

2010 AHEAD and PEPNet CONFERENCE

ADA: PAST, PRESENT, FUTURE

KEYNOTE SPEAKER: IRENE BOWEN

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[This is an edited version of the transcript originally provided through on-site captioning by
Alternative Communication Services, info@accaptions.com)

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>> Chris Primus: Thank you, Cathy.

I have the honor of introducing this evening's plenary speaker.

Irene Bowen has a long history of experience in the disability field. As a law student along with a couple of other law students she developed the National Center for Law and Deafness. As Deputy General Counsel for the U.S. Access Board she played a key role in developing the ADA accessibility guidelines. She was Deputy Chief for enforcement for the Department of Justice's Disability Rights Section until 2008. She oversaw ADA investigations and litigation, including the Department of Justice's physical accessibility compliance reviews and investigations of, and agreements with, several universities. She also has been a well-received presenter at meetings and conferences such as ours. Earlier I asked Irene if she had -- if there was something unique about her she would like me to share with everyone. She told me that when she retired from the Department of Justice they treated her to an Elvis impersonator in the Great Hall. She will have to tell us exactly where that great hall was, but it's someplace special I am sure in Washington, D.C. Now she will provide us with a retrospective of the ADA at its 20th anniversary, and a look ahead to 2020.

Please join me in welcoming Irene Bowen. (Applause)

>> IRENE BOWEN:

[Please note: This presentation refers to what were, at the time, proposed Department of Justice regulations and draft advance notices of proposed rulemaking (ANPRM's). On July 23, 2010, the ANPRM's were issued and posted on the Department of Justice's web site. The regulations were made final on September 15, 2010. www.ada.gov.]

[Photo descriptions are in italics.]

Thank you, Cindy, Chris, Cathy, Ida, and Ed. And welcome, everyone.

It's a real honor for me to help kick off this great and timely conference, and I am going to try to tie our look back and our look ahead to the conference theme, "person – disability – diversity – humanity."



[Photo of theme logo]

First I'd like to recognize the assistance of Scott Lissner. With his smooth jazz voice, he'll be describing the photos that I'm using. Almost all of the pictures, in keeping with our theme, are of people. If I don't jump right in and describe a particular photo, Scott will do that for me. He is the "Wizard of Oz" behind the curtain over there.

The conference organizers have asked us to consider -- and I love this quote -- "the underlying layers of humanity and the added value of disability." What better way to start our group consideration of humanity, individuals, and disability and of where we've been and where we're going, than to explore and celebrate the Americans with Disabilities Act.

In two weeks, the ADA will be 20 years old.

Yes, the ADA is 20 years old, and generally we are not. (Laughter) Not to be flip, but that in itself has implications: where you "come in" affects your perception. Your entry point becomes your reference point for much of what is past and what is to come.

Some of us remember the passage of the Act in 1990. According to my review of a study by AHEAD, about 80% of us were "of age" at the time, and about 10% of us were involved in disability rights or disability services at the time. As to the people who were just up here on the stage, and President-elect Jean Ashmore, and President Mike Shuttic, who will come up next, I took an unscientific poll. Some people self-disclosed. Otherwise I did my own assessment, with absolutely no documentation. (Laughter) And I think that almost all of these leaders, with perhaps two exceptions, remember the days when there was no ADA, and the major laws were Section 504 and -- for those not yet in college -- the Individuals with Disabilities Education Act (IDEA). If you're in the group that remembers that, you've seen tremendous change in the nature, scope, and number of disabilities of the people you serve, and of disabilities of the visitors on your campus, and in the nature, scope, and number of the accommodations, adjustments, and auxiliary aids that you provide under the ADA and section 504.

Yes, the ADA is 20 years old.

Most of the students that you serve are about that age, and they are part of the "ADA generation" -- or maybe we should say they're "Next Gen ADA" -- meaning that in their lifetime there has always been an ADA. And there has always been an IDEA. Perhaps some in that generation take these laws for granted. Probably few of them know how hard people with disabilities fought for basic civil rights, including in the way that Ed just mentioned, and how much must still be done to achieve full inclusion and self-determination. But you can be sure that most of them come to you with high expectations of services and with full knowledge of their rights.

Yes, the ADA is 20 years old.

And the law itself is in late adolescence. That's a time of transition and transformation, the cusp of adulthood. At 20 you can start to count your accomplishments, but the best is yet to come. And after 20, the issues that we confront in life become a little more complex. In my view, the same is true of the issues involved in implementing the ADA.

So this is a time to celebrate. But what has the ADA accomplished? Has the country been transformed, as we envisioned? Or have the worst predictions come true -- the predictions that the ADA would be an Attorney's Full Employment Act, it would bankrupt businesses, it was too vague to apply, or it had too much specificity to comprehend, that it would be a disincentive for employers to hire people with disabilities? Have those come to pass? With the original ADA regulations mostly intact, and new ones on the horizon, and after 20 years of regulation, implementation, and litigation, what's left to do, and how do we do it? And as our world and the issues that we face become more complex on the verge of the ADA's adulthood, what will the next 20 years bring?

Higher education is a microcosm of society as a whole, and it is often at the forefront of developing issues. So let's take a broad view of where we are, how we got here, and where we might be going -- with a glimpse at some issues particular to higher education.



[White house lawn, President George H.W. Bush signing the ADA, and four other individuals]

This is the now-iconic photo of the signing of the ADA in 1990 at a ceremony on the White House lawn. It's a day that is embedded in my memory, as it always will be for others that were there. Hundreds of people gathered on a beautiful sunny day in what President Bush called a "splendid scene of hope." He compared the passage of the ADA to the falling of the Berlin Wall a few months before and said, "Let the shameful wall of exclusion finally come tumbling down."

The landscape of our country has changed because of the ADA. We have more curb cuts, accessible buildings, parks, stadiums. The cumulative effect of the ADA and related laws has been to open up transportation for more people with disabilities by buses, trains, airplanes, and now even cruise ships. The statutes have increased access by people who are deaf or hard of hearing or have speech disabilities to communication in person, by phone, and on the internet, and access for people who are blind or have low vision or print disabilities, to media of all types -- electronic as well as print. Our society has modified policies that exclude or limit opportunities for people with a variety of disabilities, including the ones that I mentioned, mobility disabilities, learning disabilities, mental or emotional illness, HIV/AIDS, and a host of other conditions.

President Bush said that "every man, woman, and child with a disability can now pass through once-closed doors into a bright new era of equality, independence, and freedom." Certainly those figurative doors have opened wider. But we have much to do, to truly provide equal opportunity for people with disabilities and to include them fully in every aspect of society.

People with disabilities continue to be unemployed at an alarming rate. Twice as many people with disabilities are below the poverty line compared to the general population. Housing opportunities are extremely limited. In particular, people with intellectual disabilities and those with psychiatric disabilities continue to face discrimination. People are still shut away in nursing homes, when with supportive services in true homes, they could fully participate in the daily activities others take for granted.

President Bush said that the ADA would open the doors to a new era. But keep in mind that at the time we saw only the doors to the world of 1990. You know that during the past 20 years our world has changed. More people with disabilities, and more severe disabilities, are “about in the world,” and now the doors open to a different future – with some issues that we can anticipate, and some that none of us can imagine.

I brought some little toys with me, to illustrate the point about perspectives. These are the little Russian dolls that have other dolls hidden inside of them. They’re up here on the podium, and I know most of you can’t see them, so they’re all lined up in the photo.



[Photo of Russian dolls with images of Presidents Obama, Bush, Clinton, Bush, and Reagan, descending in size.]
(Laughter)

The first of course is President Barack Obama. He looms largest because he is President in the here and now. Inside Barack Obama's doll is a smaller George W. Bush, and, of course, as you open them up they get smaller. Isn't this what happens to

our perspective? We remember more clearly what has happened recently, and it seems more important. So these little dolls are going to be up here while we go through the various eras of disability rights implementation, all the way back to the teeny-tiny Reagan at the end of the line. (Laughter) My children gave me these recently for Mother's Day. (Laughter) And now they've come in handy, in an unanticipated way.

