentally disabled and operated a busy and informal information clearinghouse for them. While at MHLP she was elected to the board of directors of Project Release, a New York ex-patient group, and helped prepare a legal-rights consumer handbook for New York City mental patients.

An experienced health lawyer, MARGARET F. EWING was a consultant to the Legal Services Corporation, the National Legal Program on Health Problems of the Poor, the Health Law Project (Philadelphia) and the DC City Council Task Force on Residential Care Facilities. As adjunct professor at the Georgetown University Law Center, she taught seminars in health-related legal issues and government regulation of the health industry. A graduate of Cornell University, where she was elected to Phi Beta Kappa, she was a member of the *Yale Law Journal* and graduated *cum laude* from the University of Chicago Law School. Ms. Ewing serves on the board of directors of the Pierce Warwick Adoption Agency.

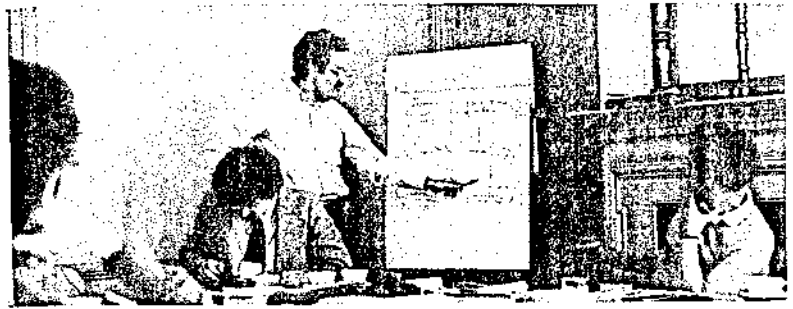
NORMAN S. ROSENBERG comes from an assistant professorship at the School of Law at the State University of New York at Buffalo, where he was director of clinical education and of the legal assistance program. An honor graduate of Hofstra University with a JD *cum laude* from SUNY Buffalo, in 1976 he received the Christopher Baldy University Research Fellowship to promote innovative research and program development in law and social services and an NIMH research grant to facilitate ongoing research in the criminal justice system. Recently he was a consultant to the Bureau of Education for the Handicapped (HEW) to develop procedures for evaluation of Federal legislation affecting educational services to handicapped children. Among his publications is, with W.J. Newhouse, *Educational Services for the Handicapped Child in New York State*.

Project Policy Development

Who, what, where, when & how?

Policy determination by any group working at the cutting edge of law is inherently delicate --made even more so in the mental-disability area by the enormity and sensitivity of the rights and equities involved. Incessant review is needed in light of the many new issues which surface as outcomes of landmark litigation and legislative reform.

In several kinds of regular forums, the staff and trustees of the Mental Health Law Project explore these issues and devise strategies for their equitable resolution, often with guidance by "outside" experts. At biennial goalsetting conferences, we establish priorities for MHLF objectives and functions; in semiannual board meetings, broad policy guidelines are set; at biweekly staff meetings and weekly gatherings of professional staff, current strategy is developed and experience shared.



At a two-day goalsetting conference in February 1977, staff and trustees decided to maintain the Project's emphasis on landmark litigation, especially to develop methods for implementing system-changing court orders. Above, Bruce Ennis (left) and Paul Friedman listen as Charles Halpern charts the impact of test cases. (Photo: Lee Carty)



Above, Project staff attorneys Jane Yohalem and Norman Rosenberg. (Seminar photos: Morton Broffman)

This summer, several staff meetings were expanded into seminars for Project study of major issues such as civil commitment, deinstitutionalization and the merits of various implementation techniques. Above, at the implementation seminar, from left:

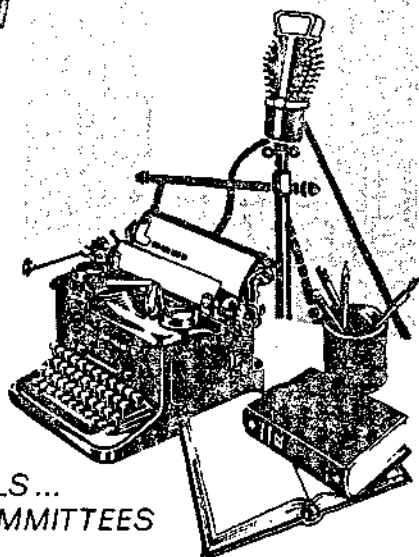
Harvard law professor Abram Chayes, Norman Rosenberg, Robert Moon, Paul Friedman, Michigan Legal Aid attorney Lawrence Gilbert, Chris Hansen, Margaret Ewing and, backs to camera, Bill Reedy, Robert Plotkin, Susan Winders and Kay Rigling.



Consultants at the seminar were Professor Chayes, author of "The Role of the Judge in Public Law Litigation" (89 *Harvard L. Rev.* 1281), left, and Jennifer Howse, executive director of the Willowbrook Review Panel--the implementation mechanism for *NYSARC v. Carey*. Right, Ms. Howse discussed with Margaret Ewing (on left) ways to implement the deinstitutionalization order in *Dixon v. Weinberger*, drawing on her experience in developing community placements for Willowbrook residents.



