

PostEverything

Why I wrote the Americans with Disabilities Act

The bill, a model for bipartisanship, addressed hideous discrimination faced by people with disabilities.



By **Robert L. Burgdorf Jr.** July 24

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In January 1987, I sat down at a word processor in my small office at the National Council on Disability and began writing the first draft of a bill. NCD published my draft of the Americans with Disabilities Act bill in 1988; it was introduced in Congress with a few changes that same year, and provided the basis for the revised version that was signed into law July 26, 1990. On the ADA's 25th anniversary, I want to tell the unlikely story of how this historic federal law came to be, and to reflect on what the law has accomplished.

The ADA was a response to an appalling problem: widespread, systemic, inhumane discrimination against people with disabilities. In 1971, a New York judge described people with disabilities as “the most discriminated [against] minority in our nation.” Large numbers of children with disabilities were systematically excluded from American public schools. In the early 1970s, according to widely quoted estimates, approximately 1 million school-aged individuals with disabilities were totally excluded from public educational programs, and another 3 million pupils with disabilities attended public schools but were not provided services to meet their basic educational needs. This meant that well over half of all kids with disabilities were not receiving minimally adequate education.

State residential treatment institutions for people with disabilities were generally abysmal. Large state facilities, typically located in rural areas with high walls and locked wards that isolated the residents from the rest of society, were primitive and often unsanitary, dangerous, overcrowded and inhumane. A New York court described the conditions at Willowbrook State School in 1972 as: “horrible,” “dreadful,” “sub-human,” “a blot on the conscience,” “not only appalling but frightful,” a place where “the most helpless and defenseless of our citizens were left living on a thread of life ... rotting in inadequate warehouses, the living among the dead, the dead among the living.”

Most public transportation systems made few, if any, accommodations for persons with disabilities, resulting in a transportation infrastructure that was almost totally unusable by people with mobility or visual impairments – a situation that was mirrored in inaccessible private transportation services including taxis, ferries and private buses.

Government buildings, public monuments and parks had generally been designed and built without taking into account the possibility that people with disabilities might want or need to use them. Flat or ramped entrances into stores and businesses were the exception rather than the rule. Curb cuts or ramps on sidewalks were extremely rare, often forcing people who used wheelchairs to make their way on streets, where they faced the peril of being hit by motor vehicles.

People with disabilities were routinely denied rights that most members of our society take for granted, including the right to vote (sometimes by state law, other times by inaccessible polling places), to obtain a driver's license, to enter the courts and to hold public office. Many states had laws prohibiting marriage by, and permitting or requiring [involuntary sterilization](#) of, persons with various mental or physical conditions, particularly intellectual disability, mental health conditions and epilepsy. A number of states restricted or denied the right of people with mental disabilities to enter into contracts. Several U.S. cities, including Chicago, Columbus and Omaha, had what became known as "ugly laws" that banned from streets and public places people whose physical condition or appearance rendered them unpleasant for other people to see. These laws were actually [enforced](#) as recently as 1974, when a police officer arrested a man for violating Omaha's ordinance.

In some instances, discrimination threatened the very lives of individuals with disabilities: Lifesaving medical treatments that would routinely have been made available to other patients were denied to patients with disabilities; in 1974, the New York Times cited an estimate that [unnecessary deaths of babies with disabilities](#) in the U.S. resulting from withholding of medical treatment numbered in the thousands each year.

I had felt the sting of disability discrimination myself. When I was a year old, I contracted polio, which caused serious damage to my right arm and shoulder. For the next 10 years, I had a functioning right hand and lower arm dangling from a nonfunctioning shoulder joint and upper arm. Creative surgery when I was 11 gave me some use and range of motion in the shoulder. As a result of my disability, I, not infrequently, experienced discrimination. Apart from routine slights and undesired pity, some incidents were more dramatic — particularly being thrown off a construction job site by a contractor who said he didn't "want any cripples on the job." And though it kept me out of the Vietnam War, it felt terrible that, after a pre-induction physical, the Selective Service System ruled on the spot that my disability made me unfit to serve my country.

I had never thought about disability advocacy as a possible career path. But as a law student, a project I helped start morphed into the National Center for Law and the Handicapped. As a student intern at the Center and then as one of its first attorneys, I soon learned about groundbreaking lawsuits that were inciting a disability rights movement. Initial judicial victories in the early 1970s, particularly in Pennsylvania, Alabama and the District of Columbia, spawned an avalanche of disability rights lawsuits around the country.

I was involved as an attorney in some of those cases. Early groundbreaking successes in the courts focused on access

to public school education and confinement in residential treatment facilities, but subsequent court decisions and protest actions by activists with disabilities addressed unequal treatment in other contexts, including transportation, guardianship, housing, medical services, involuntary sterilization, contracts and voting. By 1980, the case law was sufficiently developed to allow me to publish the (hefty) first law school casebook on disability rights.

In 1982, I was hired by the Office of the General Counsel of the Civil Rights Commission to help write its first report on disability discrimination. My job (one of the best I've ever had) was to survey the whole field — statistics, social science literature, histories, legislation, legal commentary and court decisions — on the status of people with disabilities in American society and in the law. This work, which culminated in the commission's report, *Accommodating the Spectrum of Individual Abilities*, gave me the opportunity to take a big-picture look at disability rights law and where it ought to go. A key finding of the report was that discrimination based on disability was “a serious and pervasive social problem.”