So where are you on the spectrum? Going back in time, whom do you remember, and how clearly?

Here's my perspective. I am a former teacher. In law school, as advocates, three of us got a grant to start the National Center for Law and Deafness. Getting the grant was a bit of a shock -- I would never try to get a grant now. (Laughter) I learned to litigate while working with a Ralph Nader public interest group and then joined the U.S. Access Board staff way back in the time of the invisible -- now invisible -- Jimmy Carter. I say invisible because he is not up here. (Laughter) Then I went to the Department of Justice to coordinate section 504 policy and implementation.

I did not write the ADA. There are about 1,000 people who say they wrote it. (Laughter) There are a number who wrote it and there are hundreds and thousands more who worked really hard to make it happen. But I was part of the team that drafted the existing Department of Justice regulations and the ADA accessibility standards. I started the code certification program and did the first Project Civic

Access Review and then focused on ADA enforcement. I helped draft the DOJ regulations that we're now waiting for in their final form.

I am also the mother of two independent adult children. I had to fight hard to get accommodations for one of them, who has invisible disabilities, in one of the most progressive public school systems in the country. And I breathed a sigh of relief when the accommodation process worked as it should in college, and even better than expected.

I'm now a recovering attorney and a consultant.

PROLOGUE TO THE ADA: WHAT CAME BEFORE

So as we go back in time, let's look at how we got to the Americans with Disabilities Act. Why was it needed? And let's look at the theme again, "person, disability, diversity, humanity."



[photo of theme logo] At one end of the spectrum is the broad category of humanity. At the other end is the person, the individual.

Our laws and our language reflect our values as a society. Our language has not always been very accepting of people with disabilities. As we came to understand the nature of disability, and the effect of our society's policies on the quality of life of people with disabilities, our language and our approaches have changed. I want to touch on this to drive home the point the Ed made, which is that the ADA is a civil rights law. And it was long in coming. People have had to struggle long and hard for their civil rights, and if you are one of those who don't remember teeny-tiny Reagan or a little bit bigger George Bush or the passing of the ADA, I hope that this will give you a glimpse into those eras.

Historically, people with disabilities were treated neither as persons, nor even as a part of humanity. Not too many years ago, because of our feelings of fear or shame, and lack of understanding, "cripples" and "crazy aunts" and other people who were different from the rest of us were segregated – the cripples in institutions and the aunts in an insane asylum or an attic or a basement. Disability was seen as a defect, a punishment for a sin of a parent or of the person with a disability. Such people weren't deemed worthy of being in our society.

Then we took pity on people with disabilities. We tried to "help the handicapped." People with physical disabilities – but only those with physical disabilities -- became the subject of our charity; for example, the adorable children paraded before the cameras on telethons tugged at our heartstrings and raised funds to help "the crippled children."

Then we advanced to the "rehabilitation" era; we still saw disability as a defect, but we were optimistic that people could be rehabilitated, or "fixed" enough to function, even if they couldn't be "cured." We were still following a medical model – fixing the person, not the society.

Now we're "enlightened" enough, and I put that in quotes, generally to know that disability is natural, part of the natural condition. It's part of being human. Of those of us who have disabilities, only about

15% are born with disabilities, and 85% of disabilities are acquired. Viewed this way, disability becomes an aspect of diversity, one of the words in the continuum of our conference theme. In the context of diversity, disability is the minority that includes all minorities.

And in fact that is the approach of the ADA: that people with disabilities are members of a class, that that class has faced discrimination, and that society needs to change to remove both physical barriers and other obstacles that it creates to limit people with disabilities. (There are several good sessions on disability studies and diversity this week, and I urge you to go and see how that can be incorporated into your work.)

Before the ADA, we had a slowly evolving patchwork of disability rights laws. Our primary civil rights law -- the Civil Rights Act of 1964, which banned discrimination on the basis of race, religion, and national origin and later added sex -- covered most sectors of society but did not include the basis of disability. As of the early 1970's, no federal statute reached any part of the private sector to ban discrimination on the basis of disability. The first inroad was the Architectural Barriers Act of 1968. But it affected only people with physical disabilities, and applied only to federally funded buildings.



[Photo of California governor Ed Brown and Ed Roberts. By Tom Olin.]

But in 1962 Ed Roberts, on the right in this photo, wanted to attend the University of California as a student. He was a quadriplegic due to polio, and relied on a respirator. At first the university said, "We've tried cripples before and it didn't work." Then it reluctantly agreed that he could attend as a student -- and live on campus -- only if he lived in an empty wing of the student health center. He did so, under protest, and he brought others with similar disabilities to join him over the next few years. They worked for on-campus housing for students with disabilities, and then integration into the community. Thus began the movement for independent living and disability rights. Ed Roberts and others advanced the revolutionary concept that individuals with disabilities -- not doctors or caregivers -- know best how to meet their own needs. The slogan of that movement became "nothing about us without us."



Image of a stamp with a young child with a telephone, and a bunny, and the words, "Help the Crippled Children." A second stamp with the international symbol of accessibility (a profile graphic of a person in a wheelchair) but with the person holding a protest sign, and around the graphic are the words, "You gave us your dimes. Now we want our rights."]

These two stamps contrast the pity or charity model with the model on which Section 504 is based. The slogan “You gave us your dimes. Now we want our rights” became one of the slogans that led to the passage of Section 504. More and more people like Ed Roberts were working to end the charity model and the medical model.

Then in 1973 Congress passed Section 504, the first ban on discrimination on the basis of the class of disability. Section 504 banned discrimination on the basis of the class of disability for the first time. In 1975 Congress passed the Education for All Handicapped Children Act. But section 504’s ban reached only federally-funded or, later, federally-conducted programs. And of course, the education act reached only public education.

This is the part where I came in, in the administration of Jimmy Carter, not represented by the dolls here. Section 504 had passed with little attention, as part of the Rehabilitation Act of 1973. It was the law, but there were no regulations. And of course, you have to have regulations that tell you how to implement a statute, especially when it's only two or three sentences, which is what Section 504 was at the time. A lot of us forget – or never knew -- how hard-fought this was.



[Photo of a campaign button, “Sign 504. Handicapped human rights.” Bumper sticker: “504. Civil rights for all disabled people.”]

More than three years after section 504 passed, because regulations had not been signed, people with disabilities sued the U.S. Department of Health, Education, and Welfare, and advocates took over federal buildings in ten cities across the country. People with disabilities vowed to continue the sit-ins until the regulations were signed. Some of them went for days without food and water and other basic needs.



[Photo of three federal security officials protecting an entrance to a building, facing protesters in wheelchairs.]

You see that one protester’s t-shirt says, “Never surrender.”

And after 29 days, which is how long the longest sit-in continued – in San Francisco—and congressional hearings, the regulations were signed, and the protesters left.

So now we had section 504 – the law and the regulations. As required by the regulations, some entities did self-evaluations and transition plans. Most of them didn't. Those who did them didn't necessarily implement them.

Pretty soon after this, the Supreme Court decided the Davis case, in 1979. A lot of you remember this – if not, at least you know about this decision, because it continues to guide your work. Southeastern Community College v. Davis was the first Supreme Court case about disability rights. It arose in the context of higher education, one of the areas where section 504 has had the most impact. The Court found that, under the facts set out there, a college did not have to admit a student with severe hearing disabilities to its nursing program because she was not “otherwise qualified.” The court also imposed the limits of undue financial and administrative burden, and fundamental alteration, on the types of actions that were required under Section 504.

As we enter the 1980’s, it’s time for the teeny-tiny Reagan doll. This photo is pretty blurry because the doll is small, but they’ll get a little clearer as we go.

