ROUGH DRAFT

**2015 Jacobus tenBroek Disability Law Symposium**

**“The ADA at 50: The Future of Disability Law and the Right to Live in the World”**

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MARK RICCOBONO: Good morning! I'm Mark Riccobono. I want to officially welcome you to our 2015 Jacobus tenBroek Disability Law Symposium, our eighth one. We started eight years ago by trying to honor the legacy foundation that was built by Jacobus tenBroek in disability law, and I think everybody who has been here before would agree that not only have we done that, but we've built upon that foundation, added to the legacy, and have contributed to the future of disability law. And so today we come to our 2015 Disability Law Symposium, The ADA at 50. So everybody else is celebrating 25 years, but we're talking about what it will look like 25 years from now. And we're setting down the foundation for the future of disability law and the right to live in the world.

So thank you very much for coming to our Jernigan Institute of the National Federation of the Blind. It is a pleasure to have you here. If you have not been here before, I hope you will have an opportunity to spend a few minutes taking a tour of this facility, which has been established by blind people for blind people and is the place from which the National Federation of the Blind springs much of its national program.

Before I introduce our chair for this meeting, I do want to acknowledge the organizations that have come to sponsor this year's symposium. At the gold level, we have Brown Goldstein Levy.

(Applause.)

Silver level, we have Rosen, Bien, Galvan & Grunfeld.

(Applause.)

At the bronze level, we have AARP Foundation Litigation. We have Burton Blatt Institute. We have the Civil Rights Education and Enforcement Center.

(Applause.)

We have some fans there.

Maryland Department of Disabilities. The Mid-Atlantic ADA Center. And Whiteford Taylor Preston.

(Applause.)

Then we have the Scott LaBarre level.

(Laughter.)

Which is LaBarre Law Offices. He kind of created his own level.

(Applause.)

And then we have the supporter level. So I guess Scott's level could be supporter heavy.

At the supporter level, we have Disability Rights Advocates. And we also have Disability Rights Education and Defense Fund. And the Law Office of Lainey Feingold. Welcome, for the first time, to the law symposium, Lainey. And it's Lainey's birthday.

(Applause.)

I do also want to recognize that the law symposium is cosponsored by the American Bar Association Commission on Disability Rights. So thank you very much to all of our supporters and sponsors, and thank you to all of you for coming. We do have record attendance this year.

(Applause.)

I'm sure we'll hear about that later.

For each of our previous programs and for this year's program, we are honored and privileged to have with us as chairperson a gentleman who served as the longest serving president of the National Federation of the Blind and now serves as our director of legal policy here at the National Federation of the Blind. It's my pleasure to turn the program and the next two days over to the immediate past president of the NFB and a legal giant in his own right. Here is Dr. Marc Maurer.

(Applause.)

MARC MAURER: Well, it is good to be back. I appreciate the kind words, and I'm glad that all of you can join in for this eighth law symposium. We call it the ADA at 50, and we're going to talk about the ADA but a lot of other manner, as well as the Americans with Disabilities Act. I have been recently negotiating an agreement with Microsoft Corporation, and they have an ADA also. This is an App Developer Agreement.

(Laughter.)

And this causes me to have certain dislocated neck muscles because I keep thinking, yeah, but that's -- oh, yeah, that's the -- that's the other ADA.

Anyway, it's good to have everybody here.

We have today all day, this evening, tomorrow until noon. Many of us are going to have an opportunity to speak about our thoughts with respect to disability and law, and I am very much looking forward to what I will learn, and also I have some thoughts of my own that I will offer.

Lou Ann Blake has been responsible for putting this together, along with a committee of distinguished legal professionals and some very impressive legal minds. But she wants to talk a minute about the housekeeping matters, in case you have questions about where to get what you wanted to have or what you were hoping to do or know.

So, Lou Ann, do you want to tell us a thing or two?

Also, I gather, Peter Blanck, you're supposed to be up here, aren't you?

PETER BLANCK: Yeah.

MARC MAURER: So why don't you bring yourself up.

(Laughter.)

So, Lou Ann?

(Applause.)

LOU ANN BLAKE: Thank you all so much for being here again.

Just a few quick announcements. The all-important where is the restroom question?

(Laughter.)

If you go out the door that is stage right, take a left, take the first hallway on the left, the restrooms will be down on the right. There are also single restrooms on either side of the elevators out in the atrium.

Those of you who are participating in the workshop this morning with Tina, that location has been changed to the round room. To get there, you follow the directions to the Betsy conference room and our staff will help you get there.

If you're in the workshop with Mike this afternoon, meet me on the other side of members’ hall and I will take you to where that workshop will be taking place. So meet me this afternoon at break side of the members’ hall.

I think that's it. Thank you all very much again for being here.

(Applause.)

MARC MAURER: Very good. And if you have questions about things that might be wanted or needed, if you'll just let me or let Lou Ann know, we'll do our best to make sure you get what you need.

We have two panels this morning from 8:40-10:40. As there are two hours, it looks to me like an hour per panel. We have four people on the first panel. Anita is one of them, and she's having a little challenge in getting here, but she's managing it. Here she comes. Well, it worked last time when I tried it. I was hoping the lift would work, and apparently it did.

Now, this first panel is entitled the future of disability. We have four people to present. We have numerous microphones on the table. Or else you can use this podium which is the right height for reading Braille and it's where I probably will make presentations.

There are four, as I say, people on this panel. Anita Silvers, Fredric Schroeder, Peter Blanck, and Christopher Slobogin. I gather that we're not following the order that is in the program, and I am informed that we begin with the professor and chair of philosophy at San Francisco State University, and I could give your longer biography, but I notice it's in the program, so I think I'll leave it for those who want to read it and give you more chance to talk about what you had to say.

Please welcome Anita Silvers.

(Applause.)

ANITA SILVERS: Thanks very much. Because this is a talk about the future, I'll be talking about the past.

(Laughter.)

Just a little bit.

First of all, I'm really thrilled to be here, because tenBroek has inspired me for my entire career. If I could just be a little bit like him, I think I'll end my career very happy.

So I'm reminiscing. I want to talk about the civil rights movement and then about disability rights. And I want to talk a little bit about the current generation and a little bit about my worries there.

So I actually lived in Baltimore for five years going to Hopkins. This was the civil rights movement, and I recall, among other things, canvassing here in Baltimore to defeat a state proposition called my home is my castle, which was an anti-fair housing proposition.

And I started think about why we were all involved in the civil rights movement. That was my generation. And Congressman Lewis and I had some exchange about reminiscing about what it was like, especially because when he was talking, they brought in a thousand school kids from all over San Francisco, and he started talking about applying to college and being turned down by all the colleges because they were white colleges, and the kids were not interested.

So we started talking a little bit about what it was that moved us to be in this kind of movement. And I'm sure you know that tenBroek also was part of the general desegregation movement, as a historian has written some interesting articles about his constitution on school desegregation.

So I want to now talk about San Francisco State, where I first met Fred. I want to begin by talking about what got me into doing disability rights. I had never done that before. I've done civil rights. I've been lifted on to a bus, which was enormously scary because I knew I couldn't get off that bus without help. It just never occurred to me that civil rights could be for me. I just assumed that -- by the way, I haven't been on a bus since.

(Laughter.)

Nevertheless, two young men came to see me. This was after a strike, just by people with disabilities, faculty members with disabilities, because we couldn't picket quite as easily. Two gentlemen came to see me. They were freshmen and they were blind. They came to me and asked could I help them because -- and this was very unusual for students -- they were being prohibited from doing a general education requirement. I had a steady stream of students complaining that they wanted to get out of a requirement, but they were being prohibited from doing the math requirement. Both of them, by the way, had had four years of high school math. So I dragged myself up to the chair of the mathematics department, and I did that, I realized finally, not for them but for me. Because I had also, after I had polio, been banned from school on the ground that if I failed, the school would be responsible. And I remember the terror that I felt about not being able to get an education, and particularly not knowing whether I could learn math by myself. And this poor man had a furious young female crippled professor, assistant professor, yelling at him. And he explained to me that they just could not let these two students into a math class because they didn't know how to teach them because when you're teaching math, you write on the blackboard. In fact, he said, when you're teaching anything you write on the blackboard. Now, as it happens, I don't write on the blackboard because I can't reach the blackboard.

And then I made what apparently to him was a startling suggestion. I said, look, they have gone through four years of high school math. Presumably they know how they learn math. Why don't you ask them?

(Laughter.)

And that was quite startling. But that worked out. And from then I was very fortunate to have leadership from wonderful San Francisco State students of whom Fred was the first. And I learned from him, and we now sue the university about every ten years.

(Laughter.)

Apparently when you get to be a university manager, your memory starts fading and you forget why it was you had to pay five million dollars the last time.

(Laughter.)

But I think what worries me is that I'm not sure the younger generation knows how to do this. You would think that at San Francisco State, we're traditionally strong enough so that students would understand how you have to continue to fight.

So I want now to mention something that I read on the Berkeley disability listserv. Some of you are probably familiar with that. It sent real chills down my spine because it told me that people had really forgotten why we need civil rights and what we have to do when we do civil rights. We must understand that standing up for somebody else's right is reaching out to ourselves as well. That revelation, that I could help other people get into a math class, because I remember how alone I had felt as an 11-year-old trying to fight a school board and I couldn't get through to them that so what if I fell. I bounce.

This is what I read on the Berkeley listserv. It's mostly people with mobility impairments. There are a few blind people on there. There was a woman complaining that when she came out of the co-op, she had to roll over, gosh, a metal plate with bumps in it. And she was going -- she wanted everybody to write to the co-op to take that metal plate out because it was bumpy. And she obviously had no idea why there was that metal plate there. It was marking the curb cut at the end of the site walk. And I was stunned because she couldn't think through anything beyond her own comfort. She never even asked why. It was as if there were not other kinds of people in the world.

So I think my message today is something like this: What we may have lost, which we had, was a cross-disability movement. This is one of the very few forums and organizations that I really see as trying to understand other kinds of disability. And I am hoping that when we talk about what the ADA will be like in 50 years, that we will find that people will have continued to work cross disability, which basically means really trying to understand how other people function and other people's ways of life.

Thanks very much.

(Applause.)

MARC MAURER: Professor Silvers has written eight books and many chapters in other books. If you want to hear more about what she has to say, there is a way to find out. Professor Silvers, if you want to get on a bus, I'm there to make sure you get there and I'll ride the same bus with you.

ANITA SILVERS: I appreciate that.

MARC MAURER: We can conquer this territory, whatever territory it is.

Now, we're going to hear from the next presenter who is a person with a degree from San Francisco State. This is Fredric Schroeder. He currently serves as vice president of the World Blind Union. He is a professor at San Diego and he has many other jobs. He has been a leader in the National Federation of the Blind now for 30 years or more than that maybe, and here is Dr. Schroeder.

(Applause.)

FREDRIC SCHROEDER: Good morning. I need to disclose right up front, I am not a lawyer.

(Laughter.)

(Applause.)

Last evening, I was telling my daughter, I have two children. I have a perfect daughter and I also have a son.

(Laughter.)

And I told my daughter what I was doing, speaking at a law symposium, and she said, but you're not a lawyer. I said, no. So she thought for a bit, and then she said, well, look, if you can't be good, be brief.

(Laughter.)

So with that admonition to bolster my confidence, let me turn to my topic. And it's a serious topic. Civil rights. You know, yesterday marked the 50th anniversary of the third of the three civil rights march from Selma to Montgomery. 50 years yesterday. And the three marches began March 7. The protesters never got beyond the bridge before they were brutally turned back by state police. But of course that march built on other activities that had come before. On February 26 of that same year, a man named Jimmy Lee Jackson, who was a civil rights leader but also a deacon in his church, was shot and killed by a state trooper during a peaceful protest in Marion, Alabama.

So why were African-American people protesting? At that time, they were working to have the Congress pass the Voting Rights Act. And, in fact, they were successful. Their efforts led to the Voting Rights Act of 1965, a landmark piece of legislation, a strong and powerful support or you might even say declaration of equal rights.

But something happened a year before the Voting Rights Act. Something also in 1964 of great import. And that was the passage of the Civil Rights Act.

So you may wonder, why only a year after the passage of the Civil Rights Act did minority individuals have to go and protest and face brutality and all of the harshness of society that marginalized them to gain voting rights.

It is an evolution. And the work to pass the Voting Rights Act of 1965 was a way of furthering the progress that was made. In no way was it to diminish the importance of the Civil Rights Act of 1964. That was and remains landmark legislation. But even the Civil Rights Act of 1964 did not come about in isolation. In fact, you might argue that the first civil rights steps that were taken as a matter of federal policy occurred on January 1, 1863, when President Abraham Lincoln issued the emancipation proclamation. But the emancipation proclamation didn't confer equality. What it did was it eliminated slavery. But it was foundational to work that came later.

People with disabilities are a minority. We suffer discrimination. And we suffer it based on public misunderstanding, stereotype, low expectations, in the same way that unreasoned and unreasonable assumptions about people from other groups, be they ethnic minorities, women, etc., deny them opportunities.

So do we have civil rights comparable to the rights afforded to ethnic minorities as a result of the 1964 Civil Rights Act? Well, I think people would say, of course we do. Of course we do. It's the Americans with Disabilities Act enacted into law 25 years ago this year. And it is absolutely true that the Americans with Disabilities Act ensures certain protections for people with disabilities and seeks to bar discrimination on the basis of disability.

But, and without in any way demeaning or trivializing the importance of the Americans with Disabilities Act, I would argue that it is inherently separate and different from the civil rights protections afforded to others. And it is because disability, unlike membership in other defined groups, has the characteristic, the aspect of limited functioning. It might be motor functioning, it might be loss of vision, it might be impaired intellectual functioning. And as a result, there is an unspoken, yet unquestioned, belief that people with disabilities are inherently limited by virtue of the characteristic of disability. And civil rights protections are extended to people who are not inherently inferior, not inherently damaged, but people whose opportunities have been unreasonably constricted by social convention.

So we have civil rights, but in a qualified or limited degree.

