

A Movement Perspective

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The history of the ADA did not begin on July 26, 1990 at the signing ceremony at the White House. It did not begin in 1988 when the first ADA was introduced in Congress. The ADA story began a long time ago in cities and towns throughout the United States when people with disabilities began to challenge societal barriers that excluded them from their communities, and when parents of children with disabilities began to fight against the exclusion and segregation of their children. It began with the establishment of local groups to advocate for the rights of people with disabilities. It began with the establishment of the independent living movement which challenged the notion that people with disabilities needed to be institutionalized, and which fought for and provided services for people with disabilities to live in the community.

The ADA owes its birthright not to any one person, or any few, but to the many thousands of people who make up the disability rights movement – people who have worked for years organizing and attending protests, licking envelopes, sending out alerts, drafting legislation, speaking, testifying, negotiating, lobbying, filing lawsuits, being arrested – doing whatever they could for a cause they believed in. There are far too many people whose commitment and hard work contributed to the passage of this historic piece of disability civil rights legislation to be able to give appropriate credit by name. Without the work of so many – without the disability rights movement – there would be no ADA.

The disability rights movement, over the last couple of decades, has made the injustices faced by people with disabilities visible to the American public and to politicians. This required reversing the centuries long history of “out of sight, out of mind” that the segregation of disabled people served to promote. The disability rights movement adopted many of the strategies of the civil rights movements before it.

Like the African-Americans who sat in at segregated lunch counters and refused to move to the back of the bus, people with disabilities sat in federal buildings, obstructed the movement of inaccessible buses, and marched through the streets to protest injustice. And like the civil rights movements before it, the disability rights movement sought justice in the courts and in the halls of Congress.

From a legal perspective, a profound and historic shift in disability public policy occurred in 1973 with the passage of Section 504 of the 1973 Rehabilitation Act. Section 504, which banned discrimination on the basis of disability by recipients of federal funds, was modelled after previous laws which banned race, ethnic origin and sex based discrimination by federal fund recipients.

For the first time, the exclusion and segregation of people with disabilities was viewed as discrimination. Previously, it had been assumed that the problems faced by people with disabilities, such as unemployment and lack of education, were inevitable consequences of the physical or mental limitations imposed by the disability itself. Enactment of Section 504 evidenced Congress' recognition that the inferior social and economic status of people with disabilities was not a consequence of the disability itself, but instead was a result of societal barriers and prejudices. As with racial minorities and women, Congress recognized that legislation was necessary to eradicate discriminatory policies and practices.

Section 504 was also historic because for the first time people with disabilities were viewed as a class – a minority group. Previously, public policy had been characterized by addressing the needs of particular disabilities by category based on diagnosis. Each disability group was seen as separate, with differing needs. Section 504 recognized that while there are major physical and mental variations in different disabilities, people with disabilities as a group faced similar discrimination in employment, education and access to society. People with disabilities were seen as a legitimate minority, subject to discrimination and deserving of basic civil rights protections. This “class status” concept has been critical in the development of the movement and advocacy efforts. The coalition of people with disabilities has been constantly put to the test by attempts to remove protections for particular groups. The history of the ADA is a testament to the movement's commitment to solidarity among people with different disabilities.

After Section 504 established the fundamental civil right of non-discrimination in 1973, the next step was to define what non-discrimination meant in the context of disability. How was it the same or different from race and sex discrimination? The Department of Health, Education and Welfare (HEW) had been given the task of promulgating regulations to implement Section 504, which would serve as guidelines for all other federal agencies. These regulations became the focus of attention for the disability rights movement for the next four years. During this time the movement grew in sophistication, skill and visibility. The first task was to assure that the regulations provided meaningful anti-discrimination protections. It was not enough to remove policy barriers – it was imperative that the regulations mandated affirmative conduct to remove architectural and communication barriers and provide accommodations.

The second step was to force a recalcitrant agency to get the regulations out. All over the country people with disabilities sat-in at HEW buildings. The longest sit-in was in San Francisco, lasting 28 days. A lawsuit was filed, hearings before Congress were organized, testimony was delivered to Congressional committees, negotiations were held, letters were written. The disability community mobilized a successful campaign using a variety of strategies, and on May 4, 1977 the Section 504 regulations were issued. It is these regulations which form the basis of the ADA. In the early 1980's the disability community was called upon to defend the hard-fought-for Section 504 regulations from attack. After taking office President Reagan established the Task Force on Regulatory Relief under the leadership of then Vice President George Bush. The mission of the Task Force was to "de-regulate" regulations which were burdensome on businesses. The Section 504 regulations were chosen for "de-regulation." This news sent a current throughout the disability movement across the country, which quickly mobilized a multi-tier strategy to preserve the regulations.

