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REFLECTIONS ON DISABILITY DISCRIMINATION POLICY— 25 YEARS

*Laura F. Rothstein**

I. INTRODUCTION

During the year 2000, there will be many publications and conferences focusing on the ten years of disability discrimination law developments since the 1990 passage of the Americans with Disabilities Act (ADA).¹ While ten years is a good milestone to mark for such an important law, it really seems more appropriate to reflect on the past 25 years, because disability discrimination law really began emerging around 1975, fifteen years earlier than the 1990 passage of the ADA.

The following commentary will reflect on the emergence of disability discrimination and related policy over the past 25 years, the significance of the ADA in that development, and the key policy issues yet to be addressed. The conclusion of this author is that while there remains much to be done in this area, there has been dramatic improvement in disability policy in the past 25 years, and the interaction between Congress, the courts, and the regulatory agencies has been important in developing and interpreting policy on this important issue. The commentary will also respond to the image created by some that disability discrimination law is an extreme policy that is “crippling” the efficient functioning of the workplace, public accommodations, educational institutions, and other sectors of society.

II. THE KEY POLICY INITIATIVES

Although advocates for individuals with disabilities began realizing the importance of developing policy to appropriately address the interests and needs of individuals with a wide array of disabling conditions before the mid-1970s, it was in 1973 and 1975 that some key events occurred that really began moving disability policy forward. These key events were the 1973 passage of Sections 501, 503, and 504 of the Rehabilitation Act² and the 1975 passage of the predecessor to the Individuals with Disabilities Education Act

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1. 42 U.S.C. §§ 12101-12213 (1994).

2. 29 U.S.C. §§ 791, 793, 794 (1994).

(hereinafter "IDEA"),³ which codified what the courts had determined should be required in schools for students with disabilities in key lower court decisions in *Pennsylvania Ass'n for Retarded Children (PARC) v. Pennsylvania*⁴ and *Mills v. Board of Education*.⁵

These two federal statutes moved disability policy from a philosophy of support and benefits to one of rights. The Rehabilitation Act amendments recognized that programs supported by federal funding should not discriminate on the basis of disability (at that time "handicap"), and the IDEA similarly established that federal support for public schools should be made available to ensure that *all* students with disabilities should be provided a free, appropriate, public education, individualized to each student's needs, and with the assurance of procedural safeguards.⁶

Other federal statutes followed that provided a piecemeal approach to ensuring nondiscrimination in a variety of areas, including voting,⁷ air transportation,⁸ and housing.⁹ These efforts were enhanced by additional policy support for benefits to ensure access to legal services and other social services for individuals with developmental disabilities.¹⁰ The changes in air transportation and housing were significant because they began to address

3. 20 U.S.C. §§ 1400-1491 (1994).

4. 334 F. Supp. 1257 (E.D. Pa. 1971); 343 F. Supp. 279 (E.D. Pa. 1972) (establishing for students in Pennsylvania public schools that where a state undertakes to provide education at public expense, the Equal Protection and Due Process clauses of the 14th Amendment require such education to be provided on an equal basis to all children and that procedural safeguards must be available).

5. 348 F. Supp. 866 (D.D.C. 1972) (establishing the same requirements as the *PARC* case for students in public schools in the District of Columbia).

6. For an overview of these laws and how they developed, see LAURA F. ROTHSTEIN, *DISABILITY LAW: CASES, MATERIALS, PROBLEMS*, at 6-23 (2d ed. 1998) and LAURA F. ROTHSTEIN, *DISABILITIES AND THE LAW* § 1.02 (Westgroup 1997 and cumulative supplements).

7. The Voting Accessibility for the Elderly and Handicapped Act (VAEH), 42 U.S.C. § 1973ee (1994), provides for accessible voting places for federal elections.

8. The Air Carrier Access Act of 1986, 49 U.S.C. § 41705 (1994), which subjects airlines to nondiscrimination on the basis of disability mandates, was passed in response to the Supreme Court decision in *Department of Transp. v. Paralyzed Veterans of America*, 477 U.S. 597 (1986), which held that indirect assistance to airlines does not subject them to Section 504 of the Rehabilitation Act.