So what do I mean by this? What makes people with disabilities a subordinate minority, a minority that gets close to equal status but not quite there? If you look at the Civil Rights Act of 1964, it prohibits employment discrimination, and specifically it bars discrimination in employment against people based on race, color, religion, sex, or national origin. And there is a comparable provision within the Americans with Disabilities Act. The ADA also bars discrimination, bars discrimination on the basis of disability. However, it qualifies that protection. It says that you may not discriminate against a qualified individual with a disability. The Civil Rights Act is it not use that language. It doesn't talk about a qualified member of a particular ethnic group, a qualified woman, a qualified person from a particular national origin. Because it is understood implicitly that these are people whose opportunities have been denied based on prejudice, low expectations, and stereotype, but that these individuals are inherently equal.

But our right to employment free from discrimination is not for all people with disabilities, only for qualified individuals.

Well, what makes an individual with a disability qualified? The standard articulated in the ADA is that the individual with or without accommodations needs to be able to carry out the essential functions of the job. That seems fair enough. You need to be able to do the work. Who decides? Who decides what are the essential functions of the job?

Well, in the ADA itself, deference is given to the employer. The employer decides. And unless it can be demonstrated that the employer's definition of the essential functions are unreasonable, they determine whether the individual can perform those functions.

And as I said, functions that are carried out with or without accommodations. But not all accommodations. Only reasonable accommodations. In other words, our right, our right to be protected from employment discrimination is only guaranteed provided it doesn't cost too much. Provided that it's not too much bother for the employer.

And what's the defense that the employer must offer if the employer is challenged for failing to provide reasonable accommodations? It is the concept of undue hardship. You cost too much. You're too much bother.

I believe the next step in the evolution of disability policy is to get recognition that the barrier that people with disabilities face, be the barrier in education, social integration, employment, is socially constructed. And as such, people with disabilities are inherently equal individuals.

(Applause.)

We must line up our policies in support of a true rights-based model of disability. As you know, for 77 years, ever since its initial adoption, the Fair Labor Standards Act has included a provision, section 14C, that allows people with disabilities to be paid below the minimum wage. What was the basis for this exception? That people with disabilities are inherently less capable, less productive. These are damaged people, broken people, limited people, people who could not be guaranteed the same wage as others, so we measure their productivity and assign their wage based on someone else's determination of their capacity to produce.

77 years later, we still have the 14C exemption. And it's time for that to end.

(Applause.)

It's time to quit supported segregated work settings that isolate people with disabilities, that perpetuate the idea of people with disabilities as being foreign and apart from the general society.

And also we must look at our income support and medical support systems. A very simple concept. Should disability, the costs associated with disability, should they be borne by the individual or are these costs that should be distributed across society as a whole? We operate today under the former mindset. If you're poor and you haven't worked and you have a significant disability, you're eligible for supplemental security income, SSI. But once you start earning some money and reach that magic point where your income is deemed to be enough for you to be self-sufficient, you lose your benefits, your cash benefits, your medical benefits. And we wonder why only one-half of 1% of people with disabilities ever leave the social security disability rolls. It is because our system does not recognize that disability, like many other things in our society, those costs should be distributed. And it would be so much better if we eliminated all means testing, both for SSI and SSDI. Put some money in the hands of people with disabilities to help meet their disability-related costs. Think of the money that would be saved if social security didn't have to keep reaffirming the poverty of millions of people each year.

But it is not the economy. It's not the objective facts that have perpetuated this system. It is the mindset of disability. The idea that people with disabilities are broken people. Damaged people. Inferior people. People that deserve care but damaged people nevertheless. We must replace the image of disability, the conception of disability, as automatically equating to inadequate or inferior performance with a true civil rights model of disability. And we must then align our programs and supports to support that new conception.

Thank you very much.

(Applause.)

MARC MAURER: Dr. tenBroek tried to get disability into the Civil Rights Act of 1964. Not successful, as you know, but he had a shot at it in 1964, and there were numerous reasons why it didn't happen, but it was considered at the time.

Secondly, I am a blind man. I am not a busted sighted guy. I'll tell you that.

(Laughter.)

I have declared this in the past, so you know I think so. Be that as it may.

Then we have Christopher Slobogin here who is both a professor of medicine and a professor of law. It's amazing that these two things could come together in the same mind and the same heart. Here is Professor Slobogin.

CHRISTOPHER SLOBOGIN: Thank you, Marc. I hope that doesn't mean I'm confused because I have these two different aspects of my career combined.

It is a real pleasure to be here, a very real honor to be asked to address this group. It's a very impressive institution. I do have to confess, that unlike Fred, I am a lawyer.

(Laughter.)

So please give me a break during these discussions.

Also, consistent what Anita was talking about, I am going to be trying to rejuvenate a discussion that could be called a cross-disability discussion, because as you can see from my title, I am going to be talking about mental disability and deprivations of liberty and property, and something called the Convention on the Rights of People with Disabilities. How many people have heard about the convention?

(Applause.)

All right. That's terrific. I expected to see that many hands in the audience. A couple weeks ago I was talking to lawyers working within the criminal justice system, and virtually none of them had heard of the convention, which I think is stunning. 150 countries have ratified. It President Obama signed it in 2009, and even though it didn't get through the Senate, it only lost in the Senate by five votes and there are currently attempts to reintroduce it. So I think it's very important to talk about the convention for that reason alone. But it's also important to talk about it because the provisions of it are very similar to the provisions of the ADA. So it's important to talk about at this particular conference, because what the convention says is that there may be no discrimination based on physical or mental disability.

Now, in particular, I want to focus on the convention's impact on laws that have to do with mental disability, and specifically laws having to do with mental disability and deprivations of liberty and property, because here I think the provisions of the convention are -- at least based on what we usually think of as mental health, because what it would mean is that we would need to get rid of all laws that are based on mental disability but have mental disability as a predicate. There are literally hundreds of these kinds of laws. We have involuntary hospitalization. We have the insanity defense. We have guardianship laws. The convention would require all these laws to be abolished and instead be reframed in terms of disability-neutral criteria. That's a very significant agenda, and I think it's worth spending a lot of time on. And again, it's consistent, I think, with the way the ADA ought to be construed.

What the convention does not do is give us a good idea of how its principles would be implemented. It doesn't provide detail. And that's what I want to try to do this morning is provide, if you will, some statutory language, a way of implementing the nondiscrimination policy of the convention.

Let's start with what the key provisions are. There are essentially two relative to what I'm talking about. The first is Article 12. This is what it says: States shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. That's a basic nondiscrimination statement.

What does this mean? The official commentary to the convention states that one thing this means is that all special defenses based on mental disability must be abolished. That means we have to get rid of the insanity defense, which is a special defense for people's mental disability. That must be eliminated.

In addition, it means we have to get rid of guardianship laws based on mental disability as well as laws allowing hospitalization of people who have been found incompetent as a result of mental disability. The official commentary says what should take the place of these laws is something called supported decision making. What this particular process entails is that the individual is still to be or is to be the ultimate decision maker on any issue that's to be decided, but the individual can be aided by professionals who can try to make decisions as autonomous as possible, but the ultimate decision maker is the individual, not some third party. That is what is to replace the guardianship laws. That's article 12.

Then there's Article 14. What that one says is:

(Reading slide.)

What does this article require? As the commentary says:

(Reading slide.)

So in effect, what this article requires is the abolition of both police power commitment and commitment based on mental disability and danger to self.

Now, again, these are pretty radical provisions that blows up mental health law, gets rid of all mental health law as we've come to know it. So how could it be implemented? That's what I'm going to try to discuss today.

Maybe I've come to the rescue, because what I've tried to do in this book that you see here is try to explain how the principles underlying the convention could be implemented. This is a book published in 2006. Minding Justice: Laws that Deprive People with Mental Disability of Life and Liberty. The proposals in this book are consistent with the convention. Laws can no longer reference diagnosis or mental disability, but instead should be based on a focus on the precise dysfunctions or functions that the law considers legally relevant.

Now, as you notice, this book was published in 2006, which was the same year the convention came out. I have to confess, I did not know about the convention when this book was published. I really only discovered it in the last several years. But happily, as I said, the proposals I make in this book are consistent with what the convention sets out.

What I try to do in this book is set out specific statutory language that implements the principles in the convention as it turns out and all the contexts that I talked about, incompetency laws, insanity defense, etc.

I essentially divided these various contexts into three different categories, as you can see on the left-hand side of the slide: The punishment context, which basically involves the criminal justice system; the prevention model, which has to do with laws that involve preventive intervention such as police power civil commitment and so forth; and finally laws that affect to protect individuals, guardianship laws, incompetency laws, and so on.

So in these three contexts, I try to propose specific statutory language that implements nondiscrimination principles that the convention and ADA propose.

So let's start with the punishment model. What I suggested here consistent with the convention is that the insanity defense and all other special defenses based on mental disability be abolished and people with disabilities get the same defenses available to people without mental disability, assuming a criminal justice system based on subjective criminal law. For example, let's say a person is charged with murder. What kinds of defenses would a person have? There would be a defense for both a person with and without mental disability if the person did not intend to kill or even if they intended to kill but thought they were being threatened by deadly force by the victim, or the person intended to kill and was threatened by deadly force by a third party, the duress defense. I won't be able to go into detail about this given time constraints, but for some flavor of how this would apply, you all know of the John Hinckley case. He would not have a defense under this statute. Why? Because even under the defense theory of that case, he intended to kill President Reagan and his motivation was to impress Jodie Foster. Under no stretch of the imagination is it justifiable to kill a person in order to impress an actress. So he would not have a defense.

On the other hand, Danny M'Naghten tried to kill the prime minister of England thinking the prime minister of England was trying to kill him, so he would have a defense. There's a lot more to say about this. It's a very controversial proposal. The point I want to make now is that this formulation does not differentiate between people with mental disability and people who do not have mental disability. I call the integrationist test because it integrates defenses for people with mental disability with defenses that are generally available to everyone. And that I think is consistent with the convention.

Now let's go to the prevention model. This involves situations where the state is intervening preventively to prevent harm from occurring to an individual. There are basically three criteria here. The first is that no one can be subjected to preventive intervention unless the criminal justice system does not have jurisdiction. For example, a person has been acquitted by reason of insanity and is considered dangerous. Or a person with an infectious disease. The criminal justice system has no jurisdiction over that kind of person. Or an enemy combatant. Laws of war do not allow criminal prosecution of people involved in a war. Those would be situations where this would be allowed, if two other predicates were met. First, the person has to be considered dangerous. I won't get into that, but let's assume we have sufficient proof of risk. The important requirement for our purposes is that the risk has to be the result of what I call undeterrability. I define that very narrowly. You could argue that they've committed a crime and have been undeterred by the criminal justice system. But that's not my definition. My definition consists of the first type of undeterrability would be a person who literally does not think they're committing a crime at the time they commit it. For instance, someone who has psychosis who is killing innocent people but thinking he's killing space aliens out to get him. That's a person who does not think he's committing a crime at the time he's committing it. Or could enemy combatants because they're under orders to kill them at the time. Or a person who cannot prevent the kind of harm they're causing. For instance, a person who has no control over their body, like a person with epileptic seizures. Or it could include as you see here a person with contagious disease. That is an individual who literally cannot control the harm they cause because they cannot control the microbes that would infect people.

The third kind of undeterrability are the kind of persons who is willing to cause harm even if the person's apprehension and punishment or serious bodily injury is a highly likely result. For example, a highly impulsive sex offender or terrorist willing to kill for ideological reasons. This is the hardest to define. This is the kind of person who would cause harm even if a police officer was standing at his elbow. Again, highly controversial, lots to talk about here. The only point I make is this applies both to people with and without mental disability in all these cases.

Okay. I'll finish with the protection model. And here I have a question mark because I'm not sure that my proposals here are as consistent with the convention as the other two models. And the reason my proposal might not be consistent is because the convention seems to say that even people with severe impairments should be allowed to make their own decisions. And I can't agree with that. For instance, a person randomly nodding yes or no responding to questions should not be allowed to make decisions because it's not reflective of the person's true desires and is really making a mockery of the concept of autonomy. As with many other thinkers, I would require that the person have a minimal understanding of the risks and benefits of the decision, and that we inquire into the reasons for the person's decisions. But unlike many thinkers, I would only require that the person give a reason and that the person's reasons not be demonstrably false and that the person consider the pros and cons of the decision. You see, some definitions of competency focus on the idea of whether the decision is reasonable or whether the decision is consistent with lawyers and doctors. I did not take that approach. Instead I require just a minimal understanding of the risks and benefits and that the reasons for acting not be delusional and that the person not be so clinically depressed that they're not actually willing to consider the risks and benefits.

I think I'll stop there. Thank you very much.

(Applause.)

MARC MAURER: Thank you, Chris. A lot of questions come out of your summation, which we will wait to entertain until the question and answer period.

Then we have the professor at Syracuse University, chairman of the Burton Blatt Institute, a man who has been to these meetings many, many times and has helped to plan them. Here is this eminent professor, please welcome Peter Blanck.

(Applause.)

PETER BLANCK: Thank you. Such a pleasure always to be here. Thank you to Marc and Mark and the NFB. I have a little bit of a game show that I'm going to follow. 25As in the Americans with Disabilities Act focusing on the word "Americans." See if you can keep up with me with the As.

The first is arithmetic. Or demographics. By 2100 we'll be up to 10 billion people up from 7 billion people. Most of these people will be Asia and Africa, with developing countries with rising poverty throughout the world. Interestingly, the major developed nation expected to have the most significant increase in population is the United States. Not Japan, Germany, China, Russia. In fact, they're declining. This ties with aging and disability. In 20 years our population will double. There is a lack right now in our field which some of us are working on on understanding the implications of a merger of the conceptions of civil rights in the aging older adults and disability area, as Anita has talked about, A-nita. This does raise issues in article 19 of the CRPA and you'll hear about that from my great partner, Tina, on a decision we're doing on decision making funded by the Administration on Community Living.

Some populations of note which I am dealing more and more with are individuals who have A-utism and individuals with ADD, ADHD. I can't tell you how many students at Syracuse and elsewhere we're beginning to see thankfully from more diverse populations, we have just gotten with our partner a fairly large grant at the U.S. Department of Labor to look at what are pathways to employment for these new populations.

Another cohort. A, armed forces. Veterans being treated in the VA. Costs expected to go up to $1 trillion, and it's the fourth largest category of government spending. The signature injury of course is traumatic brain injury, PTSD, and that is an area which of course is terrific importance to our country.

Next, clump: Abode. Where we live. And I'll call this first one asylum one. If you all read the very insightful piece by the ivy league professors at the University of Pennsylvania about how we should bring back asylums in this country because the deinstitutionalization movement has failed, well, I would argue that none of them has been a court officer like me or others in this room and has seen the difference between institutionalization and living in the community.