For two years, representatives from the disability community met with Administration officials to explain why all of the various de-regulation proposals must not be adopted. These high level meetings would not have continued or been successful without the constant bombardment of letters to the White House from people with disabilities and parents of children with disabilities around the country protesting any attempt to de-regulate Section 504.

After a remarkable show of force and commitment by the disability community, the Administration announced a halt to all attempts to de-regulate Section 504. This was a tremendous victory for the disability movement. Those two years proved to be invaluable in setting the stage for the ADA. Not only were the Section 504 regulations, which form the basis of the ADA, preserved, but it was at this time that high officials of what later became the Bush administration received an education on the importance of the concepts of non-discrimination contained in the Section 504 regulations in the lives of people with disabilities.

During much of the 1980's, the disability community's efforts in Washington were focused on reinstating civil rights protections which had been stripped away by negative Supreme Court decisions. The longest legislative battle was fought over the Civil Rights Restoration Act (CRRRA), first introduced in 1984 and finally passed in 1988. The CRRRA sought to overturn *Grove City College v Bell*, a Supreme Court decision that had significantly restricted the reach of all the statutes prohibiting race, ethnic origin, sex or disability discrimination by recipients of federal fund. Because the court decision affected all of these constituencies, the effort to overturn the decision required a coalition effort. For the first time, representatives of the disability community worked in leadership roles with representatives of minority and woman's groups on a major piece of civil rights legislation.

Working in coalition again, in 1988, the civil rights community amended the Fair Housing Act (FHA) to improve enforcement mechanisms, and for the first time disability anti-discrimination provisions were included in a traditional civil rights statute banning race discrimination. During these years working on the CRRA and the FHA, alliances were forged within the civil rights community that became critical in the fight for passage of the ADA. Because of its commitment to disability civil rights, the Leadership Conference on Civil Rights played an important leadership role in securing passage of the ADA.

During the 1980's, it also became clear to the disability community that it should play a very active role in Supreme Court litigation under Section 504. The first Section 504 case which was decided by the Supreme Court in 1979, *Southeastern Community College v. Davis*, 442 U.S.397, revealed at best, a lack of understanding, and at worst, a hostility toward even applying the concept of discrimination to exclusion based on disability. In that case, a hearing impaired woman was seeking admission to the nursing program of Southeastern Community College. The court found that Ms. Davis's hearing impairment rendered her unqualified to participate in the program because she would not be able to fully fulfill all of the clinical requirements. However, the Court did not limit itself to the fate of Ms. Davis, but included within the decision several very broad negative interpretations of Section 504. In fact, the Davis's decision cast doubt on whether those entities covered by Section 504 would be required to take any affirmative steps to accommodate the needs of persons with disabilities. Contrary to established Court doctrine, the Section 504 regulations that had been issued by the Department of Health, Education and Welfare (HEW) were given little deference by the Court. Ironically the Court attributed this lack of deference to the fact that HEW had been recalcitrant in issuing the regulations.

After the Davis decision it was clear that the Supreme Court needed to be educated on the issue of disability based discrimination and the role that it plays in people's lives. Moreover, it was clear to the disability community that the focus of its efforts in any future Supreme Court litigation must be to reinforce the validity of the 1977 HEW regulations. In the next case to be granted review by the Supreme Court, *Consolidated Rail Corporation v. Darrone*, 465 U.S.624(1984), the disability community focused its efforts on educating the Court and bolstering the validity of the HEW Regulations interpreting Section 504. The issue in *Consolidated Rail Corporation* was whether employment discrimination was covered by the anti-discrimination provisions of Section 504. In order to educate the court on the pervasive role of discrimination in the un-employment and under-employment of persons with disabilities, the Disability Rights Education and Defense Fund filed an amicus brief on behalf of 63 national, state and local organizations dedicated to securing the civil rights of persons with disabilities. This amicus brief served not only to educate the courts on discriminatory employment policies and practices, but also to demonstrate to the Court that these issues concern the millions of Americans who were affiliated with the organizations who filed the brief. DREDF also worked very closely with the lawyer representing the disabled person in the lawsuit in order to present to the court the very best legal arguments on the validity of the 1977 HEW regulations which had found that employment discrimination was covered by provision of Section 504. The decision in *Consolidated Rail Corporation v.*

Darrone marked a significant victory for the disability rights community. The court found that employment discrimination was in fact prohibited by Section 504, but equally importantly the Court found that the regulations issued in 1977 by HEW were entitled to great deference by the courts. It is these regulations which were elevated by the Court in Consolidated Rail Corporation which formed the basis of the ADA.