OUTREACH



SEMINARS...
PAPERS... PANELS...
SPEECHES... COMMITTEES

With the expanding impact of the mental health law movement, growing numbers of professional and consumer groups are seeking greater understanding of the legal rights of mentally and developmentally disabled persons and, in conferences and publications, exploring new issues in advocacy on behalf of their clients and constituents. As part of the Project's educational program, members of its staff often take part in cross-disciplinary meetings, seminars and panels, respond with technical assistance to requests by legislatures and government agencies as well as advocates and publish their legal theories in professional journals. OUTREACH documents these individual staff efforts.

In a recent article, "Stranded in the Jungle: The Mentally Retarded Offender" (spring issue, 1977, Vol. 1, No. 3 *District Lawyer*), staff attorney ROBERT PLOTKIN assails the treatment of mentally retarded persons in the criminal justice system. "Mentally retarded people," according to Plotkin, "should not be above the law--but neither should they fall below the law's protection."

Citing a 1963 survey of the law by the President's Panel on Mental Retardation, Plotkin points out that "nine and one half percent of all prison inmates could be classified as mentally retarded, that there was a clear lack of uniform testing for retardation in correctional institutions, and that, since there were generally inadequate mental health facilities in prisons, there were virtually no special provisions or programs for the retarded." Another study documented a "failure to recognize" mental retardation, he said, and "insensitivity or indifference to it, uncertainty of application of the legal rule and inappropriateness of the legal result if the fact of mental retardation is established."

Since winter 1976-77, Plotkin has also: conducted a seminar at Antioch Law School (Washington DC) on the right to refuse treatment; addressed former mental patients at Woodley House, a sheltered-apartment facility in Washington DC; participated, with PAUL FRIEDMAN, in an educational conference regarding the low-fee clinic of the Baltimore/DC Psycho-

analytic Institute; been reappointed to the Great Oaks (retardation) Center's Human Rights Committee for a second two-year term; met with the Massachusetts Committee on Criminal Justice to discuss problems of mentally retarded persons in the criminal justice system. He has recently published a book review, "The Mentally Retarded Citizen and the Law" 14 *American Crim. Law Rev.* 347 (1976). As guest lecturer for one of his classes in Law & Psychiatry at George Washington University Law School, Plotkin invited Kenneth Donaldson to speak on the right to liberty, won in the landmark Supreme Court decision in *O'Connor v. Donaldson*. CBS Weekend News filmed the class and interviewed Paul Friedman at MHL, plaintiff Bill Dixon and other MHL clients at St. Elizabeths Hospital and members of the Green Door--the self-help aftercare program in Washington DC run by former MHL social worker Gail Marker. CBS producer-reporter Joan Snyder compiled a comprehensive segment on deinstitutionalization, telecast nationally during the evening news on July 3rd.

Increased client access to mental health records was strongly advocated by staff attorney JANE YOHALEM at a roundtable discussion sponsored by the DC City Council on the District's new Mental Health Information Act. This bill would assure maximum confidentiality of clients' mental health records, considerably tightening up access to records by third parties while favoring open access to clients. The reasoning behind this bill, which is based in large part on the Mental Health Law Project's *Legislative Guide*, is that consent to release of records is impossible when a client has no knowledge of what he/she is releasing.

Among Ms. Yohalem's recommendations, provided at the request of the City Council's Committee on the Judiciary, were (1) that a client's revocation of consent to release personal health information be effective immediately upon receipt, rather than 21 days after receipt as stipulated in the bill; (2) that a mental health professional be required to state in writing the reasons for any refusal to release information to the client; (3) that, except in an emergency situation, disclosure of information to another mental health professional should be stringently limited; (4) that the client's consent should be required before information is disclosed to third-party payers; and (5) that client access to records should be allowed without exception--or, at a minimum, that clients should have access to all records which are to be sent to third parties.

Included among her other activities, Ms. Yohalem also spoke on patients' rights in the community before the Prince Georges County (Md.) Mental Health Association and taught, at the Center for Law and Social Policy (Washington DC), a seminar on the right to treatment.

MHL was represented by staff attorney NORMAN ROSENBERG at a June conference which focused on child abuse outside the home. He participated as a legal rights panelist at the first National Workshop on Institutional Child Abuse, sponsored by the Department of Health, Education and Welfare through cooperation with HEW's National Center on Child Abuse and Neglect, along with James Clements MD, a member of the Project's board of trustees.

BIOETHICS CONFERENCE

The National Legal Center for Bioethics, a nonprofit corporation established in 1975 to affect social policy in the emerging field of bioethics, is presenting a conference in Washington DC, on October 20-22, 1977, on "Policy Making and Health Resource Allocation."

Experts in law, medicine, ethics and economics will examine public policy and life-prolonging technology, concepts of distributive justice, relationships between definitions of health and societal responsibility and the Constitutional parameters of the policymaking process. For further information, contact: Joseph F. Sedlak, Conference Coordinator, PO Box 24021, Washington DC 20024/(301) 649-4421.