(Applause.)

Asylum two, AKA prisons. In this regard, I'm so happy to see Maria Morris in the room. I'm working with her, to be determined yet, in Alabama to help understand, as Michael Bean and others have done in this room, the terrific conditions in these institutions in which people with disabilities are being stepped on as in third world nations. People who are blind and deaf cannot go into work release programs because they cannot accommodate their disabilities and therefore stay in prison longer or have worse disciplinary issues.

Asylum 2A from this week, and the word is arrest. If you've listened to the oral argument in the Sheehan case, city of San Francisco v. Sheehan, it was a wild ride with regard to ADA Title II and whether or not essentially arrests are required to consider accommodation issues under the ADA. They're talking about flipping around the whole burdens, you know, not dealing with accommodations first and then dealing with direct threat.

Here's my next A. Alito. Justice Alito.

(Laughter.)

If you listen to his comments, you wonder if he even understands that there is discrimination defined in Title II of the ADA, and some of us would think that Justice Alito is an A...

(Laughter.)

Are you transcribing this? Fill in the A as you like.

Avocation. A. I wrote a book last year, 2014, called Equality: The Struggle for Web Accessibility by Persons with Disabilities. And thanks to Dan Goldstein and Marc Maurer and so many others, it's already out of date. If you read the Scribd decision this week, which was extraordinary --

(Applause.)

-- which included coverage of apps, then you understand now how they have a strategy with Larry Paradis and others. So you have a very nice decision in the second. The ninth is kind of an anomaly because you have that nexus requirement, but I'm hard at work on revising my book because I can't keep one many of the stellar lawyers in this room.

Which of course leads to another A. Accommodations. Which was mentioned. There's still terrific myths about the costs and burdens of accommodations. I was fortunate to do a study with Sears Roebuck which tried to debunk the myths we still see today.

Next A. And by the way, next year we'll have A26-50. The next A is the affordable healthcare act. If some of you looked at the paper this week, there is a brilliant bill that had a hearing introduced into the Congress called the Preserving Employee Wellness Act. Has anybody heard of that? Basically under the Affordable Healthcare Act, there can be financial incentives if people participate in wellness programs. Of course that can be discriminatory, depending on how you define wellness and what the state of your health or disability is. And under this proposed bill, they want to provide those incentives without consideration of disability and have the Congress stamp it that it does not violate the ADA. So this is an issue we should all pay attention to.

Next A. Acid. Not what you're thinking. Deoxyribonucleic acid, or DNA. That's another area we have to look forward to in terms of Gina going forward as I just mentioned.

Okay. Moving forward to my next A. Amendments. We talked about one already. There's this ongoing myth about the so-called abusive ADA litigants who are driving all the cities and counties crazy because somehow they think they didn't have enough notice of 25 years that they should have been making the cities accessible or the buildings accessible. I see it every day. I get calls from builders once a month saying, do we really have to spend money on this? We don't see any people with be disabilities. Why do we need to have people with disabilities have a ramp to get into our leasing office? Can't they just, you know, call us up or something?

So Sam Bagenstos has written on this. The abusive ADA litigators, there's a list on the web of the most litigious lawyers and you have new forms for demand letters, right, Larry, that you have to send with regard to basically giving up your case ahead of time and so forth because somehow the legislature, including Diane Feinstein, thinks that the ADA has been abusively used.

Next one, and I only have a couple more and then I'll stop because we want your questions, is really the biggest one for me in many ways, and it is attitudes. With a capital A. Anita talked about this. Fred talked about this. Which of course leads to advocacy. And I see we have in the room somewhere our assistant attorney general, Miss Eve Hill. I don't know where she is.

(Applause.)

Thank you. What's that?

>> Deputy.

PETER BLANCK: I elevated you because I need that A.

>> Great idea.

PETER BLANCK: We all would vote for you.

(Applause.)

I have to say that I think the first case that I was an expert in was Chuck E. Cheese and Don Perkel. Paul Miller asked me to do that. Extraordinary case. The most recent case was with quality trust with Jenny Hatch. And the cases are the say. I mean, it's all about, as Fred and others have said, Anita, Chris, it's really about misplaced attitudes. And I'm sad to say that there's still so many cases that are just based on that. As Chris was saying, I'm working in the prisons quite heavily now, and they are so far behind on so many dimensions, let alone international awareness. Let's start with national or domestic awareness.

And I would add, Dr. Maurer, that's why I'm being quick because I want questions with my last couple of As, and one is, the optimist that I am, the angels of our nature. And I particularly like angel Clarence Odbody from what? "It's a Wonderful Life." I have spoken and will speak again in a serious way because this is a social science approach, what our world would be like without the Americans with Disabilities Act at 25 and what it would be like from 26 to 25. It would be like Pottersville. For those of you who know "It's a Wonderful Life." It would be Pottersville. It would be dark. It would be not inclusive. It would be worse attitudes than we have now. The work I'm working on now, trying to understand conceptually, is also trying to understand the implications of what would have happened had we not had an ADA. Because we're fighting these economists and all these others who are saying the ADA suppresses employment levels which has totally been debunked, and it creates burdens for employers and its abusive litigants, and there is no empirical support for that. I had a debate several years ago when someone said the ADA would put businesses out of business. I said, name one. He didn't know of any. But that's his shtick.

So I have to end since it's the anniversary of Abraham Lincoln on an optimistic note with regard to angels and I will tell you what he said in his first inaugural address on March 4, this month, in 1861. He said: "We are not enemies, but friends, and we must not be enemies. Though passion may have strained, it must not break our bonds of affection, the mystic cords of memory will swell, as surely they will be touched by the better angels of our nature."

Thank you very much. I look forward your comments.

(Applause.)

MARC MAURER: It's great to have you back, Peter.

We have another panel that's going to get underway soon, so I would like Ari Ne'eman and Howard Rosenblum to come up. If you have questions, I think we could take five minutes to do that.

>> I have the mic to hand to whoever.

MARC MAURER: Do you have a question?

>> I do, but I've been given the job of handing the mic to whoever has questions, so I'll do that first. Anybody want the mic?

MARC MAURER: I have a question for Chris. Does your comment mean we have to get rid of the ADA? It is pretty disability related, you have to admit.

(Laughter.)

CHRISTOPHER SLOBOGIN: You could argue that, yes, we can no longer use the word "disability" period if we follow the principles of the convention. Instead, just need to function on legally relevant criteria, which is of course what I was trying to do. So that's an interesting question, but yes, I guess that could be a logical conclusion to draw from what I was talking about. Basically, instead of the ADA would be an act to make sure all people are treated equally, period.

MARC MAURER: You mean you think the constitution ought to apply to people with disabilities as well?

(Laughter.)

You know, the 14th amendment does say "person." You think we qualify, do you? I've been wondering that myself for a number of years.

Any other questions?

>> I'll ask one since nobody else has raised their hand. It is also to Professor Slobogin. Assuming that the Supreme Court does us no favors in Sheehan and given that Congress can't even pass a gallstone, what should --

CHRISTOPHER SLOBOGIN: I'm going to have to use that one.

>> -- what should a state statute look like that would protect persons with disabilities in encounters with the police? What should we try to frame to get through the state legislatures that are reacting to Ferguson and other events like that?

CHRISTOPHER SLOBOGIN: I think Peter and others might have something to say about this, but I think one thing the ADA should be construed to demand is that police are trained to deal with anyone they confront. Police right now get all sorts of training in terms of the use of deadly force. But very rarely do they get training with respect to how to handle situations involving people with disabilities. And that right there is discriminatory. There ought to be training for every single context in which the police confront.

(Applause.)

MARC MAURER: Now, Professor Silvers?

ANITA SILVERS: I just want to pick up --

>> Microphone.

ANITA SILVERS: Just very quickly, I did want to draw attention to what Peter said about aging. Because I'm pretty old now. Two months ago, the city of San Francisco decided that I had abandoned my house. They decided that, even though I was living there, on the basis of an anonymous call from somebody be who said, she's in a wheelchair and we haven't seen her recently. What they really hate is the wheelchair ramp in front of my house which they think detracts from their property values.

It's a story that I'm really becoming more and more aware of. Because I'm really old now, I'm being treated just as I was as a child when I was institutionalized, as if I was not competent. But there's also a lesson about how the ADA can be of use without litigating. Because the department of building inspection, which insisted that I abandoned my house even when they knocked on my door and I came to the door in my PJs, and even when my mailman yelled at them to do something or other because he delivers mail to me every day, but they had made the decision beforehand that the house was abandoned.

So I had to go get a deputy city attorney to wake them up. And fortunately, they had forgotten to do ADA training of their personnel. So when I called the department of city planning building inspection and asked for the ADA coordinator, they insisted they didn't have one. They didn't know anything about it, etc., etc. I also asked about ADA training.

Bureaucracies love the idea of training their employees. So in this case, they decided that I was living in my house and they now are going to do five hours of training of all the inspectors in order to figure out if a person in a wheelchair or another person with a disability is actually alive and kicking.

(Laughter.)

So and it was just the word "ADA training" that did it.

PETER BLANCK: So if you look at the pregnancy decision yesterday, it's hard to understand really completely what the court is doing with McDonald Douglas at least for me on the first reading. But you can see first of all, the court can do whatever the hell it wants and figure it out as it goes. And number two, I thought Kennedy's concurrence, softening Scalia's wild dissent, there's no reason they have to turn over all the presumptions of the ADA in Sheehan, and maybe Kennedy will be a thoughtful vote in that case given his internationalist approach and I think his more moderate sensitivity to perhaps some of these civil rights issues. So Sheehan would be a disaster, I think in many ways, both in the prison context and more generally, but I'm not totally pessimistic on that. Maybe others have a different view on that.

MARC MAURER: I appreciate your participation in this panel, and our second panel is a little bit shorter, so we've gone a little over time. But I thank you all very much for this.

(Applause.)

I gather that many of you will be around during the rest of this so we can engage you privately.

We will now move to panel two. Christine Griffin is not able to come because of sickness. So we have three others. Ari Ne'eman, Mark Riccobono, and Howard Rosenblum. And if you'll give me your attention, I'll commence on this panel, and we might have time for questions for it as well.

The first person to make a presentation is the President of the National Federation of the Blind. He was elected to the presidency last summer. He has been a principal leader of the National Federation of the Blind for more than 10 years. He has led our research and education effort. He has also been a person trained in business. I admit that I paid close attention to him inasmuch as he has the task that I for 28 years conducted and consequently, it's of considerable personal interest to me. President Riccobono is a man who has one characteristic that presidents of the NFB need, and that is that it's very difficult to scare him.

(Laughter.)

So here is Mark Riccobono.

(Applause.)

MARK RICCOBONO: Thank you, Dr. Maurer. Like Dr. Schroeder, I am not a lawyer, but I do hope to represent the fact that at least a little bit younger generation still has a little bit of fire. So there you go.

The future of disability. Is that future already determined by today's patterns? Or can the outcomes be altered? Does the future have boundaries based on the classic notion that disability is inherently limiting? Or are there new unexplored opportunities ahead? Do we know all there is to know about disability?

As I began thinking about the future of disability, I found myself thinking about the most important forces influencing society's view of disability. And there is no doubt in my mind that the single most important influence on the future of disabilities will be what we decide to do as people with disabilities, to test the perceived limits that society has placed on us, to raise expectations, and to raise expectations for our participation in the world. The keys to our success in the next 25 years will be to continue to pleasure our progress, not by how far we have come, but rather, by how our role in society compares to that of our nondisabled peers. And to challenge ourselves and our own assumptions about disability, and the policies that we use to confront the artificial barriers that stand between us and our dreams.

With that in mind, I want to take the brief time that I have today to share a few thoughts on just two aspects of the future of disability: Education and technological innovation as a spark to the ideas that we will forge together in the next two days and in the years to come.

I graduated from high school 20 years ago. In many ways, my educational experience as a blind student in the public schools of Milwaukee, Wisconsin, was second class at best. When considering the future, it begs the question of whether education for students with disabilities is better today than it was when I was in school. And although I have personally spent much of that 20 years working on the education of blind children, I reluctantly conclude that as a whole, the education for our students is not better today.

My daughter is now approaching her fifth birthday. She has the same eye condition that I have and is experiencing the same level of blindness as I did when I was five years old. Her younger sister is almost three. She is on that same path. My five-year-old is in pre-K, attending a public charter school here in Baltimore City. Now, her mom and I are not exactly what you would call average parents of a student with a disability. We both have advanced college degrees. Extensive advocacy backgrounds. Experience as blind individuals educated in the public schools. And we have a tremendous network of friends across the country who can fill in any of the gaps.

Yet when we showed up at that first IEP meeting, we were immediately met with low expectations that we continue to combat. And due to time, I'll only share one story with you.

Although we were able to get the school to agree to provide instruction in Braille due to our informed advocacy, the teacher of blind students suggested that a reasonable initial accommodation for my daughter would be that she know the Braille characters for the 26 letters of the alphabet with 90% accuracy during the first year. Now, it would be no surprise to any of you that the sighted pre-K students are not expected to know anything less than 100% of the alphabet by the end of the year. And for the child with a disability in our education system today, the bar is automatically set lower based only on the rationale that disability means lesser than.

The reality is that lower expectations will always reap lower returns. And consider what would have happened, what my daughter's fate would have been, had she had the typical set of parents, individuals who do not have experience with disability, who are not connected with education and advocacy resources like those available in the National Federation of the Blind, and who cling to the hope that the wise special education establishment will give their child the education they do not know how to provide. The future of disability includes breaking out of today's entrenched notion of special education and creating a revolutionary notion that our 21st century classrooms and educators should be tuned to raise expectations for all students, and new models of teaching must emerge, where educators with expertise in specific areas of disabilities can work collaboratively with our best subject area educators to unlock the potential of all students.

Schools must stop purchasing inaccessible technology with the goal of later finding an unreasonable accommodation for students with disabilities.

(Applause.)

We imagine a future where schools will only implement innovative technologies that are fully usable, regardless of the mode of accessing information, auditory, tactile, visual, and regardless of the means of manipulating the systems, physical, by voice, or simply by thinking. In that future, our schools will also rely more on authentic mentoring experiences from adults living their lives with disabilities rather than attempting to teach certain skills from a nondisabled perspective.