[Photo of President Reagan doll.]



In the early 1980’s, the Reagan Administration moved to revoke the regulations for what was then called the Education for All Handicapped Children Act (or Public Law 94-142) and the law itself, in fact. This was part of an effort that encompassed a number of laws, in the name of deregulation and risk benefit analysis. The goal was to remove obligations that were just too burdensome on businesses and public entities, compared to the benefits to society. When this effort reached the Education Act, people with disabilities and other advocates rose up in protest.



[A protest rally and march by people with and without visible disabilities. Some carry a banner reading, “Stop the burial of P.L. 94-142.” Signs read, “We care. Reagan doesn’t.” Photo by Tom Olin.]

In particular, parents of children with disabilities, who were getting an appropriate education because of EHA, became a force – walking the halls of Congress, writing letters to the Administration, protesting in the streets. The Administration abandoned its efforts to erase the advances of the EHA. And this show of strength helped significantly to ward off attempts – already under way at the time -- to cut back on the reach of the federal agencies’ section 504 regulations. The government had gotten the message that deregulation was not going to work in this area.

Congress passed a number of laws in the 1980’s in a piecemeal fashion, reaching into specific areas where there was not necessarily a connection to federal funding. One was the Voting Accessibility for the Elderly and Handicapped Act. Do you remember the 2000 elections and the hanging chads in Florida? -- when some people didn’t know whether their vote counted or not? Well, for many years, some people with mobility disabilities knew their vote didn’t count because they couldn’t cast one – they couldn’t get to the polls at inaccessible polling places -- and many people who had low vision or were blind have experienced for years the feeling of not knowing whether or not their vote counted

or reflected what they intended. The Air Carrier Access Act of 1986 opened up the skies, so to speak, to people with disabilities, and the Fair Housing Amendments Act of 1988 imposed a broad ban on discrimination in housing.

Then, two years before the ADA, came a wonderful example of self-determination: the Deaf President Now movement.



Image of a Deaf President Now march, with banner reading "DEAF PREZ NOW" and sign: Gallaudet's Bison says, "I haven't seen a deaf president in 124 years."

Looking back, we could call this the first Deaf President Now movement, because another one followed later. But in this case, and some of you are sure to remember this, the Board of Gallaudet University, which was established mostly for the benefit of deaf people, named a President who was hearing. This wasn't anything new, but this time – in 1988 -- students and others rallied, urging that a Deaf President be named. I. King Jordan had been a candidate, but he had not been the one who was chosen. Some eloquent deaf spokespeople came to the forefront. The protesters shut down the University. After about a week, the Board changed its mind. And as I recall, the President of the Board also resigned. And the Board named I. King Jordan as the first Deaf President. This was monumental for deaf people and for civil rights in general.



[Photo of I. King Jordan, with thumbs up, after he was named President.]

I read recently that I. King Jordan said that the first day when he walked into his new office, there he was – the first deaf President of Gallaudet, with the deaf President of the student body, and the deaf President of the school board -- and he knew at that time, as he has said and has become quite a famous statement, that "Deaf people can do anything except hear."

All right. Little President Bush doll. Medium-size President Bush doll comes later.



[Photo of doll of first President Bush.] As you know, President Bush was the President who supported and signed the ADA. He came into office in 1989, when the effort to pass the ADA was intensifying – in part because there was no parallel for people with disabilities to the civil rights acts that protected people against discrimination on other bases, and because the patchwork of federal laws had not ended that discrimination. In fact, discrimination was still quite

pervasive.



[Photo of protesters, most in wheelchairs, near a bus. One has a sign on the back of his wheelchair: "I can't even get to the back of the bus." Photo by Tom Olin.]

This photo, as are a number of the others, is by Tom Olin, who has chronicled the disability rights movement. It's one of my favorites, because it draws such a vivid parallel between the civil rights movement of African-Americans and the

movement of people with disabilities. On the back of the wheelchair of one of the protesters, a sign reads, "I can't even get to the back of the bus." You recall that Rosa Parks, a black woman, helped to spark the movement that led to the passage of the Civil Rights Act when she refused to give up her seat to a white person and to go to the back of the bus. But in 1990, people with mobility disabilities and other disabilities couldn't even get on the bus. Some of them couldn't vote. Some couldn't call 9-1-1 because that required use of a conventional voice telephone. Some couldn't access health care or recreation. Some couldn't read their bank statements or menus because they were only in regular print, not in Braille or large print or a format usable by people who were blind or had low vision. Some couldn't appear in court or serve on juries or enjoy a play because they were deaf and didn't have access to interpreters. And people with all types of disabilities were unemployed or underemployed.



[Photo of a march in downtown Chicago, with Marca Bristo, Gary Arnold, Judy Heumann, Justin Dart, and others, and a large banner: "Injustice anywhere is a threat to justice everywhere." Photo by Tom Olin.]

Justin Dart, here on the right in his famous hat, was the "Father of the ADA." At his own expense, he toured the country, visiting each state three or four times, collecting stories from people with disabilities about the

exclusion and injustices they had faced. Those stories, which became part of the legislative history of the ADA, played a large role in convincing members of Congress of the need for a comprehensive ban on discrimination by the public and private sectors. No earlier civil rights legislation had been subject to such extensive consideration: more than 20 hearings by committees and six reports. But with no serious opposition, about two years after the first draft of the ADA, and as the result of dedicated work by thousands of advocates and their organizations, long negotiations with and within Congress, and many revisions to the actual text, the ADA -- covering many types of disabilities, and all aspects of society -- was passed and celebrated.

When I consider the ways in which the ADA has developed from the early years to the cusp of adulthood, I see three stages of implementation. These aren't "official" -- this is just my own way of perceiving this. First, the early days: there were about seven or eight "exploratory years," when covered entities, people with disabilities, and the courts grappled with some basic issues. Second, the "foundational years" established the parameters of some bread-and-butter issues, with a number of significant advances, if you will, between 1998 and 2008, even while several Supreme Court cases brought an "erosion" of coverage of people with disabilities. (Of course, Congress now has reset the definition of "disability" to what Congress intended it to be.) Starting in 2008 -- the third period -- we

have seen some major expansions of disability rights. And now I think that we're seeing an even more reinvigorated renewal and resurgence of rights and enforcement of them. I think that it's already under way.

FIRST STAGE: THE EXPLORATORY YEARS: EARLY REACTION AND HURDLES, 1990 to 1998



[Photo: first President Bush doll.]

The ADA had passed almost unanimously, with strong bipartisan support after years of persistent work. But how was it received during the first five years?

Typically, our society doesn't undergo sweeping changes immediately after civil rights legislation is passed. Change is gradual, and real change to society as a whole, and to individual behavior, takes time; it advances in stages. At first, some individuals and parts of the public sector may

start to comply voluntarily, and higher education was probably doing more toward compliance than some other sectors, because they probably understood more than others that this is civil rights legislation. There was some press attention to the ADA regulations when they were issued a year after the Act was passed, and some negative reaction to the perceived expense and 'special' treatment of people with disabilities that would be brought about by the Act. All the agencies quickly began to provide training and technical assistance under the ADA, and in fact, this is the first civil rights legislation to require the agencies to do so. But what really gets people's attention in the United States is litigation. When litigation brings about compliance in a particular arena or on a particular question, and when it requires changes in policies or actions, then attitudes start to change as we start to accept the fact that we have to change, and new behavior emerges. Then, as people see that the law can make a difference, hopes and expectations rise, and the affected class demands more compliance in more areas.

After about 20 years, you would expect that compliance with the ADA would become just a way of life.