The conference brought together a group of people with diverse experience in the field, including private attorneys, institutional representatives and people from the mental health community. The discussion focused both on the obvious kinds of institutional abuse often reported in the press (physical abuse, intrusive therapies, psychotropic-drug administration) as well as the more subtle but equally harmful effects of institutionalization upon children: imposition of an atmosphere in which it is all but impossible for a child to develop normally, where intellectual development is retarded and "normal" socialization cannot develop. Rosenberg reports "general philosophical agreement" that institutionalization of children should be avoided entirely in all but the most severe instances and that alternatives which approximate an individual's home situation (e.g., a foster home) are the most desirable solution to this especially deleterious incarceration. Also under discussion was the litigation and implementation of institutional child-abuse cases.

PAUL FRIEDMAN has been appointed to the Advisory Board of the ABA Commission's Developmental Disabilities State Legislative Project as a representative from MHLP. In recent public presentations, he addressed an International Colloquium: Innovative Treatment/Public Policy/Mental Health (Palo Alto, Cal.) on "Legal Strategies for Changing Social Policy Toward 'Mad Persons';" participated in a conference on "The Pursuit of Justice for Children in Contemporary Society" at the Rockefeller Foundation (NY); attended a meeting of the White House Conference on Handicapped Individuals (Washington DC) as a resource panelist for the Civil Rights Workshop; participated in a workshop panel at Albert Einstein College (NY) on "Recent Court Decisions" as part of a Symposium on Present and Future Directions in Developmental Disabilities for Region II of HEW; briefed the staff of the President's Commission on Mental Health at the request of its director; met with staff from the National Institute on Aging at a conference on "Protection of Elderly Human Subjects" regarding protections for elderly persons subject to research; spoke on legal rights of the mentally ill in the community to the Las Vegas Mental Health Center.

CHRIS HANSEN was a judge at the moot court competition at Hofstra Law School; spoke on "The Rights of Mental Patients" at the Community Council of Greater New York; appeared, with PAUL FRIEDMAN, on a panel on "The Rights of Retarded Persons," sponsored by the Albert Einstein College of Medicine; gave two lectures at the University of Utah Law School on "The Rights of Mental Patients"; took part in two panels at the annual meeting of AAMD in New Orleans, on Willowbrook and on *Bartley v. Kreams*.

LEE CARTY co-authored (with William Dussault) a chapter on "Legislation Affecting the Disabled" for the *Disability Handbook* due for publication by McGraw-Hill in early 1978; participated in a panel on mental patients' rights sponsored by the DC Mental Health Association.

President's Commission Panel

Paul Friedman has been named coordinator of the Task Panel on Legal and Ethical Issues of the President's Commission on Mental Health. The panel is one of the specialized groups formed by the Commission to give exhaustive study to scientific and social issues affecting mental health and mental retardation service delivery. The Commission in turn is charged with making recommendations to the President on the future direction of Federal mental health and mental retardation policy and legislative proposals.

The task panel is charged with reviewing recent developments affecting the mentally ill and mentally retarded--court cases, new statutes and administrative procedures--and with identifying the problems and issues which have emerged as a result of these developments. In its April 1978 report, the panel is asked to set forth for the Commission's consideration alternatives for Federal, state and private actions "to promote the physical and mental welfare of the mentally disabled and to protect the public interest."

Among members of the panel, in addition to Friedman, are John H. Beard MSW, executive director of Fountain House; Harold W. Jordan MD, Tennessee's Commissioner of Mental Health and Mental Retardation; Ruth I. Knee MA, ACSW, consultant in long-term mental health care; Jane Knitzer EdD, staff associate with the Children's Defense Fund; attorney Michael S. Lottman, director of the Education Law Center; legal services lawyer Neil H. Mickenberg, director of Vermont Legal Aid; John T. Monahan PhD, assistant professor of psychology at the Program in Social Ecology, University of California at Irvine; Armando Morales DSW, associate professor (psychiatry) at the UCLA Center for the Health Sciences; Michael J. Perlin, director of New Jersey's Division of Mental Health Advocacy; Loren H. Roth MD, MPH, director of the Law and Psychiatry Program of Western Psychiatric Institute (Pittsburgh); and law professor David B. Wexler of the University of Arizona.

RECENT BOOKS



Behavioral Science

How to Understand and Analyze Your Own Dreams by Louis A. Gottschalk MD; \$5.95, Vantage Press (1975).

Background reading material from new research on the physiology of dreaming and from psychoanalytic psychology.

Particulars of My Life by B.F. Skinner; \$10.00, Alfred A. Knopf (1976). The opening volume of Dr. Skinner's autobiography.

Rage/Hate/Assault and Other Forms of Violence, edited by Denis J. Madden and John R. Lion; SP Books Division of Spectrum Publications, Inc. (1976). Current literature in the area of violence from the disciplines of psychiatry, psychology, penology and sociology.

Modern Clinical Psychology: Principles of Intervention in the Clinic and Community by Sheldon J. Korohin; \$16.95, Basic Books, Inc. (1976). Written for both students and professionals, this textbook uses both clinical experience and psychological research.