In order to achieve this future, we are going to have to consider changes to our concept of educational equality for students with disabilities. The Individuals with Disabilities Education Act has been effective in getting our students into classrooms, but it has not provided an equal environment and it has not significantly transformed the way disability is understood by our best educators. Instead of segregating students with disabilities into specialized classrooms, we have segregated them into integrated classrooms with a special form of education. The end result is largely the same.

The future of disability will largely depend on our success in altering the patterns of education for the next generation, and getting people with disabilities to be a more significant driver for educational training, research, and curriculum development.

And secondly, the degree to which technology is built with accessibility from the beginning will be a critical factor in the future of disability. Equally as important is our success in anticipating the questions that will arise from the implications of technology becoming more tightly integrated into every aspect of our daily life.

Let me just give you one important illustration. Greater access to transportation for the disabled is one of the favorite benefits promoted by engineers working on self-driving cars, with the great promise of social benefit to the disabled. Will that be enough to ensure accessibility in the design is baked in?

My belief is that our active advocacy will be required if the promise is to be more than just marketing. There are many policy questions that will arise from shifting from today's concept of drivers to tomorrow's concept of active navigators of self-driving vehicles. Will a license be required? What will be qualifications be? What physical requirements will there be? And how will they be demonstrated?

If we allow the decisions to be made by today's pool of eligible drivers and all of the misconceptions that they bring with their experience, we can assume many people with disabilities will be left out. Certainly blind people will be left behind if the expression of poor driving "what, are you blind?" is any indication.

Our requirements for navigating self-driving cars needs to be informed by an authentic view of disability and enriched by our experience, rather than the artificial barriers that have previously existed.

And beyond the policy implications, the physical vehicles of the future will need to include accessibility features. What will the inside of these vehicles be like? Will they allow for access from people with physical disabilities? How will the vehicles be controlled? Will they include inaccessible touch screens? Or will they include built in accessibility, allowing for information and controls to be accessed and activated through a variety of modalities?

Furthermore, if a self-driving car is built without accessibility features, will it be illegal to sell it in the marketplace? Or will the future of disability mean our riding in the self-driving vehicles that look more like the yellow buses of old, while everybody else is riding in the sleek, sporty vehicles of tomorrow?

The future of disability, in this realm and others, will be determined by our active engagement in these emerging products and our ability to influence design and policy in a society that increasingly values technological innovation. We cannot assume that the advances in technology will either benefit us or be built with us in mind, unless we continue to drive the future of disability.

Now, education and technical advancement are just two of the domains where we need concentrated action. Employment, parental rights, community involvement, and voting, and hundreds of others of aspects of our society that will require our attention.

We can be filled with hope for the future, however, as we have built patterns such as our disability law symposium here that equip us to be proactive and allow us to sharpen our skills in raising expectations to meet that future and to raise expectations to overcome the barriers that stand between people with disabilities and our dreams.

Thank you.

(Applause.)

MARC MAURER: Mark Riccobono did drive the first self-driving car in Daytona.

(Applause.)

I was there, and I had kind of hoped to drive it myself, but he was better at it than I was.

(Laughter.)

Mr. Riccobono, do you think you can get the page shut off in there?

Ari Ne'eman is the cofounder and the President of the Autism Self-Advocacy Network. He is a member of the National Council on Disability. He was appointed by the President to serve there. He has been a friend and a coworker in disability rights, and we are currently making plans to take actions that might change the future of disability together, and it is great to have him back. He's been here before, more than once. Please welcome Ari Ne'eman.

(Applause.)

ARI NE'EMAN: Thank you so much, Dr. Maurer. It's a pleasure to be back here. As someone proud to join the illustrious ranks of nonlawyers who have spoken to you this morning.

I would like to begin with an anecdote that some of you might be familiar with from the birth of the ADA. Many of you have heard this story. At the signing ceremony for the Americans with Disabilities Act, Pat Wright and Senator Ted Kennedy sat next to each other and they had a very interesting exchange. They had both played an absolutely critical role in the passage of this legislation. They had both been involved from the very beginning to the very end. And as President Bush, the first President Bush, reached to sign the seminal civil rights document for people with disabilities, Senator Kennedy leaned over to Pat and said, "Pat, what if he reads it first?"

(Laughter.)

And I've always loved that story. I've always loved that story because I think it captures the fact that the disability rights movement is somewhat unique in the annals of civil rights movements in that very frequently our policy and our legal and our legislative victories in fact come well before the types of cultural or social change that in other movements have preceded law or policy or litigation.

And that has had a very significant impact on how our movement has operated and the degree to which the law and policy and litigation that we have won has, in fact, been enforced.

I've been asked to talk about the future of the ADA, but as many of the folks in this room played a part in, the ADA itself has already required legislative efforts to strengthen. In the aftermath of the passage of the ADA, despite the clear intent of advocates in Congress to interpret a broad definition of disability, to focus the conversation on discrimination rather than an "are they or aren't they" approach to whether or not people are disabled, courts adopted an overly narrow definition of disability, requiring Congress and the advocacy community to pass the ADA Amendments Act of 2008.

Now, the reason for that was not because the ADA was inexpertly drafted. I'm sure that any one of the dozens and hundreds of people who claim to be the author of the ADA would attest that they did it right the first time.

(Laughter.)

The reason for that was our culture had not yet and in many ways still has not yet adjusted to the idea that disability is, in fact, a broad social and cultural identity and does not equate to whatever you've seen in the movies or whatever you see on television or some small collection of diagnoses or the simple idea that this population cannot be trusted to succeed or to be included or to have a quality opportunity on our own rights.

And again, because we have not undertaken the necessary cultural and social change to safeguard and advance our policy victories, we often find ourselves in this position of playing catch up, even on questions of law that we thought were long settled.

Much of my work has to do with conversations on Medicaid finance long term services and supports. In particular, getting people with disabilities out of segregated and restricted settings like institutions, sheltered workshops, segregated day activity centers, and other similar environments, and instead encouraging states to meet their obligations under the ADA and the Olmstead decision and serve people within the most integrated setting. And one of the most concerning trends that we've seen in recent years is that as states have faced growing pressure, both from the money follows the person program and the Community First Choice option and the exemplary homestead enforcement over the last several years, we have seen efforts by states and providers to rather than shift how they are providing services to people, to instead rebrand settings that are clearly institutions as community based. The classic example of this occurred several years ago in 2001. The state of Missouri decided that they were going to close the Nevada habilitation center. It's called the Nevada habilitation center. It's in Missouri. Keep up, folks.

(Laughter.)

And they were going to take the residents of that institution and place them in a series of large group homes on the grounds of the old institution, staffed by the same people who worked in the old institution, around which they decided they would place a fence and refer to this as a gated community.

(Laughter.)

For which they desired to seek federal money.

CMS in 2011, after outcry from the advocacy community, took steps to indicate that this was not an acceptable use of HCPS funding. But, in fact, we see things of this nature all the time. There is a growing and concerning movement in this country, driven by some in the parent community and in the provider community to set up these types of segregated housing complexes, villages, farmsteads, you know, they go by everything from autism farms to gated communities to dude ranches for Down's syndrome. I've heard every single variation here.

And what we have to remember is that this population, these people who are driving these things, have in many ways forgotten the legacy of Willowbrook. They have internalized this idea that the old institutions were bad because they were staffed in some way by villains who decided for some reason, perhaps sadism, to hurt people on a daily basis. And in reality, we know that isn't true. In fact, many of the staff of the old institutional settings became some of the strongest advocates for deinstitutionalization in the development disability and mental health deinstitutionalization movements, because they saw the horrors of institutional settings.

In reality, we know that particularly for people with the most significant and complex needs, there is something inherently, structurally, problematic about saying to people that in order to get services, you need to live with 50, 60, 100 of your nearest and dearest strangers who you happen to share a diagnosis with. But because we have not made the cultural progress necessary to safeguard our legal victory of Olmstead, we see this continue to come back.

Now, in response to the Missouri situation and a wide variety of other similar situations, the folks at CMS and in the federal government realized that there was still a long way to go in deinstitutionalization, and we needed to focus not only on closing large state facilities, but we have to recognize that too often we had taken people out of large settings where somebody else controlled every aspect of their daily lives and put them into small settings where somebody else controlled every aspect of their daily lives. In short, that the size and congregate nature of the setting mattered in whether or not something was institutional in nature, but that the rights and opportunities available to people with disabilities being served even in small settings also mattered in determining whether or not something was institutional in nature. That Olmstead, as an idea, and community integration, as a value, has relevance not only to where people live or work or receive services, but also to the way in which those services are provided. If you are 45 years old and the person who runs your group home tells you when your bedtime is, you are living in an environment that is institutional in nature. If somebody else is setting the rules that define your life in a way that would not be occurring for somebody who did not have support needs, that implies that you are in an environment that is institutional in nature.

And so last year, CMS issued a new set of regulations which ASAN and many others in the advocacy community are watching very closely because we see this as a very big part of the future of the ADA and the future of the promise of the Olmstead decision. And these rules articulated a higher standard for what constitutes home and community based services. Not only would it be relevant whether or not a setting was funded through an institutional funding authority like the intermediate care facility or skilled nursing facility Medicaid funding authorities, but it would also be relevant where and in what ways those services would be provided. People receiving Medicaid HCBS under these rules had a right to privacy, to choice, to autonomy, to a choice of settings for all available options, including non-disability specific options. And in the settings we know are at the greatest risk: Provider owned settings. Where your service provider is not only somebody providing you with disability support but is also your landlord. For example, a prohibition on individuals being forced into regimented meal and sleep schedules. A right to receive visitors in your own home. A right to decorate your own home.

Now, the fact that these types of rights need to be articulated in Medicaid law and Medicaid rules seems to suggest that the underlying social and cultural change necessary to assure people with disabilities recognition as people under the law and as people who should be entitled to the types of rights and opportunities that the nondisabled population is able to take for granted, we still have a long way to go. We have not yet achieved that underlying recognition.

And so when we talk about the future of the ADA, and when we talk about the future of the disability advocacy movement, I think we need to be thinking about both the next stage in policy victories. Certainly conversations on this new CMS rule or future Olmstead litigation or the very important and significant kinds of work being done around IDEA enforcement, 504, ADA, and a number of other laws relating to disability are very relevant. But also the underlying social and cultural change that will make that progress sustainable.

Every year ASAN brings together a leadership academy. We actually do three now in different locations across the country, where we bring emerging disabled leaders from across the country together for a week of advocacy training. I understand NFB has a number of similar programs for its constituencies, and I think many of you are involved in similar efforts of leadership development.

And what always strikes me at those trainings, and what always really amazes and inspires me in meeting with that next generation of young people, and I'm not so old myself, so the next generation is always even more interesting to me, is the degree to which many of them have had the opportunity to be immersed in the idea of the disability rights movement and the ideas of the self-advocacy movement and of community integration from a very, very young age. They do not, as I and many other disabled people in the room had to discover disability rights and the ideas of community integration and the ADA after they had already experienced discrimination and are wondering, is there something out there that gives me recourse. They did not have to find disability community only in adulthood. But for a growing percentage of our own community, disability culture and disability rights is something that they are growing up with from day one.

And to me, that represents a critical aspect of what our larger strategy must be. If we are to secure the kinds of social, cultural, and other forms of change necessary to make our political and legal victories sustainable. Because if we do not ourselves understand that we as a community have rights and recourses, that the problems of disability are problems that are just as much the obligation of society to remedy as the obligation of ourselves and of the medical system, then we will have a very difficult time in making that understood to others. But if we can educate our next generation, if we can build the next generation of disability advocates with a mindset that presumes from day one that they are people and that as people they have certain rights that they should be able to enforce, we will have a valuable grounding, a valuable first step, towards convincing the larger culture of that same thing.

Thank you very much.

(Applause.)

MARC MAURER: All right. We have the chief executive officer of the National Association of the Deaf, who is a lawyer.

(Laughter.)

We're getting back to the lawyers, you know. And that should make some here at least feel a little better. You know.

He's been a lawyer for more than 20 years in disability work, and he has been on our stage in the past, and it is great to welcome him back. It is good to have a fellow traveler and a person who also understands the nature of the need for advocacy in the disability area. Please welcome Howard Rosenblum.

(Applause.)

HOWARD ROSENBLUM: Thank you, Marc.

It's an honor to be here again. I would like to start with, first, my name is Howard, and I am a lawyer.

(Laughter.)

It's like the 12 steps.

(Laughter.)

I think Ari looks great with a beard. Don't you guys agree?

(Applause.)

I want to talk about three things today. First, propagation. Second, Title IV, telecommunications. And then lastly, technology.

Peter on the last panel talked about attitudes and the training of police officers which is being looked at now because of Sheehan. But it goes beyond that. For the next 25 years, it has to be more than just police officers. We need to train lawyers, over all, the legal field, judges, doctors, psychologists. Everyone needs to understand the scope of disabilities. Even more than that, we need more people who are disabled in those fields.

When I was 12, my Jewish mother drags me to see a Jewish attorney present, who happened to be deaf. One of the few in the country at that time. And my mom told me, you can be anything you want to, but best to be a doctor or a lawyer.

(Laughter.)

(Applause.)

So I looked at the deaf gentleman talk about his experience, and a lightbulb turned on. I thought to myself, wait a minute. I can sue hearing people.

(Laughter.)

I became a lawyer in 1992. The same year that the ADA started. I encountered many judges who were A... Fill in the blank.

(Laughter.)

We should change that word to Alito from now on.

(Laughter.)

Do you agree?

(Applause.)

I realized that we do need more deaf judges. So thank you, Judge Richard Brown, for leading the way.

(Applause.)

You should not retire. You need to be going another 25 years.

(Laughter.)

But on a serious note, we really do need more. When I met that deaf attorney, there was only a handful at the time. Now we have over 400 deaf attorneys, and I'm sure many more blind attorneys and many more attorneys with disabilities. But it's still not enough. Many of them are encountering barriers when trying to get a job. They aren't able to get a job because of attitudes. Employers, HR people, various departments still think we're broken, as was mentioned earlier, or damaged. I think we as a group here, both disabled and not, have proven that we can damage the institution that has discriminated against us.

We're not damaged, but we sure can do damage.

(Laughter.)

Title IV of the ADA, telecommunication, has been an important one for the deaf community for the past 25 years. When I was growing up, we didn't have telephones. I could not call people. We had this big green machine that shook the whole house whenever we communicated, but that machine, I could only call friends of mine who also had the same machine and were deaf. If I wanted to date a hearing girl from my high school, I had to ask my mom to call her. Imagine the embarrassment.