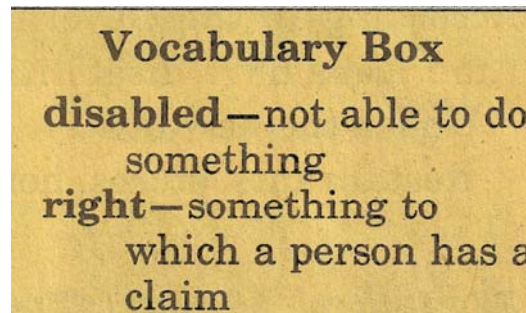
More about that later, but we have seen real change. And there is a new wave of change coming, a wave of restoration and expansion of requirements. But just as there was some initial backlash, we should be alert to potential backlash with the new wave, especially in light of the country's economic situation, as more requirements are imposed and fewer funds are available.

But back to 1990. What were the first issues? If you remember those days, you remember some of the first and seemingly simple issues.



[Image of a "Weekly Reader" commemorating the signing of the ADA with the same iconic image we opened with, of the ADA signing ceremony. Headline reads: President Bush Signs Law To Help Disabled.]

One of my kids brought this home from school that year. It's the Weekly Reader, sort of a newspaper for elementary school students around the country. It has a vocabulary box with two terms in it.



[Close-up of vocabulary box. "Disabled: Not able to do something." "Right: Something to which a person has a claim."]

In its simplicity, this little box illustrates two of the central themes of the ADA, and two that still occupy our attention. "Disabled: Not able to do something." "Right: Something that a person has a claim to."

As to the first question -- What's a disability? -- there was much debate at the beginning -- and it continues today -- about what disabilities are covered or should be covered. In 1990, many people had the mindset that a person with a disability was blind, deaf, or used a wheelchair. And some thought that people with "lesser" disabilities were asking for too much; some didn't think people with AIDS/HIV should be covered, or that people with bad backs should get accommodations in the work place. And as to the second question, how far do the rights go? Some people got very worked up about this issue, saying that we were giving "special treatment" to just a few people. This statement often would be prefaced with, "Of course, I am all for helping the handicapped," and then, "but why all this special treatment?" There is a book that focuses on these "objections" and related issues, called Make Them Go Away, by Mary Johnson. Here's an excerpt from the book, which emphasizes this "us"

versus “them” viewpoint:

Our wrists hurt from typing on our too-flat keyboards.

We put the TV on mute when it gets noisy in the bar and follow the action with the captions.

We duck into the “handicap stall” in the airport because it’s big enough to accommodate us, and our rolling bag, and computer bag.

Still, we say, the disabled are ruining things or society.

They want special keyboards at work to help them type. They want accessible restrooms everywhere. They want more captioning on television. They’re always wanting special accommodations.

Opponents were particularly vocal about employment issues, and about the first really detailed accessibility standards. There was a lot of bad press when the regulations hit the streets, much of it claiming that the estimated high costs of compliance would bankrupt businesses. I remember that hospitals said that they would have to enlarge all of their dressing rooms. They would have to make changes in their labs. Hotels said that it would cost them \$41,000 a room to make changes. Of course, many of these things weren’t required by, or a result of, the regulations. And as an aside, those of us enforcing the law would find, even years after the ADA’s enactment, that many hospitals or hotels or colleges, for example, would do an initial barrier removal plan or transition plan, estimate high costs, and then put the plan aside, not even dedicating a reasonable sum to easy improvements. Somehow it didn't happen. They didn't do it. The money wasn't spent.

Tonight we’ll focus on some selected cases and developments that have some application to higher education, other than employment (which could be the topic of a whole other session, and which is going to change significantly with recent amendments to the ADA). I want to do this as a way of tracking trends and to illustrate how the ADA has evolved, not as a comprehensive analysis.

At DOJ we brought the first Title III case six months after the regulations were final. Becker CPA refused to provide interpreters for Rod Jex, a deaf person who had signed up for classes to prepare for the CPA exam. The company insisted he would do better with just a transcript. They said it worked for other deaf students, and watching an interpreter would be too distracting for Mr. Jex, who would need to observe visual aids at the same time. The Wall Street Journal said that the Justice lawyers -- and yes, I was one of them -- zealous lawyers were browbeating Becker into providing “translators on demand” at a cost exceeding the course tuition. DOJ was urged to give Becker more time to settle the case (even though the class was beginning in about ten days after filing of the lawsuit). Eventually the case was settled with what Justice was asking for. In fact, on his third try, when he was finally able to use an interpreter for the prep classes, Rod Jex passed the CPA exam.

This was one of the first ADA cases to examine the types of auxiliary aids that were required by the ADA and the process for providing them – with clear applicability to higher education. Other questions arising in higher education included, “How do you balance access and cost, why do we treat people differently?” and one common question was, “are learning disabilities real?” and how do we accommodate students with learning disabilities in a way that is “fair” to them and to other students? These actually seem to be eternal questions.

The Bush administration and Attorney General Thornburgh tried their best to explain that there were built-in limits on what the ADA required, and that many of the claims and alleged costs were exaggerated; that you only had to do what was reasonable; and that you didn’t have to do anything that was an undue burden, or that created a fundamental alteration to a program, or that was not

readily achievable, depending on the circumstances. But the questions continued.

During this time period, the floodgates of litigation that had been predicted did open in the lower courts – a floodgate of employment cases. But more than 90% of plaintiffs were losing their cases -- mostly because the cases were thrown out at the initial stages because the individuals were not considered to have disabilities.

SECOND STAGE: THE FOUNDATIONAL YEARS, 1998 to 2008



[Doll representing President Clinton]

You see the doll for President Clinton on the screen now, because he became President in 1993 and was in office when this second stage, 1998 to 2008, or the foundational years, began. But again, keep in mind that the court decisions don't reflect what a particular administration is for or against. The courts and the executive branch are separate.

Apart from the employment cases, there really wasn't a lot of litigation during the first several years, and there were no Supreme Court cases until 1998. But the lower courts started to consider the issues that a lot of us still struggle with.

I'm not going to catalogue them all, but there are some persistent questions in higher education:

What types of modifications are required to exams if the standard format is multiple choice or some other format that's not accessible to everyone?]

What type of documentation is required, or allowed, to decide who has a disability and who is "deserving" of accommodations (like extra time)?

Who gets to have an animal in student housing?

Who gets other non-academic modifications, such as a single or air conditioned room, and to what extent can the individual be charged for these?

What auxiliary aids or formats are appropriate for people with disabilities relating to hearing, vision, or speech?

Certain themes recur in the court decisions, although they're not all consistent, of course. Whether in the context of higher education or not, the courts, appropriately, looked to the ADA regulations, which have passed the test of time. Apart from the issues about what is a "disability," and some procedural and constitutional questions that are beyond the reach of this retrospective, the courts have deferred to the regulations (although not always to the agencies' interpretations of them). The cases sound certain repeated themes: on the one hand, the value of having written policies in place that address a variety of ADA-related issues in a rational way and, on the other, the need to undertake individualized assessments and to make case-by-case decisions, following those rational policies. For example, in the Guckenberger v. Boston University case from 1998 about course substitutions – a case that some of you consult frequently with respect to adjustments to academic policies -- the First Circuit Court of

Appeals clarified how a “rationally justifiable conclusion” (in the court’s words) about which option to follow in a particular case, consistent with the ADA and section 504, could be established. The buzzwords are ones that have become familiar. A supportable decision would require:

1. Involvement of the relevant officials;
2. Consideration of alternative means, and for each possibility, a consideration of its feasibility, cost, and effect on the academic program; and
3. A demonstration that through this process the officials reached a rationally justifiable conclusion that the available alternatives – those not chosen -- would result either in (a) lowering academic standards or (b) requiring substantial program alteration.

What else did we learn from the Supreme Court during these ten years? Among other things, the Court affirmed that title II’s coverage is broad and encompasses everything a state or local government does (that was in a 1998 decision about prisons, Pennsylvania v. Yeskey) and -- in the landmark decision of Olmstead v. L.C., in 1999 -- that Title II’s “most integrated setting” language generally prohibits segregating persons with disabilities in institutions rather than providing supportive services so that they can live in community settings. The Court also said that HIV/AIDS, whether symptomatic or not, is a covered disability (in Bragdon v. Abbott, in 1998).