A Psychiatric Glossary, prepared by a Task Force of the Committee on Public Information, American Psychiatric Association; \$7.95, Basic Books (1975). The fourth edition of the glossary which first appeared in 1957.

Gifts from Lake Cowichan by Patricia Baumgardner; *Legacy from Fritz*; \$7.95, Science and Behavior Books (1975). Lectures delivered by Fritz Perls on his method of Gestalt psychotherapy, followed by edited excerpts of Perls' dream-therapy sessions with clients.

The Passions: The Myth and Nature of Human Emotion by Robert C. Solomon; \$9.95, Arbor Press/Doubleday (1976). Philosophical discussion of emotional constructs viewed as positive structurings defining roles of our lives, rather than as primitive forces at war with the intellect.

Between Survival and Suicide, edited by Benjamin B. Wolman; Gardner Press, Inc. (1976). A collection of essays to examine the nature of suicide through the nature of man and his society.

Principles of Learning and Memory by Robert C. Crowder; Lawrence Erlbaum Associates (1976). Written as part of the "Experimental Psychology Series," this volume offers a comprehensive survey of human learning and memory from a theoretical point of view.

Supported Work as a Tool for Reintegration, Center for Public Representation, Inc., Diane Post and Diane Greenley (1977). Written to stimulate activity and to illustrate the benefits of supported work as a tool for reintegration for the ex-offender, ex-mental patient or persons with a history of drug or alcohol abuse.

Life and Death at the Bronx Psychiatric Center, prepared by the Temporary Commission of Investigation of the State of New York (1977). A report written at the request of the Board of Visitors of the Bronx Psychiatric Center after six alleged incidents of patient abuse.

Research

Prolongevity by Albert Rosenfeld; \$8.95, Alfred A. Knopf (1976). A report on the scientific discoveries now being made about aging and dying and their explicit promise of a vastly extended life span.

Neurosurgical Treatment in Psychiatry, Pain, and Epilepsy: Proceedings of the Fourth World Congress of Psychiatric Surgery, edited by William H. Sweet MD, DSc., Sixto Obrador MD and Jose G. Martin-Rodriguez MD; \$42.50, University Park Press (1975). Highly technical research papers presented at above conference on titled subjects, including tutorial essays as well as documentation of clinical experience and experimentation.

Pharmacotherapy and Psychotherapy: Paradoxes, Problems and Progress by the Committee on Research, Group for the Advancement of Psychiatry; \$8.95, Bruner/Mazel (1975). Survey of experimental literature of treatment modalities for neuroses, schizophrenia, depression and anxiety.

Changing Patterns in Residential Services for the Mentally Retarded (Revised Edition), edited by Robert B. Hugel and Ann Shearer; President's Committee on Mental Retardation (1976). An update of the report first published in 1969.

Child Welfare in 25 States--An Overview, Children's Bureau, National Center for Child Advocacy, Department of Health, Education and Welfare (1976). Conducted under contract, this survey is part of a three year effort to help all states to improve their child welfare service delivery systems.

Law & Advocacy

Trial Manual for Civil Commitment, compiled by Steven J. Schwartz (Mental Patients Advocacy Project) and Donald Stern (Boston College Law School); \$5.00 for legal-service and public-interest attorneys; \$10.00 for all others. May be ordered from the Mental Health Legal Advisors Committee, 73 Tremont Street, Boston, Mass. To assist attorneys and advocates in representing defendants in civil commitment proceedings the authors have compiled a comprehensive trial manual with extensive citations that trace a commitment case from its inception through trial and appeal. Although the manual is primarily based on Massachusetts law, its strategies and legal approaches should be of use in other jurisdictions.

Psychiatric Slavery: When Confinement and Coercion Masquerade as Cure by Thomas Szasz MD; Free Press (1977). In his most recent polemic, Dr. Szasz has chosen the dramatic personae of the Donaldson case as his targets, proclaiming himself "inimicus curiae" (enemy of the court). His conclusions are based on inaccuracies of fact, greatly detracting from the otherwise cogent statement on the dangers of institutional psychiatry.

Civil Disabilities of Individuals with Drug or Alcohol Abuse Records: Annotated Bibliography; Center for Public Representation, Inc. A representative group of available sources.

Freedom to Die: Moral and Legal Aspects of Euthanasia by O. Ruth Russell; Human Sciences Press (1975). The author argues that there is a time when it should be legally permissible for a physician to end hopeless suffering or to provide means for a patient to do so in accordance with safeguarding laws.

Rehabilitation and the Retarded Offender, edited by Philip L. Browning PhD; Charles C. Thomas (1976). An exploration of the subject by professionals in psychology, rehabilitation, law and criminal justice.

Death, Dying, and the Biological Revolution: Our Last Quest for Responsibility by Robert M. Veatch; \$12.95, Yale University Press (1976). A critical survey of the medical, ethical and legal aspects of death and dying, based on the assumption that the patient must be the center of any decision-making.