(Laughter.)

Today we have email, which is great. We have Twitter, Facebook, wonderful tools. But even as we arrive at new technology, it adds to our experience but also sets us back. With the relay system we have now, it's great. I can call any one of you in the middle of the night.

(Laughter.)

But we still have struggles. Every time a new technology is developed, for example, the internet, we struggle with access to it, both the deaf and the blind communities. And the ADA didn't really apply to that until just recently. Thank you, Netflix.

We thank those who make sure that happens, and we're not done. As you know, we're going after the wonderful institutions like Harvard and MIT.

(Applause.)

But that's more of retrofitting. We're fixing the damage that has already been done. It should have been universally designed from the get go.

And that leads me to technology. I don't know if you've heard the new term in the industry called the internet of things. IOT. What does that mean? It means we will not have any privacy anymore. But what it really means is that everything will be interconnected. Your smartphone will be connected to your thermostat at home will be connected to your lights at your house, it will unlock your door when your kids get home from school, it will be connected to your car. It will be connected to everything you own. I heard today that it will be connected to your suitcase. We won't lose our suitcases anymore, apparently.

But at the same time, the internet of things, while it could be beneficial to all people with disabilities, depending on if the engineers takes all of those things into consideration in making them accessible to us. If it's purely visual, it doesn't benefit the blind. If it's purely auditory, it doesn't benefit the deaf. There has to be redundancy in every type of technology so that every person with a disability can use it no matter how it works for them.

So that's where I think we're going to be in the next 25 years when things change. For example, the television will probably not exist in another 25 years. People will be watching the internet. And we might not even have that. It might just be holograms in 25 years.

(Laughter.)

Yoda.

(Laughter.)

But imagine a hologram. How are you going to caption a hologram? We don't know yet. Maybe we'll have holographic interpreters.

(Laughter.)

But that's what we need to look forward to. We need to make sure that what we're doing now keeps up with the changing technology with legislation. We have to keep up. Most federal employees today who are deaf have a hard time making a phone call. The technology is already there. We have video phones. The rule says that video phones are allowable as an auxiliary aid. However, how many federal agencies are actually installing them or implementing effective ones? The NAD has sued the IRS. We'll probably get audited this year.

(Laughter.)

But we successfully won, requiring them to improve their video phones. In the past, and still right now, the video phones they have have been there since 2011, and they can only call each other. Internal. A deaf person that works at the IRS can only call another deaf person who works at the IRS, because they said security encryption issues.

During the hearing, I asked their expert witness, do you have encryption on the voice phones? They said no. And I said, well, why not? And they said, it was considered allowable security exemption. So I said, then what's wrong with the video phones? Can't you make that an allowable security exemption as well? And they said, well, that's above my pay grade.

So we need overall at the federal level to mandate video phones, and any other technologies that come along, allowing a plethora of successful options to work, and if it's not allowed, we need to make that work, including everything that's coming within the next 25 years.

Thank you very much. I'll leave some time for questions.

(Applause.)

MARC MAURER: We do have time for questions, so Dan, you've got the mic, yes? Somebody must have it.

Okay. Dr. tenBroek used to run these classes, and he would say, don't say my name, I already know my name, say your name so I know who to recognize.

>> I want to thank all the presenters, but I guess the question I want to ask is the extent to which our aspirations for the kind of equality and recognition we're talking about are dependent upon broader trends in society that even if we cannot control we have to pay attention to and we are inevitably affected by.

For example, education. The problem of low expectations. We see it through a variety of evidence in other minority populations in underachieving and economically limit the populations generally.

And the questions of prisons. Again, we see not really a lack of accommodations or attention to any decency of humanity, but to see them increasingly as a holding facility for people who society has no interest in.

And in all the areas we're talking about, we see our own destiny to a certain extent inevitably tied to and dependent upon the kinds of broad based decisions society is making about how much it values people, individuals, how much it wants an educated, healthy, productive population or doesn't need that for political or economic reasons.

So I'm wondering if the presenters in general have any idea the extent to which we can divorce our identities or aspirations from those wider tendencies and where those tendencies are going in relation to the tendencies.

And I'm Steve Mendelson.

MARC MAURER: Okay, Steve.

Who wants to tackle that one?

ARI NE'EMAN: The issue of education dependability there is a good one to latch on to to answer that question. I'm one of about eight people in the country left who actually likes No Child Left Behind as a law, but I think it's actually a really good point that the issues around low expectations for students with disabilities are connected to the issues of low expectations for students at large. And one of the concerning things that we're seeing in the education policy conversation right now is that, well, NCLB laid out actually a fairly progressive structure of educational accountability, students across the board would be evaluated to the degree they were meeting grade level standards in content areas and schools would be held accountable not only for the percentage of their student body meeting grade level standards but their percentage of specific subgroups, students with disabilities, students from racial and ethnic minority groups, students from other categories.

We're seeing efforts right now to try and roll back those kinds of accountability structures. And that's concerning. That's concerning on a number of different levels. First, it's concerning because we know that No Child Left Behind and the introduction of testing and evaluation actually has had a significant impact on graduation rates and educational achievement for students with disabilities. We're starting to see more progress towards making IDEA enforcement more like NCLB or ESEA enforcement. Last year the Department of Education began to evaluate states' compliance with IDEA not only on the basis of was the state filing all of its relevant paperwork with the federal government in a timely fashion, but also on whether or not students were having outcomes in line with students without disabilities. And I think that's an important step.

But it's also concerning because we know that when students with be disabilities are not subject to the same kind of accountability and evaluation infrastructure as students without disabilities, school districts and school officials do not focus on them. The research shows that students who are placed within the alternative assessment track, so at the moment, 1% of all students and 10% of all students with disabilities are vastly more likely to be educationally segregated, are tracked into special education diplomas, essentially nondiplomas, from a very early age, sometimes as early as first or second grade, a point in time at which it's rather early to be deciding that a child is not going to be able to graduate with a high school diploma, and are less likely to receive access to literacy instruction, and I think this is crucial here, also augmentative communication technology. And the issue of augmentative communication technology is a concerning one because the 1% of students placed on the alternative track are nominally supposed to be students with the most significant levels of cognitive impairment. And if we aren't giving those students access to technology to have a functional communication system, the obvious question is, how would we know whether or not those students are, in fact, the most significant, experiencing the most significant levels of cognitive impairment?

In the recent proposed reauthorization.

MARC MAURER: We're getting close to the end of this, Ari.

ARI NE'EMAN: Okay. Sorry.

MARC MAURER: We've kind of run out of time is the trouble. I certainly have an opinion about this and I'll discuss it later, if you want, but I notice that we're supposed to have a break here and this calls for coffee and probably things like cookies. I don't know. And I know people are interested in that, so we're going to do that.

And then we have workshops. We have five of them. Protecting the rights of individuals with disabilities in the medical decision process, potential for congressional assault on protection and advocacy for individuals with mental illness, Workforce Innovation and Opportunities Act reauthorization implications, getting the disability rights message out through social media, and introduction to the national resource center for supported decision making.

You can pick one of those. That starts at 11:00 and goes until noon. At noon, we have our lunch with a keynote speaker. So don't miss the lunch. Please be there.

We'll now break for the break.

LOU ANN BLAKE: Just one quick announcement. During the break, please do not sit at the tables. Our staff is setting up for lunch. Thank you.

(Break.)

“Protecting the Rights of Individuals with Disabilities in the Medical Decision Process”

Fourth Floor Conference Room

11:00 a.m.

ELIZABETH PENDO: …the requirement of full and confirmed consent to all medical decisions, which developed out of a larger movement centering around the rise of autonomy and patients' rights that really developed in the 1960s alongside the civil rights movement. And later the right to free and informed consent was the right to say no or to choose treatment. That principle is probably best embodied in the California Court of Appeals case out of 1986. Are you familiar with that case? It's really an example of the prevailing rule that we have today, that competent adults have the right to refuse treatment. Although that case upheld Elizabeth Gluvia's right to refuse treatment, there was disability bias and misinformation on decisions of capacity and how we view decisions made by people with disabilities. The language of the case itself is often cited as an example of disability bias. It was seen as accepting too readily her perceived decision to end her life because they accepted and promoted a devaluation of her life.

As many people have noticed about this case, the perceived quality of her life, at least as framed by the court, really had more to do with prejudice and a lack after appropriate supports for living with a disability than it had to do with her actual disability itself. And I think those themes of assumptions, false beliefs, devaluation of life, continues to have a lot of resonance around the so called right to die when invoked by people with disabilities. So it's a complicated issue.

These cases focusing on autonomy also highlight the legal issue of competency. It's a troubling concept. Generally in healthcare it means the ability to understand the medical problem and its consequences, to evaluate options, to communicate a choice to your healthcare providers.

Incompetency is of course a legal concept. Only a court declares someone incompetent or unable to make their own decisions. This is an interesting conversation to have with doctors, which I do frequently, because they often believe that they make that determination, when, in fact, a court does. And they can appoint or recognize a substitute decision maker, right?

If you look at the experiences of people with disabilities in the healthcare system and you listen to what they have to say, many people who have not been declared unable to make their own decisions experience barriers and limitations in making their own decisions. That's sort of where my research focuses.

Other components of sort of the classic legal landscape include a basic division of case law and legal thinking on capacity into two categories: People who have never had decisional capacity from birth and people who once had decisional capacity and now do not or are perceived to not have decisional capacity. And a lot of attention in bioethics and health law and in the courts is given to these two categories. Think of the Nancy Cruzan case in Missouri or the Terri Schiavo case in Florida. The cases that go to court are almost always women, and they're always presented as certain, static, and lacking in ambiguity. The diagnosis and prognosis are presented as completely clear, which is interesting and doesn't reflect real life.

For folks who had decisional capacity in the past but have lost it in the present, either on a temporary or permanent basis, there's some formal legal statements they can use: Advanced directives, living wills, durable powers of attorney for healthcare. These are designed to preserve autonomy in the event that it's lost or threatened or diminished, permanently or temporarily. But we know most people don't complete advanced directives. And many states have surrogate decision making statutes that typically appoint from a list of next of kin to make decisions. So I think there's still ways in which bias and assumptions creep into decision making regardless of the legal tools available.

The third major feature of the legal landscape are legal devices for decision making or decisional capacity is not present or is presumed not to be present. Those are the traditional devices like guardianship or substituted decision making or a proxy decision maker is appointed in theory to make the decision that the patient would have made if he or she was competent. So you're probably likely all familiar with the criticisms of the guardianship process. It's a state law process, so it varies a little bit state to state, but in general, guardianship is a plenary or full process, meaning you lose all rights to all decisions, not just healthcare. So a person with a disability who goes through the guardianship process loses autonomy in all areas. It's been criticized as anti-therapeutic, as stigmatizing, as being used inappropriately to take away the legal right to make decisions, often on insufficient evidence because it can vary state to state what type of evidence is acceptable, and although it's intended in most states to take into account the patient's subjective wishes, conversations around these preferences are notoriously difficult. Right? That's why the vast majority of people do not complete any form of advanced directive. It's very hard to discuss what you might want in a hypothetical situation that you are not actually in. So again, there's still a way that assumptions and biases can creep up.

Of course there's the newer model of supported decision making. There's another workshop happening on that right now. Where a third party assists people to make their own decision. I think this is an incredibly interesting idea because it's not particular to people with disabilities. It really is intended to mirror the decision making process generally, how we all make decisions, even big decisions. We seek advice, we look for input and information from friends or family or professionals who might know more about this, and then we make our own decision. So it could be especially promising for people with intellectual or developmental disabilities, although, again, it's sort of a universal model that could work in a lot of different situations. For children, for developing minors, for the elderly. And in contrast to guardianship, it's seen as empowering, the patient retains their right to make decisions, and also seems more consistent with legal rights and human rights as expressed in the Convention on the Rights of Persons with Disabilities. It's a newer model, and there have been some concerns raised about the risk of undue influence by these third parties. Blumenthal and Cohen have written about the empirical evidence of supported decision making, the process, the techniques, the outcomes, the risks. Just sort of a side note as to nothing is perfect, right?

What I think characterizes this entire landscape is that the risk of disability bias, of incorrect and negative assumptions about life with a disability, really runs throughout this landscape and can enter at various points, notwithstanding certain legal structures and devices I think designed to minimize it, right, other than supported decision making. That's sort of a different creature.

In my work, I've notices there's a lot of focus on the most dramatic, perhaps the most extreme factual situations. They're often presented as very known, very black and white, and very static. My work in the healthcare system just doesn't reveal that that's very often the situation. And I think there's a lot less focus on every day interactions and decisions that are less clear and perhaps more complex. In the world of bioethics, when a doctor perspective is taken into account, it's very often at the beginning or end of life and there's a lot less attention to living your life every day. So that's the area that I'm really interested in. Most of my recent work is focused on every day clinical encounters and influences on medical decision making for people with disabilities who have decisional capacity. I think attitudes and biases lead to disparities. They also limit choices patients have and choices patients make, and can constrain medical decision making.

My recent research is people with mobility disabilities and inaccessibility to exam equipment, imaging equipment, scales, chairs, tables, and obviously this could apply in other areas.

My research shows that patients with disabilities, especially with mobility disabilities, experience really fundamental physical barriers in healthcare offices and facilities, including a lack of accessible medical and diagnostic equipment, coupled with a lack of policies and procedures designed to accommodate needs and promote access. And this is tied to one of the As we heard about this morning, attitudes. The underlying attitudinal barriers, in particular clinician assumptions, biases, and lack of knowledge about living with a disability. Also a lack of awareness of the ADA. Right? A lack of awareness of federal laws that protect and promote accessible healthcare that really accompanies and underlies these physical barriers. Lawyers love to suggest that we should have a law about something. What I think is fascinating about this area is, we do have a law about this and we've had it since 1990. Like what is going on? Something else is going on. I'm interested in the something else and how it affects medical decision making.

