

MENTAL HEALTH LEGAL
ADVISORS COMMITTEE

THE FIRST 35 YEARS
1973 - 2008

*MHLAC - informing, advancing and protecting
the fundamental rights of Massachusetts citizens
since 1973*

MENTAL HEALTH LEGAL ADVISORS COMMITTEE
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This narrative history is published on the occasion of the 35th anniversary of the Massachusetts Mental Health Legal Advisors Committee. It should be considered a work in progress. Readers with first-hand knowledge of MHLAC and the events during this 35 year period are encouraged to add their commentary and expand on the content. An interactive version of this document is posted at www.mass.gov/mhlac/history - for this purpose.

This paper is a joint effort. MHLAC staff provided fodder and editorial assistance. Attorney William F. Landers did additional research and initial drafts. Laura Colby did the design layout work. I alone am responsible for the final content and for any errors or omissions.

Frank Laski
Executive Director
October 2, 2008

Introduction

Thirty-five years ago, as part of a comprehensive reform of the Massachusetts mental health laws, the legislature created a unique advocacy entity within the Supreme Judicial Court — the Mental Health Legal Advisors Committee (MHLAC).

MHLAC's statutory mission pursuant to G.L. c. 221, § 34E is to assist indigent persons with legal problems related to their mental illness or disability through administrative, legislative and judicial advocacy and public education. We counsel individuals in facilities and in the community. We act, often in coalition with others, to press for legislative reform of mental health law. We train lawyers to function as mental health advocates. We educate and raise awareness through our journal, the *Advisor*, and in other publications on current mental health issues. We advise and represent families through the Clubhouse Project, and we appear in court both as *amicus* and directly as counsel or co-counsel in class actions, again often in partnership with others, to address systemically the denial and deferral of the rights of persons with mental disabilities.

This brief paper does not attempt to fully describe the many activities of MHLAC or to chronicle all the contributions of those associated with MHLAC over the past thirty-five years. We hope this document highlights the good works of MHLAC over the years and acknowledges the accomplishments of many people who have participated as committee members, staff, volunteers and collaborators. The following provides an account of MHLAC activities as counsel in the courts, the legislature and administrative agencies, and its activities related to individual representation, professional training, public education and client assistance.

The Courts

MHLAC has been a constant "friend of the court" in the Supreme Judicial Court in cases where important mental health issues have been raised. Since 1976 MHLAC has filed twenty-two "Amicus briefs" in the SJC. MHLAC has briefed and argued the broad range of constitutional issues and questions of statutory interpretation that have shaped developments in mental health law. MHLAC also has provided a practical practitioner and patient perspective on technical procedural mental health issues before the SJC. MHLAC has participated in seminal and ground-breaking cases decided by the Court including: *Rogers, Saikewitz, and Andrews*.

One can never tell if a particular brief or argument has been helpful to the Court or influential in the outcome of any one case. However, a survey of the SJC mental health jurisprudence over the last thirty-five years reveals that the SJC has been constantly attentive and consistently protective of the basic rights of citizens with mental disabilities. We trust that the work of MHLAC has some small, positive influence on this record.

When individual representation and advocacy are stymied by systemic failure to comply with state and federal laws affecting persons with mental disabilities, MHLAC has engaged in litigation on behalf of groups of adults and children with disabilities.

In *D.L. v. Commissioner of Social Services*, the SJC recognized MHLAC's right to sue on behalf of a class of minors in the custody of DSS in order to challenge that agency's authority to commit these youth to institutional care. In *Kadlick v. DMH*, MHLAC counsel were part of a group of advocates successful first, in correcting the mishandling of social security funds intended for patients at Worcester State and Westborough State hospitals and second, in establishing the right of a public advocacy agency to collect attorneys' fees.

In 1990, MHLAC filed *Cordeiro et al. v. Dukakis, et al.*

seeking the transition of persons with mental retardation from Taunton State Hospital. Negotiations with the Office of the Attorney General resulted in transfer of plaintiffs and all other persons with mental retardation from Taunton State to Department of Mental Retardation (DMR) community programs. As a result of *Cordeiro*, DMR clients in all other DMH facilities were transferred and provided community services.

More recently, MHLAC has co-counseled with the Center for Public Representation (CPR) and *pro-bono* private counsel to successfully litigate state-wide, federal class action suits on behalf of children and adults with mental disabilities.

In *Rolland v. Cellucci*, MHLAC joined with CPR and the lawyers from Foley Hoag to represent adults with developmental disabilities residing in nursing homes that were denied active treatment and opportunities for community living in violation of federal law. For nearly ten years, the *Rolland* team of lawyers has litigated and negotiated class members' rights under the Nursing Home Reform Act and ADA to secure active treatment and transition from inappropriate nursing facilities to the community for hundreds of individuals throughout the Commonwealth.