RECEIVED BY MHLF

The Patient as Person by Paul Ramsey; \$3.95, Yale University Press (1970). An analysis of medical ethics written by a Christian ethicist.

Litigation Under the Amended Federal Freedom of Information Act, edited by Christine M. Marwick; Project on National Security & Civil Liberties of the ACLU Foundation (1977). An update of the first edition, citing twice as many cases and covering all amendments to the 1966 Act. \$6.00 for nonprofit public-interest organizations, law students and faculty; \$20.00 for all others.

Standards Relating to Juvenile Delinquency and Sanctions, Institute of Judicial Administration, American Bar Association, Juvenile Justice Standards Project; Tentative draft, 1977) Ballinger Publishing Co. Standards and commentary written as part of a series to cover the spectrum of problems pertaining to the laws affecting children. They examine the juvenile justice system and its relationship to the rights and responsibilities of juveniles.

Consent Handbook, American Association on Mental Deficiency (1977). Compiled by the Task Force of the AAMD Legislative and Social Issues Committee as a conceptual framework for consumers, professionals and other interested citizens to approach consent issues.

The Right to Treatment for Mental Patients, edited by Stuart Golan and William J. Gremow; Irvington Publishers, Inc. (1976). An examination of the problems of right to treatment, especially as reflected in class-action suits.

ACLU Texts

ACLU HANDBOOK SERIES

The Rights of Young People by Alan Sussman; \$1.50, Avon Books (1977). In question-and-answer format, this book covers a wide range of topics including a child's right to medical care, the right to work, juvenile offenses and court procedures, police practices, child abuse, neglect and adoption etc. The handbook is simply and clearly written. Although each subject is treated rather superficially, the underlying documentation is thorough and accurate. The preface states the hope "...that Americans informed of their rights will be encouraged to exercise them." This is a laudable goal. As the preface points out further, however, the guide "offers no assurances that [one's] rights will be respected." The young reader should be cautioned to use the guide advisedly, keeping in mind that there is often a wide gap between the law on the books and the law in action.--NORMAN S. ROSENBERG

The Rights of Hospital Patients by George J. Annas; \$1.50, Avon Books (1975). This guide sets forth the rights of hospital patients under present law and offers suggestions on how those rights can be protected.

The Rights of Mentally Retarded Persons by Paul R. Friedman; \$1.50, Avon Books (1976). Written by MHLF's managing attorney, this book was described in some detail in the Winter 1976-77 Summary of Activities.

ACLU texts, published by the National Textbook Company, include: *Freedom of Speech* by Franklin S. Haiman, *Racial Equality* by Laughlin McDonald, *Rights of Privacy* by John H.F. Shattuck, *Religious Freedom* by Leo Pfeffer, *Due Process of Law* by Joel M. Gora and *Women & the Law* by Eve Cary and Kathleen Wilert.

Law of the Elderly, edited by Jonathan A. Weiss; Practising Law Institute (1977). Written for lawyers and other professionals to provide a clear description of what the elderly confront, what the law does and does not do, and what should be done in response to the law's inadequacy.

Statewide Grand Juries, The National Association of Attorneys General, Committee on the Office of Attorney General; \$2.50, (April 1977). Discusses use of grand juries statewide. The statutory and actual operation of such grand juries in the six states where they exist is also presented.

Taps, Bugs, and Fooling the People by Herman Schwartz; The Field Foundation (1977). A 48-page study of wiretapping in the United States, emphasizing its impact on the growth of governmental lawlessness and the corruption of law enforcement.

Affirmative Action for Handicapped Persons in Wisconsin: Handicapped? You Have Rights! by Stu Spielman and Dianne Greenley. A guide to Section 504 of the Federal Rehabilitation Act of 1973.

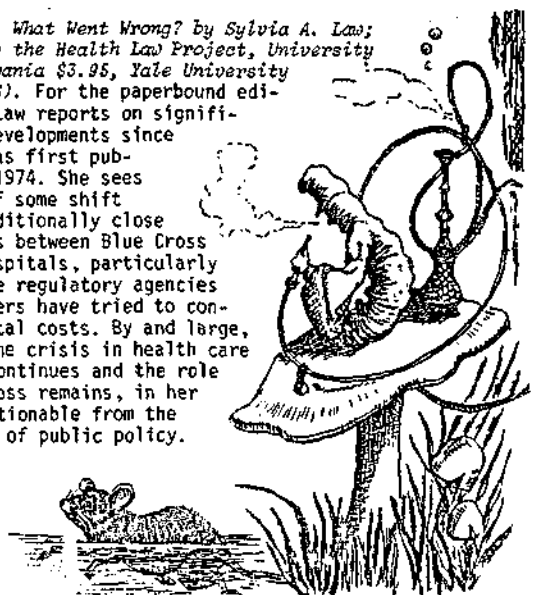
American Medicine and the Public Interest by Rosemary Stevens; Yale University Press (1972). This book traces the interconnections of professional, social and legislative developments in health and analyzes future implications.