Also in the 1990’s, there were significant inroads in improving physical access, through federal investigations and private litigation and settlements. The Department of Education, of course, conducted numerous investigations and issued letters about these and other issues. Private litigants brought about wide-ranging changes on some campuses. And the Department of Justice entered a major agreement with Duke University, leading to substantial accessibility improvements. Advocates and DOJ also focused on access to movie theaters and stadiums, with courts struggling with whether or not to defer to DOJ and require stadium-style theaters to include seats with improved lines of sight, and whether architects are liable under the ADA. Other agreements and litigation led to enhanced access to nationwide chains of hotels, restaurants, banks, gas stations, and other retailers. DOJ achieved agreements ensuring full accessibility at the 1996 Olympics.

DEFINITION OF “DISABILITY,” 1999-2002

You’re all aware probably that right around the turn of the last decade, the Supreme Court decided some cases that gave a really narrow reading to the definition of “disability,” therefore limiting the number of people who were covered.

We refer to the three major cases as the “Sutton trilogy.” In Sutton v. United Airlines, Albertson’s v. Kirkingburg, and Murphy v. UPS, all decided on the same day in 1999, the Supreme Court held that an individual whose impairment can be mitigated – whether it’s with eyeglasses, medication, or other adjustments or compensation mechanisms – isn’t an individual with a disability. And then in 2002, in Toyota v. Williams, the Court defined very strictly how “substantial” a limitation in a major life activity must be in order to fit within the definition of “disability.” In a nutshell, people with “lesser disabilities,” such as back injuries or poor eyesight, were in a Catch 22 situation: Employers wouldn’t hire them because of their impairments (that is, they were too disabled to meet the employers’ requirements), but they were “not disabled enough” to bring a successful lawsuit under the ADA. So here we are. The question of what’s a disability becomes the critical question; and answering that question often requires intrusive inquiries. After the Supreme Court spoke, even more cases were thrown out. Fortunately, this is one of the issues that the ADA Amendments Act has now resolved, we

hope.

Although the major questions about the definition of disability were raised through employment cases, the Court's conclusions of course have had a considerable impact on testing issues, documentation of learning disabilities and other disabilities, and other concerns in higher education.

Is Jo Anne Simon here? I know that she will be eventually. There was one bright light shining through this darkness, in my opinion: the Bartlett case in the Second Circuit.
(Applause)

And Jo Anne did a brilliant job of achieving success there. Marilyn Bartlett had a severe learning disability, making it very difficult for her to read with any fluency. She wanted extended time and other accommodations to take the New York State Bar. The problem was that she had done too well in school. The State said that her scores on a reading test were too high for her to qualify for any accommodations. They argued that because she had been so successful there was no way that she could have a disability. I am simplifying it, but you're familiar with the case, obviously. The court held that Ms. Bartlett was entitled to accommodations, and noted, with great insight, "the field of learning disabilities is replete with chaos." The court also cautioned that an individual with an impairment that substantially limits a major life activity should not be penalized when seeking protection just because he or she managed their adaptive strategies or received accommodations that had the effect of lessening the deleterious impact. After the Supreme Court decided the Sutton cases, it told the Second Circuit to reconsider its Bartlett decision, and the Second Circuit again found that Marilyn Bartlett was disabled and should be given accommodations, and that test scores alone were not enough to diagnose a disability. The judge writing the opinion I quoted from was Sonya Sotomayor. So that makes two good women making good decisions!
(Applause)

MORE FROM THE SECOND STAGE (1998 to 2008)

After that diversion about the "disability" definition, let's go back to the foundational years of 1998 to 2008. The second George Bush was President began serving in 2001, so we'll put his doll picture up now – again, remember the court decisions are separate from the Administration's actions.



[Photo of George W. Bush doll.]

Around the same time as these Supreme Court decisions, the Court decided PGA. V. Martin, in 2001. If you're more than 30 years old, you may remember the Casey Martin case. Mr. Martin wanted to play in the PGA golf tournament. He has a disability that makes it very painful for him to stand and difficult to walk more than just a very short distance, so he wanted to use a golf cart to go from green to green. As a threshold matter, the PGA argued that it wasn't a public accommodation; the court found otherwise. The PGA's next argument was: we can't change the game of golf. The PGA said that the game of golf isn't just about putting a little ball in a little bit bigger

hole. It's not just about the swing and accuracy; it's also about walking and stamina, and allowing use of a cart would be a fundamental alteration to the game. The court found for Casey Martin, holding that it is a reasonable modification to waive the requirement that players walk the course. The court basically found that walking was not fundamental to the game of golf, and that it was not a fundamental alteration to the game to allow someone with this type of disability to walk. The opinion gives us some more insight into the "fundamental alteration" concept that was first raised in the Davis case, but it's difficult to apply this particular case to other instances. What "fundamental alteration" really means is one of the areas still needing more clarity.

There have been no ADA rulings from the Supreme Court since 2006 but there have been a lot of accomplishments through settlements, sometimes after preliminary court decisions. For example, in 2003, the Ninth Circuit ruled court in Barden v. Sacramento that city sidewalks had to be accessible. While the Supreme Court was deciding to hear the case, there was a settlement agreement. Twenty per cent of the transportation funds of the city are being used to improve sidewalks, cross-walks, and curb cuts. The Supreme Court rejected the appeal without comment, and now Hawaii, California, and others have been making their sidewalks and curb cuts accessible after litigation. The Office for Civil Rights at the Department of Education, which is an office that most of you deal with, stepped up access reviews, and continued to issue letters of findings and resolutions on a wide range of issues, some of them about physical access. Some of the agreements that OCR and private attorneys achieved also required some elements that aren't in the statute itself: training, hiring of new staff, and specific maintenance schedules.

In the meantime, almost 100% of buses used in mass transportation are now accessible – a great achievement. (Applause.) Even before the ADA, the Urban Mass Transportation Act required that new mainline buses be accessible. But many transit authorities and bus companies and the organizations representing them said, "It's too expensive to make mainline transportation accessible. We'll do it through paratransit, a special system." Now guess what? Mainline systems are accessible. Now some of the transit authorities are saying that we don't need paratransit anymore. Or we can't provide services to as many people as we used to on paratransit, so they are cutting back eligibility. That's a broad-brush statement, and not true of all transit authorities, but it's an interesting trend.

THIRD STAGE: RECENT ADVANCEMENTS (2008 to 2010)



[Photo of President Obama doll.]

There is a President up there on the screen. But only the federal enforcement part of this has to do with who was or is President. So unless we're on enforcement, hide your eyes, whatever, don't look at the President and don't imagine Scott's voice describing him. (Laughter)
But he's there because he's here as our President now, and we're going up to the present time. And yes, I realize that 2008, when we're starting this period, was before President Obama became President.

There have been some stunning advances in disability rights since 2008. It really hit me when I was doing this "inventory" of change, and I realized how much has happened in the last

two years or a little more.

First, web accessibility. There were no websites in 1990 when the ADA was passed and when the regulations were written in 1991. And now we use the internet to transact business, to interact with our friends, to get information from state or local governments, to apply for jobs, to shop, et cetera. But much of it has not been accessible to people with various disabilities, whether it's people who are blind or have low vision, or those who are deaf or are hard-of-hearing, and sometimes to people with mobility and dexterity disabilities as well. Although the Federal Government imposed binding technology accessibility standards on agencies in 1998 under section 508, the Department of Justice has not been out front (until very recently) about coverage of web sites of private and public entities under the ADA. In 2006 the National Federation of the Blind sued Target Corporation, alleging that its web site violated the ADA because it was inaccessible to blind people who used screen readers. The court found in 2006 that the website is covered, at least to the extent that it relates to the brick-and-mortar stores. In August 2008, the parties entered a ground-breaking settlement under which Target is making its website accessible, and because of this example, increased activism by people with disabilities, and the example of Section 508, more and more websites are becoming accessible.

