

## **The Rights of Some Insanity Acquittees Prevail**

**September 9, 2008**

A year ago, insanity acquittees in North Carolina learned that the State would be moving them twenty-eight miles from the Dorothea Dix Hospital (DDH) in Raleigh, to the newly constructed, Central Regional Hospital (CRH) in Butner. The new hospital is in a rural area with far fewer community resources than DDH. The move meant that the insanity acquittees who had progressed in treatment and were now housed in the minimum- security program would lose not only their independent living housing, but also their jobs in the community. The relocation would also affect the ease of family visits and attending houses of worship. Disability Rights N.C., a nonprofit law project, and the State's Protection and Advocacy agency successfully made the case that the proposed move would violate the rights of this subgroup of insanity acquittees under Federal and State law. Central to the Disability Rights N.C. argument was that the previously appropriate treatment plans at DDH would be unreasonably altered by the move to Butner. Treatment plans often address liberty interests, and these interests cannot be compromised just because the State is moving a hospital.

For forensic psychiatrists, several useful concepts are in this news. There are standard of care issues in the programs that treat insanity acquittees and the standard of care cannot be arbitrarily dismantled by the State. Some insanity acquittees live in independent living programs, have supervised housing arrangements and work competitively in the community. If these could not be adequately reproduced at the Butner facility, the rights of those insanity acquittees would be adversely affected. In a recent telephone interview of Disability Rights N.C. attorney, Susan Pollitt, the reasoning behind their successful petition to the State was based upon concepts of rights maintained by insanity acquittees under federal and North Carolina law. Also, the rulings of three Supreme Court cases can logically extend to insanity acquittees who are far along in the treatment program and who enjoy a variety of freedoms.

In *Jackson v. Indiana*, 406 U.S. 715 (1972) the court stated that for individuals found incompetent to stand trial and who were committed to a mental hospital, the commitment to the facility must bear some "reasonable relation" to the purpose of the commitment. Insanity acquittees are held by commitment until they are no longer mentally ill and dangerous. Their commitment to a State hospital is for treatment.

In *Youngberg v. Romeo*, 457 U.S. 307 (1982) the court addressed the issue of the rights of committed individuals, in this case those who are mentally retarded, to receive "minimally adequate or reasonable training to ensure safety and freedom from undue restraint." The application of this concept to insanity acquittees seems reasonable. Those committed to a State hospital have, according to the *Youngberg* case, "constitutionally protected liberty interest in safety, freedom of movement, and training within the institution." The *Youngberg* decision also underscored the idea that professional (medical or psychiatric) decisions concerning treatment plans were important in establishing what constitutes minimally adequate or reasonable training (treatment).

Those with mental illness who are committed to treatment facilities also have rights under the Americans with Disabilities Act (ADA). In *Olmstead v. L. C. ex rel Zimring*, 119 S. Ct. 2176 (1999) the Supreme Court found that states must maintain

persons with mental disabilities in community settings over institutions when treatment professionals determine that doing so is safe and appropriate. According to the ADA:

No... individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by such entity.

The Court determined that confining, unnecessarily, a disabled person to a psychiatric unit when the patient and treatment team believe a community-based program is more appropriate, is a form of discrimination, which discriminates in two ways. It unreasonably fosters stigma and severely diminishes that patient's participation in ordinary life activities (family relations, social contacts, work, economic liberty, educational opportunities, and cultural enriching activities).

In light of the arguments put forth by attorneys with Disability Rights N.C., North Carolina will not move its minimum-security forensic unit to the new hospital in Butner. The decision to rescind the move was reached in late July 2008. However, insanity acquittees who continue to need a higher security based forensic treatment program will move to CRH in Butner. Many will say that North Carolina is to be commended for changing the course of its earlier decision based upon a letter from concerned attorneys. No lawsuit was filed because none was necessary.

Forensic psychiatrists play a critical necessary role in the establishment of adequate and appropriate forensic treatment plans for those who have committed serious crimes and who have been found not guilty by reason of insanity. Insanity acquittees who are successful in meeting the responsibilities of a treatment plan that includes a supervised independent living arrangement and work in the community, etc., should not have their treatment plans arbitrarily overturned by the State.

Had the proposed move to the new facility provided strikingly similar opportunities as those found at DDH, there would not likely have been a reasonable objection to the proposed move. Please note that this article does not address the larger issues of ongoing mental illness and dangerousness in insanity acquittees whose treatment plan privileges are supervised by courts.