Legal Aspects of Admission and Treatment Proceedings, edited by Carolyn F. Swift; Wyandotte County Mental Health and Guidance Center, Inc. (1976). Proceedings of a conference held April 23-25, 1975, sponsored by the Kansas Association of Directors of Community Mental Health Centers, the Kansas Community Mental Health Continuing Education Program and the Wyandotte Mental Health Center (Kansas City).



Profiles of DD Councils by Roy Brunninghaus and Ron Wiegert; Developmental Disabilities Technical Assistance System, University of North Carolina at Chapel Hill (spring 1976). The purpose of this report is to share information on the basic characteristics of state Planning Councils for Developmental Disabilities.

Blue Cross: What Went Wrong? by Sylvia A. Law; prepared by the Health Law Project, University of Pennsylvania \$3.95, Yale University Press (1976). For the paperback edition, Ms. Law reports on significant new developments since the book was first published in 1974. She sees evidence of some shift in the traditionally close regulations between Blue Cross and the hospitals, particularly where state regulatory agencies and consumers have tried to control hospital costs. By and large, however, the crisis in health care delivery continues and the role of Blue Cross remains, in her view, questionable from the standpoint of public policy.



Driver Screening Hazards

continued from page 1

teria and the procedures for permit-application review function in discriminatory fashion.

Last December, in cooperation with the Epilepsy Foundation of America, MHLF mailed a comprehensive questionnaire to the Department of Motor Vehicles in each of the 50 states and the District of Columbia. Thirty-two of the agencies cooperated in the survey, returning with their answers sample forms and review standards.

Of the states that responded, 75 percent have a special screening division for applicants who admit to mental disability, separate from the licensing bureau itself. Twenty-four depend on a professional advisory committee--physicians with various specialties--for this evaluation; eight delegate review responsibilities to a DMV employee, often a physician, or to the director of the screening division. In 20 states the medical boards operate under written guidelines; 12 states have no such formal policy.

Asked to rank in order of importance the criteria influencing issuance or denial of a permit, states showed considerable variation, although overall averages show greatest reliance on the recommendation of the applicant's personal physician. Previous driving record was the second most important criterion cited, followed in descending order by "diagnosis," "prognosis," medication, road test, number of years in treatment and, lastly, the DMV's written examination. Over two-thirds of the states do not allow an applicant to take either the road or written test before screening for mental disability or epilepsy.

The survey also tried to determine what protections exist for the confidentiality of information supplied by applicants. Eighteen states reported that applicants admitting to any disability are required to sign a medical-information release form. These records, once obtained by the DMV's, remain available for scrutiny not only by the relevant medical review boards but also by staff members of every agency responding to the survey. Most store the reports in manual office files, although some records are computerized. In one state, these files are a matter of public record.

Yet such screening is undertaken without basic knowledge about its validity. No state could provide any data on the number of accidents involving drivers with a history of mental disability or epilepsy. (Five, however, suggested that another state agency might be able to supply such statistics on referral.) Of the responding states, 87.5 percent kept no data on the screened population--even as to the number of persons either denied permits or granted licenses after review.

A review of the relevant literature undertaken by Ms. Carter suggests that there is no reliable method to discriminate between a competent and incompetent driver without a clear demonstration of individual medical incapacity and/or technical inability. Indeed, she refers to an article ^{1/} by former MHLF staff attorney Bruce Ennis and psychologist Thomas Litwack citing a large and relatively consistent body of professional literature which questions the reliability and validity of psychiatric prediction of individual behavior in regard to dangerousness. Instead, various studies suggest that, aside from previous driving record, there are only subsidiary indicators of a potential for high-risk driving, including youth, alcoholism, sociopathic patterns and certain organic medical conditions. ^{2/}

A Mississippi State Medical Association memo on policy and program for medical advice to the State Department of Public Safety, returned with the com-

^{1/} "Psychiatry and the Presumption of Expertise: Flipping Coins in the Courtroom," 62 Cal. L. Rev. 693 (1974).

^{2/} E.g., Julian Waller, "Chronic Mental Conditions and Traffic Safety," *New Eng. J. of Med.* (Dec. 1965), 1413-1420, and "Administrative and Research Problems in Identifying Individuals with High Crash Risk," 1 *Behavioral Research in Highway Safety* 67-77 (Summer 1970). M.W. Buttiglieri, in "Driver Accidents and the Neuropsychiatric Patient," *J. of Consulting and Clinical Psychology* 381 (1969), reports a three-year study of 533 VA hospital-patient drivers compared to published data for a random sample of California drivers, showing no significant difference in accident rates and, in fact, a lower rate for patients with a diagnosis of schizophrenia.

A practical difficulty exists for preliminary applicant review. Unlike the other kinds of screening—road and rules tests and eye examinations—screening for "mental disability" or seizure disorder is initiated by the applicant himself when he admits to a relevant medical history.

Please answer the following questions by placing an X in the square under the word YES or NO.