In *Rosie D. v. Swift*, after years of unsuccessful efforts to assist families of children stuck in inpatient psychiatric facilities, MHLAC joined with CPR and a team of lawyers from WilmerHale to enforce the federal Medicaid EPSDT mandate on behalf of a state-wide class of children with serious emotional disorders. After a lengthy trial, the federal court found multiple violations of federal Medicaid law and ordered a comprehensive remedial plan supervised by a court monitor to correct the violations. MHLAC, along with CPR and other counsel, are actively involved in negotiations, oversight and enforcement during the implementation of the remedial orders which promise to bring a wide array of effective, home-based mental health services to thousands of children in the Commonwealth.

Legislation and Administrative Advocacy

Over the years, MHLAC has been active in monitoring legislative activity related to the rights of persons with disabilities and in promoting legislative measures to protect and advance the rights of persons with disabilities. Working closely with consumer and professional allies, including the Coalition for the Legal Rights of Persons with Disabilities (CLRDL), M-Power, the ARC and the National Alliance on Mental Illness, MHLAC has been in the forefront of shaping and securing the enactment of important legislative milestones such as the Act to Protect Five Fundamental Rights, Civil Commitment Reform of 2000, the Mental Health Parity Act and the Children's Mental Health Act signed by Governor Patrick.

MHLAC legislative advocacy has also served to influence positive change and regulatory reform by state agencies. For example, in 1988, MHLAC drafted and filed legislation to establish an independent DMH Human Rights Oversight Process. The General Assembly passed legislation placing the DMH Human Rights Oversight function within MHLAC. With a governor's veto imminent, MHLAC negotiated the creation of a strong human rights structure within DMH, led by a respected independent human rights director.

In the 1990s, MHLAC together with a strong advocacy coalition, pressed for legislation to eliminate unnecessary restraints and reform restraint procedures across all state agencies. Although these legislative efforts were only partially successful, the campaign led to a multi-agency coordinated review of restraint regulations. DMH took the lead in proposing and adopting revised regulations which significantly improved practices and provided the momentum necessary to overhaul restraint procedures and drastically reduce the use of restraints in Massachusetts.

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The 2000 Civil Commitment Reform legislation is not only a legislative victory, it is also an excellent example of how MHLAC individual advocacy, assistance to counsel and the courts, and its public awareness agenda, all contributed to achieving meaningful reform of our civil commitment statute. The impetus for this legislation was a series of articles in *The Boston Globe* exposing aggressive commitment practices at some Massachusetts hospitals. Those articles were based upon specific instances of abuse experienced by clients represented by MHLAC published in MHLAC's *Advisor*. The *Globe* articles, in turn, led to the appointment of an Ad-Hoc Committee to review G.L. 123, § 12. MHLAC joined with representatives from CPR and the Committee for Public Counsel Services (CPCS) to shape the Ad-Hoc Committee's recommendations. MHLAC then joined with CLRDL to support the resulting bill, which ultimately became the Civil Commitment Reform Amendments of 2000.

Public Education

Education and awareness of legal rights and responsibilities have always been central to MHLAC's mission. MHLAC has produced three levels of educational materials designed to reach the broadest possible readership. First, there are materials that inform mental health consumers of their rights. Second, there are materials that inform and give practical advice to professionals and other individuals who have responsibility to persons with mental health problems. Third, there are materials intended for the legal community in the form of newsletters, brief informational packets and in-depth analysis and scholarly treatment of mental health law. One of the first publications to be used by activist consumers was the book *Your Rights as a Mental Patient in Massachusetts: A Handbook for Patients* published in collaboration with the Mental Patients Liberation Front. In 1978, MHLAC also published the first handbook on the rights of developmentally disabled persons.

In order to help families navigate the maze that makes

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up the mental health system, MHLAC produced a number of practical guides, including *The Handbook on Guardianship and the Alternatives*. In the 1990s, MHLAC published editions of the book, *The Legal Rights of Minors*. During the same period MHLAC published the *Managed Care Packet*. MHLAC's latest publication, *Just For Youth: Advocating for Youth in the Massachusetts Department of Youth Services*, provides both parents and counsel practical advocacy tips to address the criminalization of mental illness as it impacts the juvenile population.