So clinician attitudes, not that I'm singling them out, they experience the same biases and limited thinking that we do generally, but the Institute of Medicine issued a report: Disability in America, and they identified lack of disability awareness and provider education as one of the most significant barriers to care. Ahead of insurance coverage, ahead of cost. And a body of research on the role of cognitive bias and emotions in interacting with people with disabilities really underscores the significance of those barriers. So we know if we listen to the experiences of people with disabilities that they report negative encounters with clinicians, ranging from overt discrimination to subtle expressions of paternalism or exclusion or diminishment. Those could be more obvious, but their impact of clinician attitude can also be more subtle and difficult to pinpoint because it's really more structural and subtle. So bias and negative assumptions can impact communication within the clinician patient relationship. Mary Catherine Beech and Debra Roder have done interesting work on this, about attitudes of respect and how it influences communication behaviors. They can diminish the essential trust that scholars have deemed critical to the therapeutic relationship. Consider sort of every day examples like a clinician speaking to a family member rather than to the patient who has a disability. Or a recent article in Health Affairs described a doctor who spoke very slowly, as if his patient may not understand him merely because the patient had a stutter. And how that affected the relationship not only with that patient but the relationship with the other doctor who also experienced stuttering unbeknownst to doctor number one.

So lack of knowledge and awareness can also diminish the quality of care. This was described by Adrienne Ash. If we're relying on clinicians to provide us with full informed consent, they simply can't advise on futures that they can't imagine.

Disability can also function as a distraction from the patient's needs, which may or may not even be related to the disability. In my research on equipment, I found that a lot of healthcare providers believe, falsely, that women with mobility disabilities are not sexually active and are not or should not be mothers and therefore they just assume that patients with mobility disabilities don't need services offered to other patients such as screening for STDs or discussion of birth control or discussion of fertility and having children.

Another example that came up more recently is that women can disabilities are less likely to have had a mammogram. Research identifies several different barriers. One is the lack of explicit recommendation from a healthcare provider. So that communication from a healthcare provider is an important motivator in mammogram adherence behavior. A study in the American journal of public health published last year looked at reasons for this disparity by comparing experiences of women with and without disabilities, and they used a state mammography registry to use this. Interesting way. So they looked for women who had already been to a screening. Issues of coverage and transportation and physical access, at least there is a suggestion that those were not barriers. And they looked at women who didn't come back and sent them letters asking them why. And the study finds, to the surprise of absolutely no one, that women with disabilities report barriers similar to those reported by women without disabilities but at a higher rate. But what I thought it was incredibly interesting is the study also found that women with disabilities are less likely to receive a physician recommendation for a screening mammogram. Even controlling for age. So there is something going on in the information being provided to patients that I think limits the choices and the information that the patients have, and we know from the research that that impacts the choices that patients make.

So I think the literature clearly suggests that disability matters in clinical relationships and treatment recommendations and outcomes often in ways that raise ethical concerns. And the literature on cognitive bias suggests that perceptions of disability may inappropriately influence clinicians' medical judgments about conversations and communications about appropriate diagnostic interventions and about treatment. And I think all of that impacts the relationship in which decisions are framed. So I see the risk of disability bias in every day encounters as well as in the more extreme situations that are more often looked at.

Lots of solutions have been suggested. Obviously enforce the ADA in the healthcare setting. It was meant to apply there. Somehow that hasn't been noticed enough. There have been significant inroads there, but there need to be more.

Education and training, including using supported provisions in the Affordable Care Act. The Affordable Care Act also calls for research and data collection including on the experiences of people with disabilities in the healthcare system. That could be valuable information.

Something I've been working on lately is reframing appropriate care for people with disabilities as a matter of medical ethics and patient-centered care, which should seem obvious yet isn't. And how we might make that turn. And of course more clinicians with disabilities and people working on the healthcare system would also be something to look at.

So I am interested in hearing your thoughts and want to leave plenty of time for discussion. So let's open the floor.

>> If I could start off with some of my stories. So I have sat for about 12 years on the medical ethics committee at San Francisco General, where we have a lot of gunshot wounds and things like that. I think part of the explanation for the phenomena that you're describing is the very same kind of thing that I encountered with a math professor who couldn't understand how he could possibly teach math except by writing on the blackboard. They really listen to me; they just forget sometimes. But my job is usually to suggest that there are ways of overcoming these enormous problems. Sometimes they just don't understand.

Two quick stories from different eras. We had a -- this will tell you something about San Francisco General. We had a drug dealer in San Francisco who had a spinal injury because he got shot by another dealer who was coming into the hospital to try to kill him. This is San Francisco. And he had a pressure ulcer. So he's supposed to stay off seating but he insisted in staying in his wheelchair so he could run away from the folks trying to kill him. Aside from the fact that it's not nice to have people running through the hospital shooting guns.

So there are such things as electric gurneys, and I found that if you actually say, even in a place like San Francisco General, this is something that you can use, this is equipment you can use that physicians who don't know about it because it's not their specialty, they just can't imagine. We do this a lot with people with communication who are borrowing from the ALS society for individuals who have no other way of communication. We are borrowing their equipment that allows people to use computers simply with eye contact or skullcaps. So I think in part this is a matter of just not knowing.

A more recent story, which I think gets more to the point, is that apparently it's extremely difficult for clinicians if they're treating somebody for one kind of thing, to imagine how they can do something usual. So if you have a patient with a communication problem, very difficult to communicate, it's very difficult for them to imagine having a usual discussion about decision making. We had a patient, again, with a gunshot wound, and he had had a great deal of trouble communicating. Nobody really knew -- he was very communicative about things that were uncomfortable. Well, which is precisely what you would think somebody would want to do. He also had an enormously aggressive mother. And the facility where he was decided that he should be represented by somebody else because they decided that his mother was influencing him.

Now, ordinarily, if we have a patient who could communicate and that patient may at some point been able to communicate, you ask the patient, would you like this family member to be your representative. So we spent about 20 minutes, and I finally said, well, what does he communicate about? Well, yeses and nos. And he did complicated yeses and nos when it came to food and stuff like that. So my suggestion was they ask him whether he wished his mother to represent him or not. And this apparently was a stunning idea. But in fact he was perfectly able to do that. They explained a lot of stuff. And he made a decision, that he didn't wish his mother to represent him. Which I think was a very good decision on his partisans his mother was really protecting him against everything. So I'm thinking that part of the problem is that it's very difficult for clinicians, once they have a patient that they're focused on, this person has communication difficulties, to actually think that nevertheless there are modes of communication. Just an observation.

ELIZABETH PENDO: Let's go around the room.

>> I just had a quick factual question about the mammography study that you mentioned. Do you know, were there differences in the disparities based on disability?

ELIZABETH PENDO: They did not look at type of disability. Although that may have been gathered in the data set and just wasn't reported in the article. But they did say that women who were over 65 and had multiple disabilities experienced more barriers, but it didn't breakdown what those disabilities were and if there were differences there.

>> Because my initial thought, I haven't read the study, so this is probably unfounded, but I'm wondering if some of the reluctance to refer women based on not knowing where to refer for example someone with a mobility impairment to to get a mammogram with an accessible mammography machine.

ELIZABETH PENDO: Right. Although they had all had a mammogram.

>> Oh, okay.

ELIZABETH PENDO: That was something really interesting about the study. That doesn't mean what you're suggesting isn't a factor, but they looked at women who had already had one mammogram and didn't return.

>> Interesting.

ANITA SILVERS: But you don't know what it was like for them to actually get that mammogram.

ELIZABETH PENDO: So it's possible that they communicated that to their physician and then their physician decided not to recommend on that basis, but I don't think it tells us why there's less recommendation, but I think it's interesting and absolutely worth investigating why are physicians less likely to recommend mammography within recommended guidelines for women with disabilities. There could be many answers to that question.

>> So if you look at the -- speaking to more doctors with disabilities, the MCAT just changed from their traditional MCAT to the new MCAT 2015, and they just put on their website that they're not flagging anymore. So it used to be if you took the MCAT, you would get a little asterisk on your score that said it wasn't tested under, you know, typical testing conditions, they couldn't tell the validity. Medical schools either looked at it or didn't look at it, you know, the asterisk or not. But that has changed. And the USMLE, the step one and step two exams, the exams you need to become a doctor after two and three years of medical school, are also not flagging. So those are huge changes in the medical education landscape that will ultimately at least include more -- you know, it will help diversify the medical profession. So it's something positive. Which is like amazing. Eventually. Yes. You still have to get into school.

>> One of the issues that I find in dealing with choice and issues for not obtaining medical information is effective communication issues with the deaf in medical settings. It's unbelievably huge. Doctors have refused to see small practitioners that refuse to get interpreters. The lack of reproductive sex ed for people with any type of communication issues. It's absolutely horrible. But then on top of that, you have the domestic violence and interpersonal violence issues on top of that because the statistics for domestic violence for persons, especially women, that have any type of disability is much bigger than the normal population. When you put all of those together, there's a huge disparity there between going into the doctor's office itself and the failure to get the treatment that's needed. And I see a lot of that.

Another issue that I've been seeing more and more of is assistance animal issues. People with disabilities who refuse to see the doctor because they have -- because if they see the doctor and they go to the hospital, then they have to leave their animal unattended. And in Florida, what we have is animal control comes and euthanizes the animal while the person is at a doctor or a rehab center or the hospital. So you have victims of domestic violence and persons with disabilities that have animals, whether they are assistance animals, emotional support animals, or any type of animals, who just do not get the help they need.

So a lot of the issues I'm seeing is not the secondary access to doctors, say you should get your second mammogram, but just on the initial part of, do people go to the doctor in the first place and the lack of healthcare for persons with disabilities that is at a doctor or a clinical experience.

>> I guess one question for me would be whether there's anybody who has done a survey of the medical schools and what kind of training and education they give to doctors as they are in education, and also to what extent there has been pressure on organized groups of doctors. Like I just went on the American Medical Association website and on their FAQs, the only question that was disability related that I saw was, do I need to have a sign interpreter, and the answer was, well, sort of kind of yes but kind of not if you can get them to agree to use a family member or something else. So I think in terms of the doctors are going to hear the message about what they need to do better from the American Medical Association and from their medical professors than from any of us in this room, and I think maybe advocating for some training, starting in medical school but also in their continuing education programs. I mean, every doctor has to have continuing medical education. I think focusing on that and also in terms of the standards, like how should your office be set up and where do you refer people. Because I think doctors go into medicine to be helping professionals, but they don't understand their legal obligations.

ELIZABETH PENDO: I think there are a couple -- there's long been an effort to increase training, whether it be in medical school or after. I think Christie Kirschner along with another coauthor published an article -- she's a doctor who works at the rehabilitation institute in Chicago. She published an article about how you would actually do this, what would the competencies be, since medical education is very competency based. And in the Affordable Care Act there is a provision to gather data about where people with disabilities get care and what equipment and training is available there, which I was super excited to see that in the law. And of course absolutely zero has happened with that provision since it was passed. But that would be very valuable information too because doctors don't know where accessible equipment is. You have to happen to know that. So after I publish an article about this, I get phone calls now, and I don't necessarily know either. So we started to find that out in St. Louis, so now we know, but I'm sure it's not complete. So that information sharing is also a huge issue.

ANITA SILVERS: So who would be the best -- I'm thinking like county medical societies might be a good place to focus on to get this information.

>> Can I respond to that?

ELIZABETH PENDO: Sure.

>> There have been a couple of limited med school training programs and modules on disability access and standardized patient models have been used at Tufts, but for a very limited amount of students. So it's not everyone who goes to tufts medical school. It's a small cohort and then a couple others across the country. But I think it's a real problem. And teaching the medical model as opposed to the social model I think is one reason why doctors don't see access issues the way they should be seeing them. I've done a lot of work in this area, and I've found it's an omission, not a commission, that providers are having these issues, and I think a lot of it is education, lack of education in this area. And some of it unfortunately is time constraints and other things. When you have 15 minutes to see a patient, which is wrong and shouldn't be that way, but when you have 15 minutes to see a patient and the patient needs to be transferred on to a table, often doctors take shortcuts and examine a patient in a wheelchair as opposed to using a lift. So I think that's a problem.

And there have been instances unfortunately, Massachusetts for example, where I work, there was definitely resistance from the hospital association to some of these reforms because they think it's more expensive. It's unfortunate. We've tried to work with the state to get some involvement on this as well, and it's been difficult. I think there are lots of reasons.

ELIZABETH PENDO: Let's get back over here.

RICHARD BROWN: For years I found that the doctors that were seeing me were patronizing to me. Talking down to me. Even though I have advanced degrees, I'm a judge. They talked down to me.

I don't see that as much. Has there been a study on attitudes of physicians? Because I've detected a change personally.

ANITA SILVERS: Are you sure they just didn't finally figure out you're a judge?

RICHARD BROWN: Maybe.

ELIZABETH PENDO: It would be interesting to do a longitudinal study to see if you could detect changes in attitudes over time. Perhaps that's been done. I haven't seen it. But that would be very interesting.

RICHARD BROWN: Well, one of the things, I wrote a decision involving a person with a mental health issue saying that the doctor had to give alternative methods of remedies, and the Supreme Court affirmed me saying you have to give these informed choices, these alternative informed choices. And the medical association went to the legislature and got that changed, overruled me by statute that said you don't have to do that. So here on one hand I'm saying there's an attitudinal change, and on the other hand, maybe not. I don't know. But it would be interesting to find out.

>> I have a client who because of his disability, when he has a medical appointment, requires very simple accommodations. Not expensive. And at both ends of the spectrum, in the small individual doctor's office, there's a lot of insensitivity.

On one occasion, several years ago, he needed to have a procedure done at a large academic medical institution. Those are scary places even for -- they're scary places for all of us. They're big, they're confusing, they're bureaucratic, they're all these things. They did ultimately, after weeks of planning, do everything that was necessary and the visit went very smoothly. But they did not at least at that time have anyone on their staff whose job it was to assist people with disabilities in obtaining those kinds of accommodations which I think in that kind of institution is needed. So I'm wondering if that is still the case, whether that's generally the case, or whether you have any comments about that.

ELIZABETH PENDO: Yeah. It is still the case. It's very interesting now. Certain specialties have clearly been able to figure out how to accommodate, right? Consider geriatric care practice or facility. Or frankly orthopedics. They have figured out how to make equipment accessible. So it's really -- it's not that it's not available or doable; it's just not thought of. And when you raise it as an issue, you get a variety of responses. Many times clinicians are like, oh, you're right, I will do that. And sometimes there's a reflexive maybe defensiveness or even exhaustion of everything they're being asked to do. Which is frustrating because it's about patient care.

ANITA SILVERS: If I could just ... You're right. If they think you're an expert, then they'll listen to you.

>> Do you know of any programs in the country that seek to educate law students and medical students about legal rights of persons with disabilities?