The disability community continued its active involvement in Section 504 cases in the Supreme Court throughout the 1980's. In 1987, the Court was presented with the issue of whether people with contagious diseases are covered by Section 504. Although the case involved a woman with tuberculosis, it became clear throughout the country that the court's decision in this case would be critical for protection against discrimination by people with HIV infection. The disability rights community worked closely with the lawyers representing the woman with tuberculosis as well as filing numerous amicus briefs in the Supreme Court. The Supreme Court's decision in *School Board of Nassau County v. Arline*, 480 U.S.273,(1987), became the foundation for coverage of people with AIDS under Section 504 and the ADA. Working on the Arline case also provided a critical opportunity for lawyers in the disability rights community and lawyers in the AIDS community to work closely together and form alliances that would carry through and prove to be critical in the battle to secure passage of the ADA.

During the 1980's the disability community was also successful in overturning by legislation several disability – specific negative Supreme Court rulings. Legislation was passed to reinstate the coverage of anti-discrimination provisions to all airlines, the right to sue states for violations of Section 504, and the right of parents to recover attorney fees under the Education for Handicapped Children's Act (now called IDEA). These legislative victories further advanced the reputation of the disability community and its advocates in Congress. The respect for the legal, organizing, and negotiations skills gained during these legislative efforts formed the basis of the working relationships with members of Congress and officials of the Administration, that proved indispensable in passing the ADA. Whether by friend or foe, the disability community was taken seriously – it had become a political force to be contended with in Congress, in the voting booth, and in the media.

The ADA, as we know it today, went through numerous drafts, revisions, negotiations, and amendments since the first version was introduced in 1988. Spurred by a draft bill prepared by the National Council on Disability, an independent federal agency whose members were appointed by President Reagan, Senator Weicker and Representative Coelho introduced the first version of the ADA in April 1988 in the 100th Congress.

The disability community began to educate people with disabilities about the ADA and to gather evidence to support the need for broad anti-discrimination protections. A national campaign was initiated to write “discrimination diaries.” People with disabilities were asked to document daily instances of inaccessibility and discrimination. The diaries served not only as testimonials of discrimination, but also to raise consciousness about the barriers to daily living which were simply tolerated as a part of life. Justin Dart, Chair of the Congressional Task Force on the Rights and Empowerment of People with Disabilities, traversed the country holding public hearings which were attended by thousands of people with disabilities, friends, and families documenting the injustice of discrimination in the lives of people with disabilities.

In September 1988, a joint hearing was held before the Senate Subcommittee on Disability Policy and the House Subcommittee on Select Education. Witnesses with a wide variety of disabilities, such as blindness, deafness, Down’s Syndrome and HIV infection, as well as parents of disabled children testified about architectural and communication barriers and the pervasiveness of stereotyping and prejudice. A room which seated over 700 people overflowed with persons with disabilities, parents and advocates. After the hearing, a commitment was made by Senator Kennedy, Chair of the Labor and Human Resources Committee, Senator Harkin, Chair of the Subcommittee on Disability Policy, and Representative Owens of the House Subcommittee on Select Education, that a comprehensive disability civil rights bill would be a top priority for the next Congress. At the same time, both presidential candidates, Vice President Bush and Governor Dukakis, endorsed broad civil rights protections for people with disabilities. The disability community was determined to assure that President Bush would make good on his campaign promise, and reinvoked it repeatedly during the legislative process.

On May 9, 1989 Senators Harkin and Durrenberger and Representatives Coelho and Fish jointly introduced the new ADA in the 101st Congress. From that moment, the disability community mobilized, organizing a multi-layered strategy for passage. A huge coalition was assembled by the Consortium for Citizens with Disabilities (CCD), which included disability organizations, the Leadership Conference on Civil Rights (LCCR), and an array of religious, labor and civic organizations.

A team of lawyers and advocates worked on drafting and on the various and complex legal issues that were continually arising; top level negotiators and policy analysts strategized with members of Congress and their staffs; disability organizations informed and rallied their members; a lobbying system was developed using members of the disability community from around the country; witnesses came in from all over the country to testify before Congressional committees; lawyers and others prepared written answers to the hundreds of questions posed by members of Congress and by businesses; task forces were formed; networks were established to evoke responses from the community by telephone or mail; protests were planned – the disability rights movement coalesced around this goal: passage of the ADA. From the beginning the “class” concept prevailed – groups representing specific disabilities and

specialized issues vowed to work on all of the issues affecting all persons with disabilities. This commitment was constantly put to the test. The disability community as a whole resisted any proposals made by various members of Congress to exclude people with AIDS or mental illness or to otherwise narrow the class of people covered. Even at the eleventh hour, after two years of endless work and a Senate and House vote in favor of the Act, the disability community held fast with the AIDS community to eliminate an amendment which would have excluded food-handlers with AIDS, running the risk of indefinitely postponing the passage or even losing the bill. Likewise, all of the groups, whether it was an issue particularly affecting their constituencies or not, held fast against amendments to water down the transportation provisions. The underlying principle of the ADA was to extend the basic civil rights protections extended to minorities and women to people with disabilities. The 1964 Civil Rights Act prohibited employment discrimination by the private sector against women and racial and ethnic minorities, and banned discrimination against minorities in public accommodations. Before the ADA, no federal law prohibited private sector discrimination against people with disabilities, absent a federal grant or contract.