Over the years, MHLAC has provided up-to-date information to assist attorneys in their representation of persons with disabilities. From the late 1970s to 2000, MHLAC published a well respected periodical, the *Advisor*. The *Advisor* started as a mimeographed newsletter and was later expanded to include in depth articles on current legal developments. MHLAC's attorneys are also regular contributors to scholarly journals, such as *Berkeley Women's Law Journal* and the *Journal of Poverty Law and Policy*. Many of the recent publications and materials produced by MHLAC are now available on the MHLAC website.

Training

Right to counsel was a key feature of the 1970s mental health reforms (Ch. 888 § 5 (1970)). The primary function of MHLAC in the early years was to develop a cadre of qualified, well trained attorneys to provide zealous advocacy in mental health proceedings. MHLAC took a leading role in the development of standards for attorneys in mental health proceedings, sponsored the publication of the authoritative *District Court Manual on Civil Commitment* (S. Schwartz, D. Stern, 1979) and conducted training sessions for attorneys across the state.

The expansion of CPCS in the 1980s, with the creation of a mental health unit to qualify and assign counsel, enabled MHLAC

to focus on continuing legal education for CPCS counsel, private counsel and the judiciary. Over the last decade, MHLAC has organized and conducted trainings enabling attorneys to earn over 40,000 continuing education credits in mental health law. These trainings, coordinated by MHLAC's Kate Dulit, have featured a prominent and distinguished clinical faculty to bring state of the art knowledge to attorneys representing persons with mental illnesses in Probate District and Juvenile Courts.

Client Assistance

The most meaningful and rewarding work performed by MHLAC staff, volunteers and interns is the day to day handling of requests for assistance. MHLAC's toll free help line is available to all persons in public and private facilities as well as other persons seeking assistance with a variety of issues related to mental disabilities.

The demands upon MHLAC's small legal staff have made it necessary to seek creative ways to expand advocacy resources. In the early days MHLAC established field offices on the grounds of large state hospitals, staffed with student advocates. In 1976 MHLAC joined with the ARC of Massachusetts to give birth to the Disability Law Center as the federally funded protection and advocacy agency. Again in 1986, MHLAC joined with CPR to form the Mental Health Protection and Advocacy system to focus advocacy resources on institutional populations.

Over the years, the dynamics of deinstitutionalization have shaped the nature of MHLAC's individual advocacy. From facility-based monitoring and in-patient assistance, MHLAC shifted to advocacy related to facility closures and transition to the community, and finally to advocacy encompassing a broad range of community issues. Those issues include eligibility for programs and services from various state agencies, access to behavioral health services

through managed care and private insurance, eligibility for federal benefits, entitlement to special education services and combating disability-based discrimination in employment, housing and public accommodations. For example, to better respond to the privatization of behavioral health care, MHLAC established the managed care hotline in 1999. Most recently, with the assistance of AmeriCorps members, MHLAC has created a dedicated intake line to address mental health and education issues of youth involved with the Department of Youth Services (DYS).

Another example of MHLAC's response to newly emerging legal issues affecting persons with mental illness involved with the courts is our family law priority. In 1999, MHLAC partnered with Employment Options, a clubhouse in metro west with a strong parenting support program to create the Clubhouse Family Legal Support Project. This project integrates legal services with family supports and provides assistance and direct representation to parents in Family Court to maintain custodial relationships and increase contact between parent and child. The benefits of integrated legal and mental health services upon family reunification have been amply demonstrated over the last six years as the project has expanded to support clubhouse members in the greater Boston area.

MHLAC Family and Partners

Fifty-six Massachusetts lawyers have served as members of the Mental Health Legal Advisors Committee. In the best traditions of the Massachusetts Bar, they have contributed their time, talents and energies to our most vulnerable citizens, improving access to justice. A far greater number of attorneys have made a difference by taking on the representation of indigent citizens with mental illness, often without compensation or with token fee.

We owe a great debt to our founding members: Michael Angelini, the first Chair of MHLAC; Frederic Greenman, Vice

Chair; Neil Chayet; Ruth Abrams; Ann Lake; Oliver Fowlkes and Honora Kaplan, as well as the early Directors William O'Neil and Thomas Hare.

The staff of MHLAC has always been tiny in numbers but those who have served at MHLAC have giant records of accomplishment and are widely respected for their expertise and persistent advocacy. A person or family, alone and new to the mental health maze, could not do better than have as their attorney/advocate Susan Fendell, Jennifer Honig, Kate Dulit, Kate Nemens, Miriam Ruttenberg, Angelica Vargas, Lauren Roy or Abigail Selter. For many years, our professional staff has been ably supported by Eleanor Garcia and Laura Colby.