Chris Bell, co-author on the *Accommodating the Spectrum* report, and I were disappointed that the members of the Civil Rights Commission decided not to include any legislative recommendations in the report. We wrote an article making two principal points: A federal law prohibiting discrimination on the basis of disability should cover all the contexts in which Congress had prohibited discrimination in other civil rights laws and, beyond that, should extend to all entities that affect interstate commerce; and such a law should, unlike then-existing disability statutes, define, explain and set standards as to what constitutes disability discrimination.

Unfortunately, despite Chris's and my naïve belief that our blueprint would inspire legislative action by members of Congress or their staffs, the article was generally ignored.

Established as an independent federal agency in 1984, the National Council on Disability was charged with reviewing federal laws and programs affecting people with disabilities and producing a report to the president and Congress on how they should be improved. After conducting consumer forums around the country, NCD concluded that discrimination was the biggest problem facing those with disabilities. It recommended enactment of a comprehensive law prohibiting discrimination based on disability — conclusions that were further buoyed by the results of a 1986 nationwide Harris Poll of Americans with Disabilities, which documented that people with disabilities were largely a disadvantaged, isolated, stay-at-home population that commonly experienced discrimination and desired civil rights protection. NCD tapped me to write the report, *Toward Independence*, in which NCD recommended a comprehensive nondiscrimination law, and then to draft such a law, which at the suggestion of Council member Kent Waldrep was named “the Americans with Disabilities Act.” NCD published the law I had drafted (with the Council's input and approval) in its 1988 report *On the Threshold of Independence*.

Disability has traditionally been a cross-party political matter, but the introduction and enactment of the ADA was extraordinarily bipartisan. Proposed by Reagan appointees in the NCD, initially sponsored by a Republican in the

Senate (Senator Lowell Weicker) and a Democrat in the House of Representatives (Representative Tony Coelho), passed by a Democrat-controlled Senate and House of Representatives, and supported and signed by President George H.W. Bush, the ADA was a model of bipartisanship. As a result of such across-the-aisle support, the votes in Congress to pass the ADA were overwhelmingly in favor of passage. Since its passage, the ADA has been supported by each successive U.S. president, whether Democrat or Republican.

In a variety of ways, the ADA has lived up to the hopeful expectations that accompanied its passage. Among various areas of particular impact are the following:

Buildings, facilities and thoroughfares: Flat or ramped entrances into buildings have become the rule rather than the exception, and curb cuts and ramps on sidewalks are now commonplace. As a result of ADA mandates, designated disability parking spaces have become a standard feature of parking lots and garages. Due to all these improvements, today it's common to encounter people using electric and manual wheelchairs, crutches, white canes, service animals or prosthetic devices on sidewalks and in parking lots, at malls and shopping centers, in airports and train stations, in stadiums and theaters, in parks and playgrounds, and at most other public places.

Mass transportation: The ADA imposed detailed requirements for operators of bus, rail and other public transportation systems, plus intercity and commuter rail systems. Implementation has been far from perfect, but transportation accessibility has progressed considerably.

Telecommunications: The ADA's telecommunications provisions have resulted in the establishment of a nationwide system of relay services, which permit the use of telephone services by those with hearing or speech impairments, and a closed captioning requirement for the verbal content of all federally funded television public service announcements.

Government services and public accommodations: The ADA has had a profound effect in reducing discrimination in state and local government services. Among many positive impacts, the U.S. Supreme Court's interpretation of the ADA in the *Olmstead v. L.C.* case has fostered the development of community residential treatment and care services in lieu of unnecessarily segregated large state institutions and nursing homes, and spawned strong presidential initiatives in favor of community-based alternatives for people with disabilities. Perhaps even more profound has been the impact of the ADA's public accommodation provisions that require accessibility and ban discrimination in almost all private businesses in America.

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Hiring Practices: The ADA's employment provisions barred invasive pre-employment questionnaires and disability inquiries and the misuse of information garnered in pre-employment physicals. The employment provisions also

have made job accommodations for workers with disabilities more common than they were before the ADA was enacted.

HIV Discrimination: The ADA has proven to be the principal civil rights law protecting people with HIV from the sometimes egregious discriminatory actions directed at them, and has been so applied by the Supreme Court.

International effect: The ADA has spurred numerous countries to enact legislation prohibiting discrimination on the basis of disability. These countries have looked to the ADA as an inspiration and a model in crafting their own legislative proposals.

None of the foregoing is meant to suggest that the ADA is a panacea for people with disabilities, nor to ignore the fact that there are huge gaps in enforcement of the law's requirements. Some covered entities have taken an I-won't-do-anything-until-I'm-sued attitude toward the obligations imposed on them. But in the 25 years since its enactment, the ADA has, as NCD observed in one of its reports, "begun to transform the social fabric of our nation." (For more on the history of the bill: [A Dozen Things to Know about the ADA on its 25th Anniversary.](#))

In today's polarized political climate, it's enlightening to contemplate that the ADA was an exemplary fruit of bipartisan congressional cooperation. When President Obama welcomed former senators Lowell P. Weicker Jr. and Bob Dole, Sen. Tom Harkin and Rep. Steny Hoyer to a White House reception this week to celebrate the ADA's 25th anniversary, it was a good reminder of what our nation's leaders can accomplish when they meet each other in a spirit of civility and compromise.