The job of the disability rights movement during the ADA legislative process was to demonstrate to Congress and the American people the need for comprehensive civil rights protections to eradicate fundamental injustice -to demonstrate not only how this injustice harms the individual subjected to it, but also how it harms our society.

The first hearing in the 101st Senate on the new ADA was an historic event and set the tone for future hearings and lobbying efforts. It was kicked off by the primary sponsors talking about their personal experiences with disability. Senator Harkin spoke of his brother who is deaf, Senator Kennedy of his son, who has a leg amputation, and Representative Coelho, who has epilepsy spoke about how the discrimination he faced almost destroyed him.

The witnesses spoke of their own experiences with discrimination. A young woman who has cerebral palsy, told the Senators about a local movie theater that would not let her attend because of her disability. When her mother called the theater to protest that this attitude "sounded like discrimination," the theater owner stated "I don't care what it sounds like." This story became a symbol for the ADA and was mentioned throughout the floor debates and at the signing. The members and the President related this story to demonstrate that America "does care what it sounds like" and will no longer tolerate this type of discrimination.

A Viet Nam veteran who had been paralyzed during the war and came home using a wheelchair testified that when he got home and couldn't get out of his housing project, or on the bus, or off the curb

because of inaccessibility, and couldn't get a job because of discrimination he realized he had fought for everyone but himself – and he vowed to fight tirelessly for passage of the ADA. The President of Galludet College, gave compelling testimony about what life is like for someone who is deaf, faced with pervasive communication barriers. The audience was filled with Galludet students who waved their hands in approval.

The committee also received boxes loaded with thousands of letters and pieces of testimony that had been gathered in hearings across the country the summer before from people whose lives had been damaged or destroyed by discrimination.

A woman testified that when she lost her breast to cancer, she also lost her job and could not find another one as a person with a history of cancer. Parents whose small child had died of AIDS testified about how they couldn't find any undertaker that would bury their child.

At this Senate hearing and in all the many hearings in the House, members of Congress heard from witnesses who told their stories of discrimination. With each story, the level of consciousness was raised and the level of tolerance to this kind of injustice was lowered. The stories did not end in the hearing room. People with disabilities came from around the country to talk to members of Congress, to advocate for the Bill, to explain why each provision was necessary, to address a very real barrier or form of discrimination. Individuals came in at their own expense, slept on floors by night and visited Congressional offices by day. People who couldn't come to Washington told their stories in letters, attended town meetings and made endless phone calls.

And it was a long haul. After the spectacular Senate vote of 76 to 8 on September 7, 1989, the Bill went to the House where it was considered by an unprecedented four Committees. Each Committee had at least one subcommittee hearing, and more amendments to be explained, lobbied and defeated. Grass roots organizing became even more important because by this time many business associations had rallied their members to write members of Congress to oppose or weaken the bill. The perseverance and commitment of the disability movement never wavered. Through many moments of high stress and tension, the community stayed unified. For every hearing the hearing room was full and for every proposed amendment to weaken the bill letters poured in and the halls of Congress were canvassed. As the effective date for Title III of the ADA covering Public Accommodations and Title II of the ADA covering State and Local Government passed by on January 26, 1992. As the effective date for the employment provisions in Title I of the ADA approach on July 26, 1992, the awareness of the ADA and its requirements is heightened. For the first time in the history of our country, or the history of the world, businesses must stop and think about access to people with disabilities. If the ADA means anything, it

means that people with disabilities will no longer be out of sight and out of mind. The ADA is based on a basic presumption that people with disabilities want to work and are capable of working, want to be members of their communities and are capable of being members of their communities and that exclusion and segregation cannot be tolerated. Accommodating a person with a disability is no longer a matter of charity but instead a basic issue of civil rights.

While some in the media portray this new era as falling from the sky unannounced, the thousands of men and women in the disability rights movement know that these rights were hard fought for and are long overdue. The ADA is radical only in comparison to a shameful history of outright exclusion and segregation of people with disabilities. From a civil rights perspective the Americans with Disabilities Act is a codification of simple justice.