9. The Fair Housing Act Amendments of 1988, 42 U.S.C. §§ 3601-3631 (1994), were passed in part as a response to the Supreme Court decision in *City of Cleburne v. Cleburne Living Ctr. Inc.*, 473 U.S. 432 (1985), a case in which the denial of a special use permit for a group home for individuals who were retarded was struck down as unconstitutional. The need to have a statutory, rather than a constitutional basis, to challenge housing discrimination led to the FHAA.

10. The Developmental Disabilities Assistance and Bill of Rights Act of 1975, 42 U.S.C. § 6042 (1994), provides for federal funding to states that implement a protection and advocacy program for the rights of individuals with developmental disabilities. To receive funding under this statute, the program must provide for legal services.

discrimination in the private sector, something that was largely untouched by the Rehabilitation Act and IDEA. The changes are also significant because they are examples of Congressional response to judicial attention to these issues that demonstrated the inadequacy of current statutory protections. Amendments to the Rehabilitation Act and IDEA also occurred between the 1970s and 1990 in response to other court cases, in which policy deficiencies were highlighted.¹¹

The political momentum to develop a comprehensive policy affecting more of the private sector culminated in 1990 with the passage of the Americans with Disabilities Act (ADA).¹² It had been recognized that in many ways disability policy could only be totally effective if virtually all major aspects of life were subject to nondiscrimination mandates. Ensuring that a student with a disability would receive special education and be better prepared for college and the workplace was of limited value if most of the employment sector was allowed to discriminate and did not have to provide reasonable accommodations. Covering private employers would have limited impact if individuals with disabilities still faced substantial barriers in accessing transportation and engaging in the social interaction of going to restaurants and business meeting and training sites essential to participating in the workplace.

The ADA provided the essential overarching coverage of a broad spectrum of programs that permitted a much more coordinated effort to ensure

11. In addition to the legislative responses resulting from the *Cleburne* and *Paralyzed Veterans* cases noted previously, Congress responded to the Supreme Court decision in *Grove City College v. Bell*, 465 U.S. 555 (1984), which held that receipt of federal financial assistance by one program within an institution does not mean that the entire institution is covered by federal financial assistance civil rights statutes. Congress responded by passing the Civil Rights Restoration Act of 1987, Pub. L. No. 100-259, 102 Stat. 28 (1988) (codified at 20 U.S.C. § 1687 (1994)). A 1986 amendment to the Rehabilitation Act, Pub. L. No. 99-506, 100 Stat. 1807 (1986) (codified at 42 U.S.C. § 2000d (1994)), was passed as a response to the Supreme Court's decision in *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234 (1985), which established that states were immune from the application of Section 504.

At least three special education issues have been addressed by Congress as a result of Supreme Court decisions. The 1984 decision in *Smith v. Robinson*, 468 U.S. 992 (1984), resulted in the passage of the Handicapped Children's Protection Act of 1986, 20 U.S.C. § 1415(e)(4)(E) (1994). The 1988 decision in *Honig v. Doe*, 484 U.S. 305 (1988), resulted in some of the clarifications about disciplinary removal in the 1997 IDEA amendments. See 20 U.S.C. §§ 1414-1415 (1997). The 1989 decision in *Dellmuth v. Muth*, 491 U.S. 223 (1989), resulted in a Congressional clarification that states are not immune from IDEA actions. See Pub. L. No. 101-476, 104 Stat. 1103 (1990) (codified at 20 U.S.C. § 1403 (1997)). The 1993 Supreme Court decision in *Zobrest v. Catalina Foothills Sch. Dist.*, 509 U.S. 1 (1993), which held that it does not violate the Establishment Clause for a public school to pay for the cost of an interpreter for a deaf student attending a parochial school, was codified in the 1997 IDEA amendments, 20 U.S.C. § 1412 (1997).

12. 42 U.S.C. §§ 12101-12213 (1994).

full participation in society by individuals with disabilities. The ADA was also enacted recognizing the problems of small employers and small businesses in complying with a law that required more than nondiscrimination, but whose reasonable accommodation provisions could require an outlay of funding and other resources, such as training. This recognition is found in the provisions that clarify that accessibility and barrier removal that are unduly burdensome are not required.