ELIZABETH PENDO: You mean educate them together?

>> Either together or separately.

ELIZABETH PENDO: A lot of schools have -- law schools have disability rights programs or somebody who teaches disability rights. It may also be a focus of a clinic. In our law clinic, we have a focus on disability rights. So those exist.

In terms of programs at medical schools, the barrier free health -- the barrier free healthcare initiative has sort of a conference call that goes on monthly, and one of the projects that we've been working on is trying to create a directory of educational or awareness programs for physicians, both that are disability specific and ones that are really patient centered but include disability. Because those are really the two different models.

In terms of bringing students together, I think that's one of the ideas behind medical legal partnerships where we sort of unite health needs and maybe public health needs and also legal needs and educate students together. Those don't exclusively focus on disability, but they can very effectively, depending on the client base.

>> Are there any such programs in existence?

ELIZABETH PENDO: Oh, yeah. Many.

>> Where are they?

ELIZABETH PENDO: We have a clinic at St. Louis University. Actually, if you want to know about programs at law schools, you can go to the ABA commission on disability rights. That's one of the sections of the American Bar Association. And over the last few years they've been very involved about collecting information about what's happening in law schools and making it available. That's available on their website.

>> So David, Bob Dinerstein and I are conducting a survey of disability rights clinics nationally. And those clinics which focus in particular areas. And also that encompasses or includes the medical legal partnerships. We can talk, David, later about the existence of those.

ELIZABETH PENDO: Let's go around this way.

>> One issue that I've kind of noticed from the outside, from some work I was doing, healthcare providers are being required to roll outpatient access to electronic health records, EHRs, and the regulations include requirements for accessibility. The technology companies that are providing them I have found don't have knowledge on their own. Electronic health records in the medical community are horrible. They are cobbled together systems that look like they're from the 1980s. Providers are being told of the requirements but they're not being instituted at all. They do not seem to be building it in. I'm not sure how to publicize those requirements or otherwise make those requirements effective at the get go, but it is an issue.

>> So my personal experience has been that the doctors are generally not the problem in terms of issues related to disability, but that it's more the hospital support staff. Not even nurses. For instance, I went to the hospital up in Boston and they were fine about accommodating me. I had my guide dog. That was fine. By they found out I lived alone and they assigned me a social worker who refused to let me be discharged because I was blind and lived alone. I said, don't worry about it, I'll go to the clinic down the street. She said, no, no, no, I won't discharge you until you get me a doctor promising to manage this for you. And you know, this is a place where they have a disability clinic. They have social workers for people with disabilities. They're the ones who need to be educated. The doctors were fine.

I'm sure that's not the case everywhere, but it seems to me it's not just a matter of making sure there is somebody who is ADA or disability coordinator at a hospital, but making sure that those people are properly educated that the fact that you have a disability and live alone doesn't mean you're incapable of being responsible for yourself.

>> On a strategy note I was going to say that structured litigations has really had some good results in this field. Linda Gargarian has done wonderful work over the last five or six years in a structured negotiations process. She's also working with Kaiser and Alexa. Amazing work in Boston. In Chicago there's been good collaborations. By taking the lawsuit out of it, I think it helps a little bit in dealing with the barrier part. Because you can skip some of the defensiveness. Instead of saying you're discriminating, you're approaching them and saying, your patients are having these experiences, we need sit down and figure out solutions. So it's just one of many strategies available.

>> And when that doesn't work, I work on the litigation aspect of it.

(Laughter.)

So the disability legal rights center in my office, we litigated against USC in Los Angeles. State of the art hospital building, gorgeous, beautiful, no nothing. Clients had a problem. There was an earthquake and the elevators went out and they had no way of getting the folks down so the fire department had to come in and take them down. That among other issues.

So my question to the group is, for the litigators, has our litigation been successful? When you've brought cases, have you had good results? Is that the solution when structured negotiation doesn't work? I would just like to find out. I have two cases pending right now and we'll see how those turn out, but I would like to hear from the litigators in the group.

>> Well, another case we kept open, which is part of the L.A. County healthcare system, it was the only place in all the hospitals where rehab was happening, that's where the accessible scales were and the lifts and the beds. And the board of supervisors was going to close the hospital because it was too expensive. And so that hospital, and there's a published decision that's really good about dismantling the ramp, closing this hospital is just like dismantling the ramp, and that hospital is still open. You know. And people are really still alive. Our expert witnesses, they were calculating the rate of death per patients with the closure of that hospital. And that hospital is still open. So I think, you know, yeah. It does. Sometimes it really does work.

>> I think also sometimes you have to sue them before they'll come to the table for a structured negotiation. That's what happens when disability rights advocates sued continuum health partners in New York. Now the Mount Sinai health system. We tried to work it out before filing the lawsuit. We filed a lawsuit. And then we got them to come to the table in structured negotiations and we're working on some revised policies and some architectural changes to make the buildings more accessible. As well as adding accessible medical equipment on all floors.

>> I'm not a litigator, but I just wanted to relate an example of now a phenomenon that apparently, and that is just by my own anecdotal research, appears to be fairly common that I experienced last year when my parents passed away within five months of each other. My dad 94, my mom 89. On each occasion, several weeks before each of them passed away, they had to enter the hospital. And that goes to the absence of training. On each occasion, they were admitted to the hospital before I could get there, and one of the things I would always do when they were hospitalized is I would look at the chart. And on each occasion, on the chart, one of the diagnoses was Alzheimer's. Now, despite their age, both my parents were quite sharp. Probably sharper than many 30 something-year-olds. But in each case, there was Alzheimer's. And I questioned the doctors and the nurses, and they said, well, they don't really understand what we're saying. I said, well, did you ask them if they have their hearing aid in?

(Laughter.)

I said, here's their hearing aid. They didn't take it to the hospital with them. But apparently it's fairly common in hospitals that they don't check to see whether an individual, old or young, has a hearing aid. They don't ask for that. And they're very ready to write a diagnosis of Alzheimer's.

>> I'm a litigator, but I like pushing the alternative benefits that someone going against may get out of doing what they should do, and this is actually a story strangely from NPR. It was about a VA hospital. And one particular VA hospital where there is a head nurse that's taken on a very active role in getting lifts and various types of equipment. And she's out there on the floor constantly pushing for are it, and the benefit that she sees from it is that the nurses aren't getting injured. So they are getting this large financial benefit that may not be what they're thinking of when they're saying you need to accommodate my client. But pointing out the things that are going to be good as a result of this that will be helpful to you often seems like a good push.

>> Just to add a wrinkle to the earlier comment about assumptions about age, I think those extend not just to the individual patient but to caregivers as well. There's an interesting case in the New York appellate division that concerns just that issue, where somebody was kept in a nursing facility essentially because, for whatever reason, they wouldn't accept her husband who had taken care of her for many years as a caregiver. They wouldn't come out and say it this way, but the assumption was, well, he's elderly and so he couldn't possibly take care of this person at home. So it's a really interesting assumption that's made for caregivers as well.

>> I just have a question. I was wondering, are there any tax incentives or maybe do hospitals get any type of credit if they purchase more accessible equipment?

ELIZABETH PENDO: Yeah.

>> Okay. I'm trying to think do they actually -- is there a financial reason why they're going to claim -- of course everybody claims undue burden. But is there any reason other than the fact that they know they can get all these discounts or credits if they --

>> It's capped more.

ELIZABETH PENDO: Yeah, it is capped. At least before the Affordable Care Act called for the creation of standards for accessible equipment, which was done through the access board, before that had been done, there was a question about there wasn't standardized accessible equipment.

>> It's not done yet. Hopefully this summer.

ELIZABETH PENDO: Accessible equipment existed, but it wasn't exactly clear what it was. You know, you know what a standard examination table is. So I think the idea of creates standards was to make the equipment more accessible, hopefully less expensive, so you would know what the categories are. How much of it you're required to have, how soon, still has not been decided.

ANITA SILVERS: The professional organizations hasn't been mentioned yet. Of which the bioethics association is included. These run some of the most inaccessible meetings. You remember this discussion that we have annually, refusing or making it enormously difficult for anybody to get interpreters. As opposed to or in contrast to most of the other professional associations where it's taken 20 years.

What is most interesting is that the model for accessible organizations is AAAS. The medical associations, the bioethics association, all use -- all contract with meeting planners who think that they do not have to make the meetings accessible the way that everybody else it does. So that tells you a little bit about why clinicians, who go to these meetings, think that they don't have to pay any attention.

ELIZABETH PENDO: Right. And if you're always operating in spaces that aren't accessible, surprise, you won't come in contact with people with disabilities and it just reinforces their not acknowledging it.

ANITA SILVERS: If your professional association refuses to provide interpreters, and apparently refuses because you're apart, then you'll get a message. So it would be useful to pursue this matter, because we're creating standards, and it's the association of the advancement of science, AAAS. They have a wonderful program for accessible meetings, so nobody can say they don't know how to do it.

ELIZABETH PENDO: All right. Thank you for the discussion. I know there's a lot more to say, but I think now I am actually standing between you and lunch. So thank you everyone.

(Applause.)

(Lunch.)

Lunch and Keynote Speaker

12:00 p.m.

MARC MAURER: If I could have your attention, please. I hope you've had a good lunch. We even had some vegetarian lunch for those who favored vegetarian lunch. I'm told it's very good.

I was sitting at the table with some of these government officials, very impressive people. And one of them was remarking that some of the things we had to say this morning were discouraging. And it's true. Some of them are discouraging. That's why we're having this thing, so we can get past the discouragement, don't you know.

I was thinking that as I began in this work, we had the Rehabilitation Act amendments of 1973, and we were thinking about writing the 504 regulations. That was a discouraging effort also, but it has done some good over the years, so let's keep at it.

(Applause.)

This very day, we have an extraordinary person to come to be part of our law symposium who will reflect upon some of the work that we're doing. Vanita Gupta is the principal deputy assistant attorney general and acting assistant attorney general for the Civil Rights Division of the United States Department of Justice. Before she became a member of the staff at the department, she worked for the American Civil Liberties Union and the director for its center for justice.

Previously, she was an attorney for its racial justice program. Through her work with the ACLU, she has been involved in reform initiatives pertaining to federal and state policing, sentencing, drug policy, and criminal law. She has spent time building bipartisan consensus to end overreliance on incarceration. She began her career with the NAACP legal defense fund. She has taught civil rights litigation and advocacy clinics at New York University. She has a degree from Yale and a law degree from New York University.

Please welcome the assistant attorney general, Vanita Gupta.

(Applause.)

VANITA GUPTA: Thank you.

Good afternoon. I want to thank you for having me. Just from being here for the last 20 minutes, I just love the energy and sense of community in this room. It's clearly a very important conference, and I'm really honored to be here amidst such committed, smart, and creative advocates.

So I'm relatively new to the civil rights division. I've been here for about five months. I was just asking Eve how long I get to continue to say that, but things are all relative.

But really at the civil rights division, and I in particular, am really honored to be your partner in the ongoing right for civil rights for people with disabilities. The division is incredibly energized to do disability rights work, and it is one of my highest priorities for the division right now. I would say that every part of the civil rights division is doing disability rights work. Every part. Every section. And I am proud and honored to be here with some of the leaders in that work who I work alongside with at the division, Eve Hill, Rebecca Bond, a number of staff from our disability rights section. I understand there's a lawyer here from our disability rights section. These are top priorities for the civil rights division.

And this year we're going to celebrate the 25th anniversary of the Americans with Disabilities Act and the 40th anniversary of the Individuals with Disabilities Education Act. We've made a lot of progress since then, and I understand that some of the comments this morning may have been discouraging, but I actually think that while we have a lot of work to do, there has been enormous progress made. That said, as President Obama once said, as long as we as a people still too easily succumb to casual discrimination or fear of the unfamiliar, we still have a lot more work to do.

As you know, disability discrimination is alive and well in this world. We take on flat out discrimination every day of the week. But we also take on the more subtle forms that are just as devastating. And regardless of the form disability discrimination takes, it damages our whole community as a society. As a community, we cannot afford not to include people with disabilities in every aspect of life. Some of the obvious examples of discrimination that we are still confronting include banks like Wells Fargo refusing to accept relay calls from deaf customers. DOJ required them to effect nondiscrimination policies and provide $16 million in monetary relief for customers nationwide.

We recently reached a settlement for law school testing accommodation policies and stop flagging people with disabilities.

(Applause.)

That settlement required nearly $8 million in monetary relief as well as a $55,000 penalty.

We settled with the Louisiana bar association to stop asking questions based on disability on their applications.

We continue to find doctors and hospitals and other healthcare facilities discriminating against people with disabilities, whether refusing to provide sign language interpreters, not offering accessible facilities, or denying service to people with HIV. We've reached seven agreements with healthcare facilities just this year to address those issues.

Some more subtle examples of discrimination happen in some of the most important aspects of life. Parenting. The internet. Education. Criminal justice. Community living. And employment.

I'll start with parenting. Parenting has frequently been found by courts to be a fundamental right. And yet a report by the National Council on Disability recently noted significant overrepresentation of parents with disabilities in state child welfare systems and included it was due to bias. We recently saw such bias in the Massachusetts department of children and families decision to remove a 2 day old infant from a mother who has an intellectual disability. Although DCS policies support reunification and they had a number of services available to help with this, they didn't offer that family all of the services they offered to other families. They didn't accept that the grandmother wanted to help the mother raise the child in her home. It didn't accept that the mother was pursuing her high school diploma. They didn't consider it a serious possibility that the child could ever be returned to her mother, just because the mother had an intellectual disability. They moved to terminate the mother's parental rights. It's a heart breaking case.

We investigated, and together with the Department of Health and Human Services, found they were violating the ADA and discriminating against the mother because of her disability.

(Applause.)

We demanded they provide the reunification services available to all other parents, as well as compensatory damages. Two weeks ago, after two years of separation, the grandmother was awarded guardianship and the child was returned to her family.

(Applause.)

I wish I had photographs that we were circulating at the civil rights division of the reunification. This is where the rubber hits the road with our work, and our discussions obviously with the state are continuing.

The internet. As you know, the growing reliance on the internet and other technologies for access from everything from groceries to education to employment has a great potential to be the great equalizer for people with disabilities. But only if those technologies are built accessibly. The National Federation of the Blind disability rights advocates, Lainey Feingold, the National Association of the Deaf and others in this room have been leaders in accessibility for technology from the very beginning, and we are proud to join in that work. Yes addressing accessibility in technology with colleges like Louisiana Tech which will now only buy technology that's accessible.