Also in 2008, in September, Congress passed the ADA Amendments Act, intended to address the problems we examined earlier with the definition of "disability." Congress made clear that many of the court decisions were contrary to Congress's intent, and that the definition is intended to be read broadly and decisions about coverage are to be made without intrusive inquiries. The hope is that now employers, testing entities, and others will spend much less time and effort determining whether someone has a disability, and focus instead on how to avoid discrimination and what accommodations or modifications are reasonable.

Last year the Department of Justice sharply increased its enforcement of the principle enunciated in the Olmstead decision ten years earlier: that institutionalizing people with disabilities in nursing homes is a form of discrimination. Justice has filed briefs in numerous lawsuits and is participating as a plaintiff in others, seeking to ensure, in DOJ's words, that "individuals with disabilities can receive services in the most integrated setting appropriate, where they can participate in their communities, interact with individuals who do not have disabilities, and make their own day to day choices."

Olmstead enforcement is just one prong of an overall increase in the Department of Justice's enforcement efforts. All the agencies responsible for civil rights enforcement, including the Department of Education, have stated that civil rights are back, and they're showing that they're serious.



[Photo of a man in a wheelchair in an accessible seating location at a huge stadium, with a person next to him who is not in a wheelchair. They are wearing yellow and blue, as are most of the fans.]

Do you remember this? Again, this illustrates a first, which occurred toward the end of the Bush Administration, in 2008. For the first time ever, the

Department of Education referred a case to the Department of Justice that DOJ then took to enforcement. And here you see a gentleman in a wheelchair, with a friend, sitting in an accessible seating area in a sea of blue and yellow at the University of Michigan. The issue there was what type of accessibility had to be provided when the stadium was altered. Working together and with private plaintiffs, the government ensured more accessible seating at the largest college stadium in the country.

There is another advance that comes not under the ADA but under Section 504, as it applies to the federal government – in this case, the Treasury Department is making currency accessible. Who would have foreseen in 1990 that representatives of people with vision disabilities would sue the Federal Government saying, "I want to know the difference between a \$1, \$5, \$10, \$20, or \$50 bill, without having to have someone's else's help." They did sue, in 2006. They won in the lower court, and in May 2008, the appeals court rejected the Treasury Department's effort to reverse that decision. The lower court then issued a landmark order requiring the Treasury to add accessibility features for people who are blind or have low vision, as part of its next redesign of paper currency. The Federal Government has now asked, through a rulemaking notice, how should we do this? Should we use Braille indentations, cut corners, textured paper? This is a major victory for blind people, and something that most of us would take for granted.

And access is stepping out – outdoors, that is. I mentioned that sidewalks and curb cuts in the entire states of Hawaii and California have been made or are becoming accessible. Campuses are learning that they need to pay attention to how people get from parking or access points to buildings, and travel between buildings, even on hilly campuses. Soon DOJ will, if it finalizes its proposal, impose ADA standards under title II and title III for play areas, golf courses, amusement rides, boating and fishing facilities, and swimming pools. When the Access Board finalizes its ADA guidelines for outdoor recreation areas, and federal agencies adopt them, then national parks and recreation areas will be required to improve accessibility when they install or alter trails, camp sites, and picnic facilities. It remains to be seen whether and how these will apply to state, local, or private outdoor areas. Soon we will also see guidelines for sidewalks and curb cuts.

So in two years, it has added up: web accessibility, broader inclusion of people with disabilities within the protections of the ADA through the ADA Amendments Act, increased enforcement (including Olmstead enforcement, which will place more people with disabilities in their communities), accessible currency, access to the great outdoors and to sidewalks and curb cuts. And we've also seen augmented awareness of – and some steps toward addressing – the interests and needs of people with disabilities in such diverse venues as study abroad and field placement of students with disabilities, and even rulemaking about access to cruise lines and ships. We are branching out far beyond the "bread and butter" issues.

STILL...

Yet before we think we've mastered the basics, let's reflect on some bad news: we still have a long way to go. Those basic issues are still with us. Consider some of the ones that the Department of Justice had to address this year -- things that we thought we crossed off the list 15 years ago:

DOJ had to enforce the rights of a family with an HIV positive child who was two years old because the owner of an RV resort called Wales West said the child couldn't go in the swimming pool.
DOJ had to sue an attorney who refused to allow a woman with a service dog into his office for a

deposition.

DOJ sued the State of California because it didn't want to hire a qualified social worker who was deaf, because the state didn't want to accommodate her with a part-time interpreter.

So yes, we have a long way to go.

One reason for this is that our attitudes still need adjustment. As I mentioned at the beginning, discrimination is reflected in attitudes, which are, in turn, reflected in our language. Last week I saw a headline -- and this is not unusual -- that read, "Wheelchair-bound polio victim sues zoo over access." In everyday conversation we hear references to people who are "manic," a "spaz," or a "psycho." President Obama joked on TV about his poor bowling skills, saying "It was like the special Olympics or something." A Virginia State legislator, in support of his opposition to state funding for abortions through Planned Parenthood, said that disabled children are punishment from God because of an earlier abortion by the mother. "When you abort the first born of any, nature takes its vengeance on the subsequent children." This was just last year.

And one of my least favorites: Not long ago the Supreme Court was considering whether defendants with mental illness should be able to represent themselves in court. During oral argument before all the justices, an attorney supporting their right to do so said that his client understood the judicial process, jury selection, and other trial basics. Justice Anthony Kennedy blurted out, "Oh, there are all kinds of nuts who could get 90% on the bar exam."

It seems some people laughed but most of those present, fortunately, appeared uncomfortable.

Let's hope that an attitude adjustment about people with mental disabilities will be one of our next frontiers. Probably physical disability no longer evokes as much pity and charity as it used to. But mental disability commonly evokes discomfort and even fear. And so do severe disabilities. Even though we now consider that about one in five of us has a disability, severe disabilities are still dreaded and feared. In fact, Americans would rather be dead than severely disabled. According to a study two years ago, 52% would choose death over living with a severe disability.

There are two areas in particular that in my view are very basic and still in need of intense attention: health care, and emergency preparedness and response.

People with disabilities tend to be in poorer health and to use health care at a significantly higher rate than people who do not have disabilities. They are also affected disproportionately by barriers to care -- including health care provider stereotypes about disability; the lack of appropriate training; and the lack of accessible equipment, sign language interpreters, and materials in alternate formats. I recommend that you read the National Council on Disability's 2009 report about the difficulties in accessing health care no matter what the nature of the disability.

I first became involved in disability rights through a law school project. Three of us asked the Federal Communications Commission to require that when emergency warnings were broadcast orally on television, the information had to be presented in some visual format, so that deaf people would know what was being said. If a deaf person was watching television in 1974, they might see a symbol that indicated there was a problem, but typically the information was only through oral broadcast, so they knew there was a problem but they didn't know what it was. We asked the Federal Communications Commission to require that oral information be provided in some visual way: someone interpreting, or

captions, or a handwritten sign. The FCC passed that requirement in about six months, to our shock.

Now, ironically, we sometimes receive emergency information only in visual format, with a crawl at the bottom of a screen, so people with vision disabilities are the ones missing the information. But last week I was watching TV and a notice came up that said amber alert. While just the symbol for the alert stayed on the screen, there was an oral description of a six-year-old girl who was missing. Of course, a deaf person would not have received any of the information about who to be looking for. And many times the missing information affects the individual's health or safety directly. If you have to boil your water for the next two days, it would be good to know that. Or if there is a wildfire approaching and you need to leave your home, people who are deaf or hard of hearing should have a way of being informed.