III. THE BACKLASH REACTION

Every July there is substantial media coverage of the ADA, because of the anniversary of the signing. Much of the coverage is negative. Many critics claim that the law is producing "absurd results" and that the ADA requirements are unduly costly. One example in 1998¹³ criticizes former President George Bush for signing the ADA in 1990. The editorial writer, Max Boot, blames the ADA for an increase in his property taxes in Larchmont, New York. In the process of modest barrier removal, the city decided to spend an additional \$2 million to completely renovate the village hall. Mr. Boot writes that "Mayor Cheryl Lewy has had her heart set all along on turning the village hall into the village manor."¹⁴ The ADA allowed her to blame the courts for hiking taxes to pay for the renovations. Mr. Boot commits a similar offense by blaming the ADA for what he considers to be wasteful spending that was not required by the ADA.

These and similar attacks¹⁵ reflect the anti-regulation and anti-government philosophy of some individuals and groups. The Larchmont Village Hall incident attempts to make the ADA the scapegoat for activities that were not required by the ADA. Other attacks have involved using isolated and extreme examples of complaints.¹⁶ Most of these complaints were ultimately dismissed by the courts, but the critics would have the reader believe that the cases were successful. Fortunately, some media coverage and commentators have recognized the benefits of the ADA.¹⁷

13. See Max Boot, *How George Bush Is Still Raising My Taxes*, WALL ST. J., Mar. 16, 1998, at A22.

14. *Id.*

15. See Walter Olson, *Under the ADA, We May All Be Disabled*, WALL ST. J., May 17, 1999, at A27; John Leo, *Let's Lower the Bar*, U.S. NEWS & WORLD REP., Oct. 5, 1998, at 19 (criticizing judicial decision granting accommodations on the New York state bar exam); Trevor Armbrister, *A Good Law Gone Bad*, READERS DIG., May 1998, at 145.

16. See also WALTER K. OLSON, *THE EXCUSE FACTORY: HOW EMPLOYMENT LAW IS PARALYZING THE AMERICAN WORKPLACE*, at 19, 89 (1997).

17. See Laura Koss-Feder, *Able to Work*, TIME, Jan. 25, 1999, at 82A (recognizing that the backlash comes from less enlightened individuals and that attitudinal changes are necessary before some changes will occur); Janet Reno & Dick Thornburgh, *ADA—Not a Disabling*

As someone who has followed this area of law closely for twenty years,¹⁸ this author has not found courts to be reluctant to dismiss meritless ADA claims.¹⁹ Courts have already dismissed claims involving conditions including left handedness,²⁰ varicose veins,²¹ chronic lateness,²² and other conditions as not being covered under disability discrimination laws.²³ These kinds of claims have rarely been raised more than once after a court has used sound reasoning to dismiss them. Indeed, the Supreme Court has been criticized as going too far in dismissing from coverage conditions that were probably intended to be covered.²⁴

Courts have also recognized that accommodations such as removing stress from a waitress position,²⁵ and allowing unpredictable and frequent absences from jobs where reliable attendance is critical,²⁶ are not reasonable accommodations.²⁷ Courts have held that employers are not required to permit workers to be under the influence of alcohol and/or drugs on the job²⁸ nor are employers required to allow dangerous behavior simply because someone has a mental illness.²⁹

Mandate. WALL ST. J., July 26, 1995, at A12 (recognizing that the ADA has been good for business and that journalistic "naysayers" often "mischaracterize the ADA by implying that it requires businesses to spend outrageous sums removing barriers almost overnight").

18. I began my work in disability discrimination law as an attorney working with the Developmental Disabilities Law Project at the University of Pittsburgh School of Law in 1979. As a result of that experience I was inspired to focus on disability issues by creating a law school course that I have taught every year since 1980, by writing numerous books, book chapters, and law review articles, and giving many presentations on disability law. This work has required me to follow on a broad and ongoing basis the developments and trends on disability discrimination law.

19. See *Study Finds Employers Win Most ADA Title I Judicial and Administrative Complaints*, MENTAL & PHYSICAL DISABILITY L. REP., May-June 1998, at 403.

20. See *De la Torres v. Bolger*, 781 F.2d 1134 (5th Cir. 1986).

21. See *Oesterling v. Walters*, 760 F.2d 859 (8th Cir. 1985).

22. See *School Dist. of Philadelphia v. Friedman*, 507 A.2d 882 (Pa. 1986).

23. For a listing of cases on how the courts have treated various conditions, see ROTHSTEIN, *supra* note 6, § 409.

24. In *Sutton v. United Air Lines, Inc.*, 119 S. Ct. 2139 (1999), the Court held that mitigating measures should be taken into account in deciding whether one has a substantial limitation to a major life activity. See also *Murphy v. United Parcel Serv. Inc.*, 119 S. Ct. 2133 (1999); *Albertson's, Inc. v. Kirkingburg*, 119 S. Ct. 2162 (1999).