YES		NO		MEDICAL HISTORY	
1.	<input type="checkbox"/>	<input type="checkbox"/>		Have you ever been treated for a mental, nervous or emotional condition?	
2.	<input type="checkbox"/>	<input type="checkbox"/>		Have you ever had or do you now have any physical defects, such as:	
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/> Missing Limb	<input type="checkbox"/> Stiff Neck <input type="checkbox"/> Stiff Arms or Joints
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/> Other _____	
3.	<input type="checkbox"/>	<input type="checkbox"/>		Have you ever had an impairment of vision or hearing that has not been corrected?	
4.	<input type="checkbox"/>	<input type="checkbox"/>		Have you ever had convulsions, seizures or epilepsy?	
5.	<input type="checkbox"/>	<input type="checkbox"/>		Have you ever had or been treated for diabetes?	
6.	<input type="checkbox"/>	<input type="checkbox"/>		Have you ever had a problem with drinking or drugs? <input type="checkbox"/> With alcohol?	
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/> With drugs?	
7.	<input type="checkbox"/>	<input type="checkbox"/>		Have you ever been treated for <input type="checkbox"/> Dizziness, <input type="checkbox"/> Heart Trouble,	
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/> Loss of Consciousness, <input type="checkbox"/> Loss of Muscular Control, <input type="checkbox"/> Stroke,	
	<input type="checkbox"/>	<input type="checkbox"/>		Hemorrhage or Clots, <input type="checkbox"/> High Blood Pressure, <input type="checkbox"/> Blood Vessel	
	<input type="checkbox"/>	<input type="checkbox"/>		Disorder, <input type="checkbox"/> Emphysema, <input type="checkbox"/> Other Serious Medical condition?	

This is to certify that the information provided herein is true and correct, and that I am the person named and described on the reverse side, and that my license or driving privilege is not currently suspended, revoked, cancelled or denied. I agree to report immediately to the Dept. of Public Safety any change in my medical condition which may affect my ability to operate a motor vehicle safely.

Signature of Applicant

Date

Change of address? Please let us know!

To: MHLP Suite 300, 1220 Nineteenth Street NW Washington DC 20036

[] This is a new address.

[] This is a correction.

NAME _____

ADDRESS _____

CITY _____

STATE _____

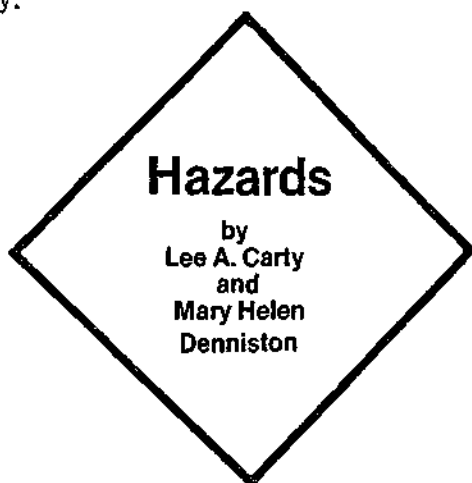
ZIP _____

ORGANIZATION _____

(if applicable)

pleted questionnaire, admits the fallacy of categorization on the basis of medical history. "There are no scientific data available to indicate that drivers with any particular disease condition have higher accident rates than comparable groups free of such conditions. The observation is substantiated by accident rates of young male adults, ages 16 through 25, who have the fewest impairments and the highest accident rate."

A further, practical difficulty exists for this kind of preliminary applicant review. Unlike the other kinds of screening--road and rules tests and eye examinations--screening for "mental disability" or seizure disorder is initiated by the applicant himself when he admits to a relevant medical history.



Given studies showing that over 80 percent of all accidents are driver-related, some kind of screening appears to be necessary. With an estimated 91 million licensed drivers in the United States, individual and confidential medical evaluation of every applicant is hardly a practical alternative. But under current practices as revealed by the MHLP/EFA survey, the licensing-review policies in most states are both discriminatory and potentially stigmatizing, while depending on unreliable mechanisms and unsupported criteria.

The issue is far from frivolous. The potential is great for economic harm to the person deprived of a driver's license--in reduced access to employment or services--yet the truly inept or irresponsible driver is an obvious menace to society. What the survey clearly emphasizes is the need for specificity on at least two fronts: documentation of the relationship to accidents, if any, of a history of "mental disorder" or epilepsy and, in light of such information when it is obtained, a complete overhaul of the criteria and the mechanisms for licensing review.

Foundations Support New Project Programs

In its first few years, MHLP's work on behalf of mentally and developmentally disabled persons was financed by general grants, principally from the Edna McConnell Clark and William T. Grant Foundations. As our work has expanded, we have solicited individual donations and additional foundation support to begin new programs. The response is gratifying. Many new friends have made personal gifts from \$1 to \$1,000 to underwrite this newsletter and to help with the high cost of test cases, and several foundations have awarded important grants which enable the Project to undertake special programs while maintaining the momentum of its current litigation, research and educational outreach.

Youth Rights

Under a grant of \$35,000 by the Foundation for Child Development, the Project has begun a program to investigate and implement the legal rights of mentally handicapped children. New staff attorney Norman Rosenberg is currently reviewing some of the issues relating to confinement of children as well as those pertaining to their need for special services in the community. He will consider various types of cases which may help to resolve the special problems affecting children in the mental health and juvenile justice systems.