On the brighter side, I found one poll of businesses in Minnesota. Of those surveyed, 82% were aware of the ADA, 52% said that it had a positive impact on their business, and three out of four said that it was important to continually look for new ways to make their business more accessible. Two thirds believed benefits to their business outweighed or equaled the cost.

NEW AND EMERGING ISSUES

What are the new and emerging issues? Let's look at a few.

First, the population itself will help shape our issues in the future. More students are pursuing higher education. One in 11 of those now have disabilities. That's three times the number in 1978. In 2000, 17% had mental, emotional, or psychiatric conditions. In 2008 that number jumped to 24%.

We'll soon see an increase in not only the number but the diversity of students with disabilities, due to recent legislation.

For example, the Post-9/11 Veterans Educational Assistance Act will offer education benefits to our returning veterans with all types of disabilities whether they are burns or vision disabilities, as you can see in the picture, or result from other injuries such as traumatic brain injury. Hearing loss is the most common injury among veterans.



[Three photos: 1. Three men in uniform. Two of them pin stars on the other, who has a patch over one eye. 2. A man with gray hair and beard, a vest and beret, touching his hand to the names of fallen

veterans at the Vietnam Veterans Memorial. 3. Several men seated, wearing casual clothes and white baseball caps. A woman hugs one of them, whose face is severely scarred from burns and whose arm is wrapped in bandages.]

And the Higher Education Opportunity Act will increase opportunities, financial aid, and services for people with intellectual disabilities, as pictured in these photos. [Photo of adult couple: St. George's, University of London, intellectualdisability.info. Photo of three young people with intellectual disabilities, performing a skit or song: Access Living, Chicago, Illinois.]



[A photo of several people, including two using wheelchairs, at a protest, with one person holding a sign that says "Our homes, not nursing homes. "]

You may also see an increase in people with severe disabilities, partly due to the stepped-up enforcement that I mentioned of the Olmstead mandate to offer community living, rather than institutional living, for people with disabilities.

Then there's aging. Somebody recently said it's very popular. Everybody's doing it. (Laughter)



[Photos of elderly people.]

Let's hope we continue to. As people age, that doesn't mean they become disabled, but they eventually are likely to age into disability. A recent article reported that on the faculty at Stanford, there are more people over 70 years of age than under 40, because more people are staying in their jobs for a longer time. Are you ready to accommodate them? And you may have alumni who are ready to open their checkbooks but may have disabilities, whether or not due to aging. Are you ready to accommodate them?

In addition, the public is coming to your campus more often. They come with more disabilities, more types of them, more types of mobility devices like Segways. Are you ready to accommodate them?



[Photos of a man on a Segway, a veteran with a large dog on a leash.]

Veterans and others may bring a variety of types of service animals. Are you ready to accommodate them?

More students, faculty, and visitors will be demanding integrated sports opportunities, not just "special opportunities." In the photo on the left there is a basketball player who has three prostheses. He plays on his community college basketball team. And the skier pictured on the right is a returning Veteran, a double amputee. He was a silver medalist in the winter Paralympics this year.



[Photo of three young men in basketball uniforms, playing on a court. One has prosthetic lower legs. A second photo shows a skier with legs amputated above the knee, on an adaptive skiing device.]

Of course, one of the most significant of the emerging issues is one I mentioned already: technology, including access to web sites, electronic information, electronic readers, and video interpreting.



[Photos of a man using a tactile map, a woman signing at a computer terminal, an iPad and a Kindle.]

Haven't we always said that technology is great when it works? Well, technology is great when you can access it. You all know that the Department of Justice and the Department of Education issued a joint letter to all colleges and universities two weeks ago saying, "If you are going to require people to use e-readers such as Kindle, or other new and emerging technology, make sure that it's accessible before you do." This was an outgrowth of some cases against universities for requiring students to use Kindle in classes. One part of the letter says that you have to ensure that the technology itself is accessible unless you are providing equal access in another way. But how many ways are there? I think the departments included that language because it's what the law says, but there may not be another way to offer the same opportunities. It's similar to DOJ's approach to the Internet; DOJ said that if a state or local government communicates through the Internet, it needs to ensure that that communication is effective unless it can be done in another way. Well, if you are allowing people to

apply for jobs electronically, and they can do that at any time – day or night – at in their pajamas at home, you are not going to be able to approximate that experience in any way other than making the on-line experience accessible. The same concept probably applies here.

There are a number of regulations coming out soon, and I am going to start to overwhelm you. I apologize. There are two efforts, two major rule-makings at the final stages. One is the Department of Justice's first revisions of the ADA regulations that have existed for 20 years. They'll affect all state and local governments and all public accommodations, unless they are religious entities. That means you. The new regulations will mean that you need to reassess your policies and your practices, and comply with extensive new accessibility standards.

Let's hope that the new regulations will give us more guidance on what animals are considered service animals, and to what extent those that provide emotional support are to be allowed access to public or private accommodations. Let's hope we'll get more guidance on program accessibility. The proposed rule gave more details about effective communication, established standards for interpreting services, dealt with student housing, Segways, and other topics. The department is trying to get the regulations out at, or close to, the anniversary. We'll have to wait and see.

In the meantime, the Equal Employment Opportunity Commission is amending its regulations to implement the ADA Amendments Act, as to the definition of disability in the employment context. They've said that those will not be issued by the anniversary date because they are reconsidering them.

There is even more to come. There are four draft public notices -- labeled "pre-rules" -- from the Department of Justice at the Office of Management and Budget, which has to clear any proposed or final regulation. Justice sent these over in June, and you can expect at some point, probably relatively soon, an announcement of these. They wouldn't propose specific language about these topics but they would ask questions about how to go about regulating. The specific language would come later. They include some very interesting areas.

One is about internet accessibility. That one may also address other types of electronic information, assistive technology, et cetera. Maybe it will cover questions such as, if you use Second Life in the classroom, and you create an avatar, how is that accessible?

Another notice will explore next generation 9-1-1. There will be one on accessible equipment and furniture – which will have implications for kiosks, classroom and lab furniture and stations -- and one on movie captioning and video description. You may know that a circuit court recently said in the [Harkins](#) case that theaters have to provide captioned movies under the ADA. It's the first time that a court has required this, and apparently Justice will see what to do now.

WHAT DO YOU DO?

So what do you do to prepare? There is a lot of change coming, and it can be overwhelming. But you can see this change as an opportunity or a burden. It can be an opportunity to guide your institution towards real, true inclusion of students and others with disabilities. You have an opportunity to tear down barriers, including the attitudes we've talked about that reinforce that outdated idea that it's us versus them.

A lot of the principles that you know well already are going to hold up: the importance of individualized assessments without intrusive inquiries, that you are free to do more, that you don't have to lower technical standards or take steps that impose undue burdens. But you need to know to apply these principles and develop appropriate policies if you don't have them already, and then to modify them according to what the new guidance is going to be.

You will need to re-evaluate your programs and policies, and, of course, this is at a time when your resources are less, but expectations are higher as we've discussed.

You'll need to continue to record your policies and your responses to accommodation requests, and your plans to provide access without prior request to buildings and equipment. You will probably need to revise your documentation procedures.

We don't know how long the DOJ rules will allow as a sort of "grace period" before the new accessibility standards apply to new construction and alterations, but we know that they will be stricter, more detailed, and more comprehensive than the current ones, and we can anticipate that DOJ will probably be enforcing them right out of the box. And even if you have a self-evaluation and

transition plan, and you've updated it as your programs have changed and you've added or altered buildings, compliance with the new rules will necessitate a re-evaluation.

In implementation, it all comes down to people too. Of course, you are the people who are responsible for implementing many of the things we've talked about. But many others "back home" will need to be involved and enlightened, shall we say. Urge a new commitment from the people at the top. That's what makes things happen. Emphasize the benefits to all people. Let people on



campus know what's coming, and build relationships on campus with other people with whom you need to work.