25. See *Johnston v. Morrison, Inc.*, 849 F. Supp. 777 (N.D. Ala. 1994).

26. See *Tyndall v. National Educ. Ctr. Inc.*, 31 F.3d 209 (4th Cir. 1994) (involving a community college teacher); *Jackson v. Veterans Admin.*, 22 F.3d 277 (11th Cir. 1994) (involving a housekeeping position); *Guice-Mills v. Derwinski*, 967 F.2d 794 (2d Cir. 1992) (involving a head nurse position).

27. For additional cases regarding reasonable accommodations, see ROTHSTEIN, *supra* note 6, § 420.

28. See cases cited at ROTHSTEIN, *supra* note 6, § 4.12.

29. For a discussion of cases involving firearms and mental illness, see Laura F. Rothstein, *The Employer's Duty to Accommodate Performance and Conduct Deficiencies of Individuals*

Lawyers have recognized the care with which the courts are interpreting the ADA and as a result are reluctant to take plaintiff cases unless they are strong cases in the first place. The extreme exceptions to this, rather than the general practice of most lawyers, are the kinds of cases that the media picks up on and reports.

Without the ADA, the Rehabilitation Act, and other federal laws, a substantial majority of the 49 million Americans with disabilities would still be in nursing homes and institutional settings or idly sitting on their front porches, collecting disability or unemployment checks, or living off of charity. What the ADA and the other statutes provide is prevention from being subjected to employment discrimination and access to the workplace. Most people with disabilities want to contribute to society and to be taxpayers. The ADA has simply made this possible. The ADA has also required employers and others to define the essential requirements of a job or participation in programs and to think through qualifications more carefully.³⁰ The result has often been reduced illness and injuries for everyone because of reasonable accommodations that make participation a better experience for everyone. For example, changing the way boxes are loaded on a loading dock is not only a reasonable accommodation to an employee with lifting restrictions, but is likely to reduce injuries to those who are not disabled, thus reducing workers' compensation costs and job training and absenteeism costs, as well.

Recently, I boarded a plane and noticed a man using a wheelchair with an assistance dog. As I passed him in the aisle, I mentioned that I work in the area of disability discrimination law and asked him if he travels a lot with his dog and whether the airlines made it easy for him. His reply was, "Oh, yes, I go all over the place." And then he added, "Of course, it became a whole lot easier a few years ago with the new laws," referring to both the Air Carrier Access Act (ACAA) and the ADA. This man represents well the individual who wants to work and play just like everyone else, and who was substantially limited, not by his use of a wheelchair, but by the fact that the law did not require accommodation of his wheelchair and his dog until the ADA and the ACAA went into effect.

In addition to the obvious human benefits, the economics of the issue support the ADA. A fifteen year study of thousands of Sears employees showed that sixty-nine percent of accommodations cost employers nothing.³¹

with Mental Impairments Under Disability Discrimination Laws. 47 SYRACUSE L. REV. 931 (1997).

30. For a discussion of this issue, see ROTHSTEIN, *supra* note 6, § 4.11.

31. See Peter David Blanck, *Employment Integration, Economic Opportunity, and the Americans with Disabilities Act: Empirical Study from 1990 and 1993*, 79 IOWA L. REV. 853 (1994).

Twenty-eight percent cost between one dollar and \$1,000, and only three percent cost over \$1,000. In most cases, expensive accommodations involve barrier removal, an accommodation that will benefit many individuals.

The ADA policy recognizes that these accommodations may cost money—to employers, to providers of public accommodations, and others—but the policy places those in the best position to distribute these costs in the position of bearing them. Who, besides Bill Gates and a handful of others, could individually pay for the cost of installing a ramp at all of the entrances to all of the buildings and places the person wanted to go? Who could absorb the costs that would be incurred if the individual or a close family member with a disability were unable to get a job, not because the person could not do the job, but because there was no way to get to work, because of lack of public transportation access or other barriers or because the employer would not hire the individual based on prejudice or stereotypes or attitudes or unfounded fears. Christopher Reeves, an individual of some financial means before his accident, has highlighted some of these issues. But for the support of friends and family and the fact that he is a highly popular entertainment star in a position to receive such support, he would most likely be relying on some form of governmental subsidy to provide for his needs in a way that would have dramatically adversely affected his lifestyle.