Supplementing the staff resources has been a steady stream of interns and law students, and AmeriCorps members joining us at MHLAC. They have been essential to MHLAC's capacity to respond to the demand the assistance. We are particularly grateful to those who we know continue to make a contribution in their practice, among them Gary Zalkin, Amy Hasbrouck, Maura Flessas and Christopher Morrison. Our in-house senior volunteer attorney William Landers has provided invaluable counsel and assistance.

However, the efforts of a small dedicated staff and a devoted volunteer board cannot alone sustain the mission of MHLAC. It is only through lasting alliances with our consumer, professional and legal services partners that we have been and can continue to be effective advocates. We have been fortunate to be able to work closely with CPR and DLC, and Massachusetts Law Reform Institute, Massachusetts Advocates for Children, Massachusetts Legal Assistance Corporation, CPCS and Health Law Advocates. Individual lawyers in local Legal Services offices have provided substantial assistance in aid of our mission. *Pro bono* support from solo practitioners and large law firms has enabled us to go beyond routine representation and use the full force of the law on

behalf of our clients. In that regard WilmerHale and Foley Hoag have been outstanding. We have learned much from our clients associated with the Parent Professional Advocacy League, NAMJ, M-Power, CLRD, Massachusetts Association for Mental Health, Employment Options, and Advocates for Quality Care. We have benefited greatly from the clinical expertise of our colleagues at Massachusetts General Hospital, among them Dr. Ronald Shouten, Dr. Gary Sachs, Dr. Judith Edersheim and Dr. Andrew Clark and University of Massachusetts Medical Center, among them Dr. Joanne Nicholson and Dr. Kathleen Biebel, as well as kindred mental health professionals both in public service and the private sector. We have been inspired by the leaders in the Judiciary who paid attention to the administration of justice for this population, among them Justices Hennessey, and Abrams, Judge Franklin Flaschner, Judge Maurice Richardson, Judge Rosemary Minehan, Judge Jonathan Brant and Judge Edward Ginsburg.

We acknowledge with great gratitude the encouragement and support of Chief Justice Margaret H. Marshall and with equal gratitude recall the support of former Chief Justices Herbert P. Wilkins, Paul J. Liacos and Edward F. Hennessey.

The next 35 years

In the near future the large state institutions will be gone for good. Commitment and confinement without due process and legal representation will be a distant bad memory. The next generation will find it inconceivable that there ever was a TITCUT FOLLIES. Yet MHLAC will continue to confront the reality that children and adults with mental disabilities are always at risk of fear, stigma and discrimination that push them to the margins of society. Although MHLAC's goals and activities will continue to evolve in the decades to come, the values, ideals and zealous advocacy that defined MHLAC from its earliest days will still hold great importance for people with mental illness their families and the Commonwealth.

**Members of the Mental Health Legal
Advisors Committee: 35 Years**

Ruth Abrams	John Healey
Michael Angelini	Edward Hennessey
James Bailey	George Hurd, Jr.
Beverly Boorstein	Honora Kaplan
Nancy Borofsky	Darragh Kasakoff
Jonathan Brant	Ann Lake
Neil Chayet	Robert Ledoux
Michael Ciota	Judith Lennett
Eliot Cohen	Charles Lewis, Jr.
David Cohen	Stephen Limon
Paul Connolly, Jr.	Francis Lynch
Thomas Connors	Charles Mahoney
George Covett	Paul Menton
John Cross	Christopher Morrison
Arthur DeAscentis	Francis O'Connor
Gordon Doerfer	Edwin Podolak
Judith Edersheim	Webb Primason
David Engle	Susan Ricci
Ida Estep	Carmen Rodriguez
Robert Fandel	Arthur Rosenberg
E. Oliver Fowlkes	Robert Smith
Herbert Friedman	Aviann Soifer
Paul Gay	Susan Stefan
Edward Ginsburg	Donald Stern
Frederic Greenman	Lisa van Gordon d'Ertico
Christine Griffin	Owen Walker
Robert Griffith	Kathryn White
Marvin Guthrie	Steven Wollman

MHLAC Staff 2008

Laura Colby
Kate Dulit
Susan Fendell
Jennifer Honig
William Landers
Frank Laski
Kate Nemens
Lauren Roy
Miriam Ruttenberg
Eleanor Sarcia
Abigail Selter
Angelica Vargas

MHLAC Executive Directors

William O'Neil (1974-1978)
Thomas O'Hare (1978-1980)
Robert Weber (1980-1987)
Stan Goldman (1987-1991)
Melissa Stimell (1991-1994)
Gill Deford (1994-1997)
Susan Fendell (acting 1997-1998)
Frank Laski (1998-present)