[Photo of two people wearing caps that say, "People first." Access Living.]

And as to people with disabilities, put people first. Work to get others on campus to accept that the ADA is a fact of life and to see it as a "cost of doing business" as well as the right thing to do.

I want to close with two thoughts: First, the debate has shifted from "Should people with disabilities

be included in society, and should they be protected from discrimination?” to this question: “How do we ensure full inclusion in society?” We have evolved to a new level of expectations. And secondly, and as a result, demands and expectations will continue to rise.



[Photo of a young boy in a classroom, raising his hand eagerly.]

Everyone expects their lives to count. To them, that expectation is everything.



[Photo of about 60 people with and without disabilities in the lobby of an office building, looking up at a balcony (from which the photograph is taken). Access Living.]

As to us, let's continue to work alongside people with disabilities, as they strive to achieve what they have a right to expect.

Thank you. (Applause)

Thanks! I am going to pack up my toys and go home. (Laughter)

>> MIKE SHUTTIC: Thank you very much, Irene.

I hope that if you are willing you can maybe take a couple of questions before I do things and then release people?

>> IRENE BOWEN: Of course. I'd love to know if people think there are different challenges ahead. I would really encourage anyone to speak up about whether there are other challenges that you face, or whether you have some creative ways of dealing with these. Or whether you totally disagree with anything I said -- that would be okay, too. And I am here all week, as they say. So feel free to bring anything up with me later. And we have microphones here in the center aisle.

>> Audience member: Can you talk about the health bill that was passed recently by Obama, and how it affects people with disabilities?

>> IRENE BOWEN: I am not an expert on the health care bill. It's my understanding that a lot of what the disability community wanted in the bill is there. One of the most important things is that pre-existing conditions will no longer be an absolute ban to getting insurance. Of course, it's not that easy, but that's been one of the biggest issues. I think that it will increase accessibility to health care generally, partly because of the specific provisions for people with disabilities, and partly because health care in general will be more available.

>> Audience member: Thank you.

>> IRENE BOWEN: Sure. Next?

>> Audience member: Hello. My name is Gary, and I am from Toronto, Canada. And, first of all, congratulations to everyone. This is such a very important issue that you are talking about, the legislation and how it affects people's lives here. Congratulations. I have one quick question. You have not mentioned very much about the term of ableism. It's the attitude that's the barrier. There are many laws out there that deal with accessibility accommodations, but there are not many that deal with the attitude barrier that comes about, that type of discrimination is based from the attitude. Do you have any comment about that, and any legislation related to that?

>> IRENE BOWEN: That's a very good point. It's difficult to legislate attitudes. But when society as

a whole sees that we need to change our approach to a certain class of individuals, which is what happened with the ADA, it puts those provisions in place, and then we hope that people's attitudes will change. Our attitudes change when we see people with disabilities in our everyday lives, when we work with them, when we go to school with them, when we socialize with them. The opportunities to do that are increased through the legislation. And one of the things that I mentioned is that as the changes are in place, attitudes change, sometimes we get a backlash, but generally attitudes become much more favorable. And I think that we've seen that with respect to other minorities and, you know, people with disabilities are the largest minority if you want to look at it in those respects. Our society is so much more free and open and inclusive for all of the other minorities, with further to go, of course, but more than it used to be. Part of it is because of legislation. The Civil Rights Act was not met with approval by everybody. But when people were sometimes forced to accept people of other races into their universities and into their restaurants, onto their buses, people learned to live with it. I think that now people are learning to embrace it. Let's hope that's what happens with people with disabilities.

>> Audience member: Miss Bowen, Brad Nealy from UC Merced. I am particularly interested in hearing what's coming our way in terms of the ADA Amendments Act, in terms of the definition of disability, how that may be impacted and what changes we can expect? And then the segue into documentation of disability, and how that could be affected as well?
Thank you.

>> IRENE BOWEN: We don't know. Those are the big questions. The ADA Amendments Act was intended to express Congress' intent that the definition of disability be much broader than the courts had interpreted it to be. And Congress was pretty clear both in the language of the statute and in the legislative history as to what it meant by that. But there are still some issues. And we expected that EEOC would have issued the regulation by now because it was proposed in September 2008. But with new commissioners, they have now decided to reconsider it, and keep in mind also that not only does the proposal go through notice and comment, the public can comment, but it also goes through notice and comment within the government. There was some opposition to some of the specific provisions, as I understand it, from some of the other agencies and also from some of those who are employers. We don't know what's going to happen. I would just say stay tuned. I think that the latest expectation is that the rule will be out by the end of the year. It will affect employment, but it will also -- what's done there will be carried over into the Department of Justice's separate rule-making where they will show us what it means for title II and title III. That's where the questions that we are asking about testing accommodations will be answered. Some of that may come out in the Justice final rule because they did ask -- they did have a provision about testing accommodations, and if they consider that, consistent with the Administrative Procedure Act they can go ahead and regulate on that, we might see some more guidance. So I would watch the justice rule on that as well. And, of course, I didn't mention that after the ADA rules and the ADAAA rules, we'll get some 504 changes, because the ADA Amendments Act affects 504, and because the 504 regs are supposed to be consistent with the ADA regulations. So stay tuned, study up. (Laughter)

Yes?

>> Audience member: I am not sure that you are going to be able to comment necessarily on this. But I was wondering what impact international law has had vice versa. So on our law and our law and regulations and changes had on them?

>> IRENE BOWEN: This is a new frontier I think, too. Most people, I think 80% of the people with disabilities in the world, live in what we call third world or developing countries. And people look to us

to see what we're doing. Now, we weren't such a great model as far as signing on to the U.N. convention about people with disabilities, but we're getting there -- we've made progress. A lot of the international efforts have been at sort of the independent living level, with people from the US and other countries going to other countries and supporting people in learning how to live independently, make wheelchairs or learn to maintain them, learn other skills. But civil rights and human rights movements similar to ours are growing in other countries, like Canada. Britain has an act similar to ours, and others are following suit. So I think that we're going to see more happening throughout the world and we will all learn from each other. Of course, the economic situation is affecting everybody, so that may be a setback. But this is something to watch.

>> MIKE SHUTTIC: Again, thank you very much, Irene.
(Applause)

All right. I'm Mike, and I am the current and outgoing President of A.H.E.A.D. I would like to publicly acknowledge and thank all of the people that have been involved in making this conference come together, A.H.E.A.D., PEPNet, the folks that were up on the stage at the outset. I think that it's going to be wonderful for folks this week, and you have no idea what happened all behind the curtain to make this such an easy, smooth process for you all. (Applause)

Humanity. It's a central part of this year's theme. There have been a lot of significant events around the world that command our attention. Wars and conflicts, economic crises, natural disasters. Each has been met with responsiveness in the form of volunteerism, support and action, care. At a time when needs are many and great, focus on people, humanity, is steeled.

But it creates opportunities to identify issues, to address inequities, and to clarify values and priorities. In every instance, examples are evident: In areas of war, the care for children, education, safety, with tsunamis, earthquakes, and floods, there is attention to medical care, health, and well-being. Regarding economic difficulties, it elicits ideas of re-configuration and collaboration and reassessing the means for and definition of independence.

We all meet the needs of others in myriad ways: Personal, professional, in the community, at work. Some actions more deliberate and obvious than others. Regardless of how, though, the impact is no less.

This week provides a framework for issues of humanity and social justice. What we do to help ourselves when done with a broad perspective and open mind helps others as well.

I expect that we will all find at least one morsel to satisfy and stimulate during our time together this week. Find and share the energy to sustain worthwhile endeavors. As simply stated by Ghandi, be the change that you want to see in the world.

With that in mind, welcome to Denver and enjoy your week.

Thank you. (Applause)