The benefit of the ADA is that it covers more than employment and more than programs receiving federal financial assistance. It covers public transportation systems, public accommodations, and physical environment access. That means that the person with a disability is not only protected at the work site, but also has protection in getting to and from work, participating in social activities with coworkers, and in attending professional development activities.

Barrier removal benefits more than individuals with disabilities. The same curb cuts that allow wheelchair access benefit people using luggage wheels, pushing strollers, and shopping carts. The ADA has caused employers to define the essential functions of the job³² and to think through job qualifications more carefully. It has reduced illness and injuries for the non-disabled population, because of the reasonable accommodation requirements.

While there is legitimate concern about some abuse of the ADA and the need to clarify the requirements, the need is not to eliminate or repeal the ADA. To the contrary, there are critical issues that remain to be addressed by

32. For example, is it really necessary to have a driver's license to hold a job that may require driving a car once every three years?

disability policy necessary to the one in five Americans who at some point in their lives will need the protections of disability discrimination law.

IV. POLICY CHANGES AND CLARIFICATIONS NEEDED

First, it must be emphasized that federal, rather than state, policy is needed in most of these areas. There are a variety of reasons for this. Most states had (and still have) a variety of disability discrimination laws and special education provisions. Experience has shown that these state provisions are often ineffective because of inadequate and/or underfunded enforcement mechanisms or remedies that do not encourage advocates to seek redress under these laws. For large corporations in particular, it is in the interest of consistency to have one set of laws relating to architectural barriers that can be applied to all places of accommodation (regardless of the state), such as hotels, movie theaters, and restaurants. In the case of disability policy which includes funding support (such as special education statutes and nursing home programs), the access to federal support provides a resource that would be otherwise unavailable to states that are not strong economically.

Many criticize the ADA as being vague. While there are certainly some areas where clarification would be helpful, one of the greatest advantages of the ADA is that its statutory and regulatory provisions incorporate specifically a great deal of the judicial interpretation from the Rehabilitation Act, a statute that had been in place for 17 years, and which had received substantial attention, including at the Supreme Court level. Issues such as what is required of mass transit and other large transportation providers have been clarified in the ADA language. The application to examinations and courses is specified in the statute. One need only look at the length of the statute and compare it with the language of the Rehabilitation Act to see that it is much more detailed. The regulations clarify even further what is required. In addition, there is substantial regulatory agency guidance and interpretation from the Equal Employment Opportunity Commission, the Department of Justice, and other agencies to give direction to appropriate interpretation of the law. Technical assistance from government agencies and a variety of other groups is available as a resource on issues from job accommodations to architectural barrier issues.³³ Other federal statutes covering special education, housing, and air travel also bring with them a wealth of information in the form of regulations, commentary to regulations, guidelines, agency interpretations to statutes, and technical assistance as a resource.

33. For example, the Job Accommodation Network (JAN), <<http://janweb.icdi.wvu.edu>>, and the EEOC, 1801 L Street, NW, Washington, D.C., 20507.

Although there is substantial guidance on how disability discrimination law is to be interpreted, there are areas that are in need of greater clarification. In addition, recent judicial interpretation has highlighted some of the policy gaps that seem not to be covered by current federal law. For both unclear areas and for policy gaps, the questions include whether the needed response is statutory, regulatory, judicial, educational, or some other response. The following are some areas that this author believes would merit greater attention. In each case, I have suggested a possible avenue for the best response to the issue.

A. Definition of Who Is Covered

The Supreme Court decisions in 1999 have raised a substantial level of concern about the narrowing of the coverage of the ADA, a narrowing that seems to be not what Congress intended. While Congress probably did not intend to cover individuals who wear eyeglasses, there is certainly an indication that Congress intended to cover conditions such as epilepsy, diabetes, mental illness, and cancer more broadly than may well be interpreted under the Supreme Court analysis.³⁴

The response to this narrowing could be judicial, congressional, or both. Unfortunately, the saying that “bad facts make bad law” proved to be the case with the *Sutton* decision. Almost no one believes that Congress intended that most individuals who wear eyeglasses should be covered by the ADA. A judicial clarification could result by having a better fact setting brought before the Supreme Court, such as one involving epilepsy or diabetes.