Deinstitutionalization

The Eugene and Agnes E. Meyer Foundation has given a second grant to the Project, of \$25,000 toward development of a model deinstitutionalization oversight and advocacy program in the Washington DC area. In addition to her work on implementation of the *Dixon* deinstitutionalization order for mental-hospital patients, Margaret Ewing will address the problems facing mentally disabled people confined inappropriately or being released from local retardation and correctional facilities.

General Program Funded Also

Three other recent grants provide significant support for the Project's work in the next year. The Veatch Program of the North Shore Unitarian Society has awarded \$80,000 for advocacy on behalf of persons labeled mentally disabled, especially in the New York and Long Island region. The Ittleson Foundation--traditionally concerned for the quality and accessibility of mental health services--has given \$30,000 toward the Project's general program on behalf of mentally handicapped persons. And, recognizing the shortage of funding for all public-interest organizations, including MHLP, the William T. Grant Foundation has renewed its generous support in the amount of \$100,000 a year through 1979.

Mental Health Law Project

1220 Nineteenth Street NW Suite 300 Washington DC 20036

Address Correction Requested

Nonprofit Organization
U S POSTAGE
PAID
Washington DC
Permit No. 46091

Printed by the Sheltered Occupational Center of Northern Virginia

Comments on New Legislation

Justice Department Standing

Important legislation now before Congress would authorize the U.S. Department of Justice to sue on behalf of institutionalized persons. Reflecting the Project's position in *amicus* briefs on appeal of this issue in two right-to-treatment cases (*U.S. v. Solomon* and *U.S. v. Mattson*), see Winter MHLF Summary of Activities), Paul Friedman testified before hearings of House and Senate Judiciary Committee subcommittees.

Addressing provisions in HR 2439 (now designated HR 7053), Friedman stressed "three points which I believe are of central concern: that there is a documentable and universally acknowledged 'national emergency' involving our country's mental institutions; that mentally retarded and mentally ill adults and children in residential facilities have a number of constitutional rights which are being violated; and that...action by the Attorney General, with his superior resources for maintaining complex and protracted litigation, is indispensable to the already well-established Congressional concern for protection of the civil rights of these persons."

Commenting on S 1393, a similar bill before the Senate, Friedman took exception to the suggestion by some state attorneys general that there are adequate protections for mentally handicapped persons "and that, therefore, there is no need for participation by the Justice Department. The facts are very much to the contrary....There is in fact virtually no jurisdiction in the nation today where legal resources available to the institutionalized person can be termed 'adequate' even by the norm of lawyers available to the general paying public....The Justice Department can provide a kind of ongoing presence and stability as well as a special expertise that is very lacking in the bar at large...."

"In the end, of course, the court cannot do it all," Friedman stated. "But all who are knowledgeable in this area agree" that right-to-treatment cases to date "have led to meaningful improvements. We need more of the same. Barring some unlikely infusion of funds into the legal services programs or into public interest advocacy, it is impossible to think that civil rights will be vindicated for mentally handicapped citizens in our public institutions without the continued presence of the Department of Justice."

"We support the bill," Friedman told the subcommittee. "We think it is terribly important and badly needed." The Senate subcommittee is chaired by Birch Bayh (D-Ind.) and includes in its membership James Abourezk (D-SD), James B. Allen (D-Ala.), Orrin Hatch (R-Utah), Howard Metzenbaum (D-Ohio) and William L. Scott (R-Va.). The committee which reviewed the House bill is chaired by Robert W. Kastenmeier (D-Wisc.) and includes M. Caldwell Butler (R-Va.), George E. Danielson (D-Cal.), Robert F. Drinan (D-Mass.), Allen E. Ertel (D-Pa.), Tom Rallsback (R-Ill.) and Jim Santini (D-Nev.).

St. Elizabeths Hospital

In testimony submitted at the request of another House of Representatives subcommittee on Fiscal and Governmental Affairs, of the Committee on the District of Columbia--Friedman addressed issues of direct concern to implementation of *Dixon v. Weinberger*, MHLF's major least-restrictive-alternative case. Commenting on HR 3335, a bill to establish a government corporation to administer St. Elizabeths Hospital, he stated:

"To achieve the goal of integrated mental health services, eventual transfer of the hospital to the control of its constituent community--the District of Columbia--is clearly desirable. However...the basic issue is not the transfer of the hospital... but rather the *transformation* of the existing system of care--with its topheavy in-hospital population--toward the concept of a phased continuum of treatment alternatives suited to changing patient needs....In this context, HR 3335 offers some grounds for optimism....The proposed corporation would replace a currently fragmented administrative structure and would bring relevant community representation into future policy development."

"Just as Saint Elizabeths Hospital was at one time intended to be a Federal showcase institution, could not the comprehensive mental health services system envisioned in this bill be a model for the urban communities of the nation? That was an objective of the Mental Health Law Project in deciding to file *Dixon v. Weinberger* and it is our continuing goal in seeking to assure implementation of the district court's order in that case. HR 3335 may be a suitable vehicle to attain such an objective."