B. Genetics Discrimination

The concern about genetics discrimination is not clearly addressed in current policy. There is clearly cause for concern that individuals with genetic markers for everything from Huntington’s Disease to breast cancer will be discriminated against in employment, health insurance, and other areas.³⁵ It is, however, far from clear that discrimination on the basis of genetics

34. In *Sutton v. United Air Lines*. Justice Stevens, in his dissent, notes that the legislative history on the ADA makes it “abundantly clear that Congress intended the ADA to cover individuals who could perform all of their major life activities only with the help of ameliorative measures.” 119 S. Ct. 2139, 2154 (1999), and refers to House Committee Reports that support that “disability includes ‘epilepsy . . . heart disease, diabetes.’” *Id.* at 2155 (Stevens, J., dissenting) (quoting H.R. Rep. No. 101-485, pt. III at 51).

35. See GENETIC SECRETS: PROTECTING PRIVACY AND CONFIDENTIALITY IN THE GENETIC ERA (Mark A. Rothstein ed., 1997).

qualifies for protection under the ADA and other federal laws.³⁶ If federal law does not currently provide protection, the question becomes whether amendment to disability discrimination law or passage of entirely separate legislation is necessary. And discrimination is not the only issue with genetics. Privacy, confidentiality, and other issues may lead to the need for other policy responses.

C. Access to Health Care

Another area where the application of the ADA and other federal laws needs clarification is in the area of access to health insurance. The questions being addressed by courts include whether differential coverage for various conditions is prohibited by the ADA under either Title I (where insurance is a benefit of employment) or under Title III (as a public accommodation).³⁷ It may be that the ADA should be amended or that additional judicial clarification will resolve the issue.

D. Independent Living

The effort to ensure that individuals with serious impairments that affect their independence are provided supportive services to further their independence led to the 1999 Supreme Court decision in *Olmstead v. L.C.*³⁸ Over the last century, policymakers have recognized that many, if not most individuals with severe disabilities could function in less restrictive settings if only supportive services in the community were available. Individuals might need assistance in dressing and eating because of physical limitations, managing money because of mental retardation, or supervision in taking medication because their mental illness affects judgment. The *Olmstead* case provided guidance for individuals in state supported institutions. The case established that to the extent the individual is not opposed to being in a community setting and where it is appropriate given the individual's needs to do so, social services must be provided in the least restrictive alternative, *i.e.*, in the community. The Court recognized that the agency's resources could be taken into account in making the determination as to whether it is reasonable to provide such a placement. Although this case provided some much needed guidance that had been hoped for since the *Pennhurst* cases had been left

36. See Laura F. Rothstein, Bragdon v. Abbott: *Does It Decide Genetic Discrimination Protection*, 3 U. MD. L. REV. (forthcoming May 2000).

37. For cases on these issues, see ROTHSTEIN, *supra* note 6, § 10.02.

38. 119 S. Ct. 2176 (1999).

unresolved,³⁹ the issues of how the cost-based defense is to be applied, how states are to prioritize these services, and other issues remain to be addressed. This is probably most appropriate to be addressed by federal administrative agency policymakers in the Department of Health and Human Services.

E. Costly Health Services

Another area where attention is needed is highlighted by the issue in the 1999 Supreme Court decision in *Cedar Rapids Community School District v. Garret F.*⁴⁰ Garret F. was a high school student who had been paralyzed at age four and who required a variety of intensive and costly nursing services for his physical needs. The Court held that the special education mandates of IDEA required that these services be treated as related services, rather than medical services, and as such, the educational agency would be required to pay for them. The case raises the policy issue of how such expensive supportive services should be paid for. Although the individual and the family are not responsible for these costs while the individual is a student during school hours, the question remains as to who should be responsible for these expenses outside of school hours and after the student graduates from high school. The case further raises the issue of whether the IDEA funding formula adequately provides for these intensive and expensive services that may on occasion be required of a small school district or state with limited resources.

The first issue of who pays when the student is not in school raises the larger health policy issue of access to health care for expensive supportive services, an issue raised previously in this article. That issue probably needs to be resolved by congressional action providing for federal allocation of resources or mandating the assurance of private health insurance coverage for such situations. The issue of the IDEA funding formula probably also requires Congress to revisit the funding system under the current statute.

F. Coordination of Services

A final issue where there are significant policy gaps involves the coordination of services for individuals with disabilities, particularly

39. In *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89 (1984) and *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1 (1981), the Court addressed issues of the right to treatment in the least restrictive environment under a variety of theories, including state mental health statutes, Section 504 of the Rehabilitation Act, the Developmental Disabilities Assistance and Bill of Rights Act, and the Constitution. Unfortunately, the substantive issue of least restrictive environment never got addressed under all theories because the case kept moving up and down through the various appellate court levels on a variety of theories.

40. 119 S. Ct. 992 (1999).

impairments such as mental illness. Currently an individual must navigate a complex array of discrimination rights and benefits laws to ensure access. For some disabilities, this is not a major problem, but for an individual with mental illness, this task can be daunting. An individual with a mental illness requiring medication to be taken regularly to function appropriately in society may currently face a revolving door of treatment. The individual might become dangerous and unable to care for himself or herself and become institutionalized. What this individual needs is some assistance in monitoring medication and even in funding for medication and counseling, gaining access to income sources either through accessing welfare or other social service funding sources or through employment, and assistance in housing. Without a single social service coordinator to ensure access to benefits and protection against discrimination, it is no surprise that some individuals with serious mental illness currently end up as homeless people. Efforts at federal, state, and local levels are needed to provide such coordinated services. Although such programs do exist at some state and local levels, these programs should be replicated on a much broader scale. The federal government could serve a valuable function in evaluating such programs that work, in providing grants to try other programs, and perhaps ultimately to fund state agencies as part of other federally funded programs. While there are already indications at the federal level that coordination of programs is often necessary and useful, further efforts at that level are needed.

V. CONCLUSION

While many believe that disability policy has moved too slowly, it would be inaccurate to state that there have not been substantial improvements for individuals with disabilities, as well as for society in general. More students with disabilities are attending college and becoming employed as a result of a quarter of a century of special education mandates. While individuals with severe impairments have not seemed to benefit from disability discrimination law in obtaining employment in the first place, those who are already on the job have benefitted by being allowed to remain on the job in many instances because of mandated reasonable accommodations. By remaining on the job, these individuals benefit society by being taxpayers instead of a drain on public social service benefits programs. The pressure to establish and clarify essential functions has benefitted many prospective employees, including those who do not have disabilities.

The world has become more accessible for everyone because of curb cuts and other accessible design features. I believe that the dramatic increase in the number of people owning and using “roller” luggage is a direct result of

curb cuts and other ramping features that enable the use of luggage on wheels, baby strollers, and delivery carts.

And in spite of the negative articles and commentary that appear from time to time, there does seem to be an improvement in attitudes overall. Perhaps it is as much a result of an aging baby boomer population that needs public policy to ensure full societal participation by individuals with disabilities or perhaps it is a result of employers, providers of public accommodations, and other institutions that have found that complying with these mandates is not so hard after all. In some cases attitudinal changes are likely to have resulted from individuals who are themselves not disabled, but whose friends or family members become disabled. The experience of seeing up close the economic, personal, and social impact of being a member of the group of individuals with disabilities, regardless of race, ethnicity, gender, or income, often changes attitudes, even for some of the most ardent, anti-government, politically conservative individuals. The number of movies and television programs portraying individuals with disabilities has also expanded awareness and understanding of the lives of individuals with disabilities.⁴¹

While there is still major need for improvement in the areas previously highlighted, advocates have remained successful in keeping these issues on the radar screen of policymakers. It seems likely that these public mandates will remain in force for the foreseeable future. And as I reflect on the 25 years of disability discrimination law development, and my 20 years of working on these issues, I am optimistic that public policy will strike the right balance on these difficult, complex, but very interesting issues.

41. In my "Disabilities and the Law" class, I require students to select a movie involving an individual with a disability and to review it evaluating whether the law would have affected the life of the individual portrayed, whether the portrayal of the individual was positive or negative, whether it was realistic, and whether the movie helps to overcome stereotypes and myths. Movies reviewed for the class include *Children of a Lesser God*, *Clean and Sober*, *Dominick and Eugene*, *Forrest Gump*, *Miracle Worker*, *Mr. Jones*, *My Left Foot*, *Philadelphia*, *Rain Man*, *Scent of a Woman*, *As Good As It Gets*, and many others. For a further discussion of this project see Laura F. Rothstein, *Teaching Disability Law*, 48 J. LEGAL EDUC. 297, 303 (1998).