(Applause.)

And with public accommodations like Peapod online grocery service which will make their website accessible.

We have compliance review programs that require jurisdictions to make their websites compliant with the web content accessibility guidelines 2.0. And in compliance reviews of public entities hiring practices, we've asked them to stop asking pre-employment questions about disability in their online job applications and require them to make these online applications accessible.

(Applause.)

Education. We know we have a lot of work to do in education. And we are committed to working with all of you in this room on these issues. Just by one example, though, we recently reached agreement with a university for placing a student on mandatory medical leave after she considered suicide without considering other ways of accommodating her education while she sought treatment, such as allowing her to take classes in person or online or live off campus.

Criminal justice. We are also transforming how police departments and prisons deal with people with disabilities. You've probably heard a lot in the news lately about the police response to young black men, racial profiling, and excessive use of force. We do those cases and yes committed to working with law enforcement to rebuild the trust that is eroded in too many communities. But what you have heard less of is police response to people with mental disabilities. It has been reported that half of the shootings by police every year in many jurisdictions of are people with disabilities. I would urge you to see the recent video that emerged out of Dallas of a schizophrenic individual killed within seconds of a call for assistance. You know, we have to take these issues on. We have taken this issue through our ADA enforcement because too often we have found that police coming in to help someone with mental illness find a person who is in crisis and simply can't follow law enforcement's directions, and too often police officers don't have the training or support to respond to people with mental illness. As a result, officers are called in to help someone and may end up actually injuring or killing the person because of the tragic confluence of circumstances.

Last year we reached agreement with a Portland Oregon police unit and we've already started to see encouraging results. Just a month or so ago, one police officer was called to a burglary. He found a man on the ledge of a hotel about five stories up. He opened the window of that hotel and here's what he said. I peaked around the window and he was right there, less than 12 inches away from my face. It actually made me jump back a little bit. The man was crying and sobbing. That's when the crisis intervention training kicked in. There was no crime being committed and it was time for compassion. He began to speak calmly to the man, assuring him from the start that he was not in trouble. I told him, we just want to help you out, but to do that, we need you to come inside. The back and forth seemed to work. Slowly, the man moved closer to the open window until he was close enough to touch. Both officers reached out, each grabbing an arm, and pulled the man into the room through the window.

The rescue couldn't have lasted more than a minute or two, but once inside, it became clear that the man was clearly in a mental health crisis and intoxicated. Paramedics were also in the room and later took the man to a hospital for mental health treatment. He was not charged with any crime. He was at the point where he would not have lasted very much longer on the ledge, and later, the officers learned that the man had crawled out on to the narrow ledge and then sidestepped his way about 100 feet to the south side of the building. It's scary to think what could have happened.

Just a year ago, that call may have ended very differently. Just a year ago, many calls in Portland just like that ended up with a person on the ledge injured or in jail or dead. But our settlement has helped prevent needless tragedies because it requires crisis intervention training that those officers relied on to successfully resolve this situation. But there are too many jails in this country housing far too many mentally ill individuals in need of treatment, not incarceration.

In prisons, we have long challenged unconstitutional conditions of confinement, and we've recognized the importance of ADA compliance in prisons and jails, particularly regarding the treatment of prisoners with mental health and other disabilities. In Pennsylvania, we issued findings against their use of solitary confinement and failure to treat people as both unconstitutional and violating the ADA. We challenged the use of -- overuse of solitary confinement in Ohio and California.

Last I want to talk about community living. You may have heard about our Olmstead enforcement work. We are deeply committed to the civil rights principle of community inclusion for people with disabilities.

(Applause.)

The ADA requires state governments to provide services to people with disabilities in the most integrated setting appropriate for each person. Olmstead has been called the Brown versus Board of Education of the disability rights movement. It says separate isn't equal and unnecessary segregation is discrimination. The Justice Department and disability advocates and lawyers across the country like you are transforming the paradigm of services that states provide to people with disabilities, I'm proud to say, for one that assumed people with disabilities were not capable of living in and contributing to the outside community, and that assumed it would be cheaper to serve everyone in one place. Because of those assumptions, state systems were set up so that people with disabilities had to go to an institution and be segregated and interact only with other people with disabilities or they had to go without. But those assumptions about how best to serve people with disabilities are wrong. First, the cost assumption is wrong. We can serve just about everybody, no matter how complicated their needs in the community.

Second, we know that people with disabilities benefit from community inclusion. Community involvement helps people with disabilities, it avoids helplessness, stimulates intellectual growth, develops social skills, and increases self-esteem. That shouldn't surprise any of us. A person lives in the community by living in the community, and we all need supports. We need friends, families, maps, Google. But we don't learn to live in the community by staying in one room. Integration of people with disabilities also helps the broader community. Community members learn to accept differences, improve communication skills, and learn from the diversity of experience of people with disabilities.

So through our Olmstead enforcement, we're transforming state service systems from ones that force people into institutions to ones that focus on services provided in a person's home, whether it's their family's home or their own home or a small group of roommates. And since 2009, we've reached transformative settlement agreements with the states of Georgia, Delaware, Virginia, New York, New Hampshire, and North Carolina, and under those agreements, the states must develop community based services for people with developmental disabilities and mental health disabilities and transition people into the community. These agreements are helping more than about 46,000 people with disabilities reenter or stay in their communities.

(Applause.)

At first our Olmstead work really focused on where people lived, but community integration doesn't end at the door of your apartment. The fact that a person sleep inside the community at night will not mean much if they spend their days in an institution, so now we're applying the community integration lens or frame to other areas of life, including school, work, and day programs. Last year we reached a settlement agreement with the state of Rhode Island to transform its employment and day services for people with intellectual and developmental disabilities from ones that sent people to sheltered workshops to ones that support people with disabilities in real jobs with real wages.

(Applause.)

You can read about Steven and Pedro and Lewis on our faces of Olmstead page on ADA.gov/olmstead. Lewis just completed his probation period at work. He earns far more than minimum wage. He receives full benefits and is a union member.

(Applause.)

And you can read about Peter on the front page of the Sunday New York times from December 7, 2014. That article tells how since leaving the sheltered workshop, Peter found a good paying job, he learned to drive, he got a license, he bought a car, he also got his first parking ticket.

(Laughter.)

We couldn't help him with that one. And he got engaged and got married.

We at the civil rights division understand, though, that our enforcement work alone can't change the world. For that reason, we're working with other agencies to address discrimination through guidance and coordination of federal programs. In November 2014 with the Department of Education we released a dear colleague letter to public schools across the country explaining that reasonable accommodations are not assumed. The guidance makes clear that sometimes a school may need to provide auxiliary aids and services to ensure a student has equal access not under the ADA.

We are also working closely with other agencies, coleading the curb cuts to the middle class initiative, a group of 11 agencies working together to coordinate and leverage resources across the federal government to increase middle class employment for people with significant disabilities. Already the curbs cut initiative has helped organize a White House champions of change event and White House summit of employment on people with disabilities.

Over the next few months, the initiative will be developing online tools to bring federal resources to job seekers with disabilities and the companies that want to hire them, implementing job strategies to help people develop the skills they need for careers, and increasing collaborations among American job centers, educational institutions, labor unions, VR agencies, veterans organizations, independent living centers, and others to offer a career path.

We have some unprecedented opportunities right now before us to level the playing field for people with disabilities in all areas of life. But it will take all of us working together. There are great, great challenges ahead. But working with all of you, as well as with other federal agencies, service providers, the private sector, the civil rights division stands ready to do its part to break down barriers faced by people with disabilities. Mother Teresa said, "I alone cannot change the world, but can I cast a stone across the waters to create many ripples." I rarely encourage people to cast stones, but I look forward to creating ripples, even waves, maybe even a few tsunamis of equal opportunity with all of you.

Thank you very much.

(Applause.)

MARC MAURER: As you see, sometimes it's very nice to know people in the Department of Justice.

(Laughter.)

There have been some forms from the DOJ that have been less welcome.

We have a few minutes. We could take maybe 10, and if there are questions, if you will identify yourself and then we will go with them. I don't know whether Dan brought his microphone or not.

(Laughter.)

But if he didn't, we'll try to get the questions in. And you can't all ask about the sheltered workshops because they only get to announce those when they're done. That's what I find is of particular interest at the moment.

Any questions for --

>> I have a comment, in the back.

MARC MAURER: And are you?

>> (inaudible).

I now work with the California department of housing. We are cocounsel in the LSAC case. It has been a remarkable (inaudible) yet that the USDOJ intervened in our lawsuit.

It would be interesting to see how we can do that type of collaboration with other people in this room. Usually it's the DOJ, this is secret, but we're doing such good work and we sometimes could really use (inaudible) especially with the internet and things like that.

VANITA GUPTA: No, look, I think the reason why there are so many DOJ lawyers are at this conference is because we do this work and need to do this work in partnership with what you all are doing. So I would encourage you to catch one of us during the course of this conference about investigations or matters that you think would benefit from Justice Department involvement. And again, as I said, this work really is a top priority for the division, and we want to be able to work with you on these issues.

>> Joe Tolman, professor at the University of District of Columbia law school.

VANITA GUPTA: I'm speak at your graduation, so I guess I'll start speaking then.

>> One of the ironies is that although the Department of Justice, with the Department of Education, are reaching out and saying we need to do more to enforce the IDEA, particularly in prisons and jails and juvenile facilities, the Department of Justice through the bureau of prisons doesn't do special education. And that's particularly problematic for people from the District of Columbia who if they're convicted of a felony and are incarcerated go into the bureau of prisons, so we need to work with you on that. DOJ itself is violating the ADA.

VANITA GUPTA: This is part of our glass house. We at the civil rights division, I think you're absolutely right and we have to strive to ensure that our federal partners are engaging in the kinds ever practices that we are pushing out into the world. So I look forward to working with you on that.

>> David, I live in Washington, D.C. My experience as someone with a hearing loss for a long time, 25 years after the law was passed, many movie theaters are not complying anymore. Their hearing systems are not well maintained. Might give you an example, even the Kennedy Center, which has been an icon, and the Signature Theater in Arlington, no longer have functioning hearing systems. So I would like to suggest that the civil rights division take that on as a problem. It's a nationwide problem, I'm sure.

VANITA GUPTA: Yeah, we are well aware of this problem, and it's very much on our radar. Can't say too much more for the moment, but we are well aware.

(Laughter.)

>> Michael Alan from Washington, D.C. I want to follow on Paula's point. In December, a couple of the sections of the civil rights division invited a group of people to a meeting in Washington with some remote capacity, in a so-called listening session. It was the Title VI session and some folks from Housing, maybe another division or two. I think it would be interesting to see whether that could happen in the context of disability rights, special litigation, etc., so that there really was a forum for folks in this room to talk.

One of the things that came up at that session, there are lots of ways in which federally funded recipients or I should say recipients of federal funds have civil rights obligations that they're not fulfilling, and in addition to the civil rights stuff that the Justice Department can do, in collaborating with the underlying client agencies, funds can be cut off if the conditions are not met. There's a really robust conversation. We didn't come to a conclusion. But I think in the context of disability rights advocates, such a session would be really valuable.

VANITA GUPTA: I think it would be great. I was just making eyes with Rebecca and Eve here. We will set that up. I mean, we do a lot of outreach and meetings with hopefully many of you, but I think it's a good idea to kind of replicate that December meeting. So we'll seek to do that.

On the Title VI piece, it is pretty hard, I will just say, for the federal government to cut off funds per se. There are a lot of ways in which we incentivize the behaviors that we need to promote. So I think this merits a much fuller discussion and we should have it, so we'll set that up.

>> Michael Bean, attorney in San Francisco. I know it's not your office directly, but in the Sheehan case this week in the Supreme Court, a case was taken that's certainly different than what the disability community would have liked. And rather than talking about that case, which is now over or pending, what is it that we could do to help influence the position of the solicitor general? I know you guys debate internally about that, but is there a role we could be playing more effectively in that balance between Justice Department as a police agency or prison system and also as a civil rights agency?

VANITA GUPTA: Yeah. I think that at the civil rights division and for the solicitor general, A, it's very important that you file amicus briefs in these matters to make these positions known. And to be able to really demonstrate the broad consequences of certain positions. So hearing -- I think the court needs to hear from all of you.

I also think it just matters a lot to the civil rights division to be hearing directly from you as we are doing our work on the inside, negotiating the positions. So this line of communication I think needs to be stronger than ever. I anticipate that there will be more and more of these kinds of cases potentially, and so I think keeping that line of communication and making sure that we are fully kind of apprised, I mean, we usually are because there's so many parts of the division that are kind of have a lot of equities at stake in these cases, but I think both of those things are incredibly important. Not just I think to the division's ability to advocate within the building but more importantly for the court to hear from you.

>> Hi. Chuck Weaner. I commend you on the settlement of LSAC. My question is two part. It's about the panel, best practices panel recommendations, if there's any plan to either encourage or push some of the other high stakes testing entities, licensing entities, postsecondary school entities, to adopt the type of recommendations that were made by the panel. And also what plans does the DOJ have in terms of looking at some of the other testing entities that flag scores such as the AANC who administers the MCAT, to stop their flagging exams.

VANITA GUPTA: So I realize this is a woefully inadequate answer, but I can't answer those questions.

(Laughter.)

Sorry.

MARC MAURER: Gotcha.

>> That's good news.

VANITA GUPTA: Oh, I don't want to end on that note.

(Laughter.)

So I'm just going to say that there are many things that are on our radar as we are, you know, as I said, this is a top priority. So I just appreciate being able to come here and be speaking alongside seems the who's who of the disability rights movement. So thank you. Please continue to bring matters to us as we look out for opportunities to advance the field. Thank you.

(Applause.)

MARC MAURER: It is an honor to have you with us, and we appreciate the frankness with which you have addressed the topics and given such answers as were available to you to offer.

(Laughter.)

We look forward to the work that's coming, and we'll have a lot of recommendations. Some of them you'll be able to take. It has been a refreshing time to be able to talk with you. I have an opinion. I'll give it to you.

(Laughter.)

And it is free.

(Laughter.)

I think that the executive order that changed minimum wage law that included people with disabilities in certain government contracts came about, that part of it that had to do with disability came about because of the work of the Department of Justice. I've never had that opinion confirmed, but I've carried it with me, and I've never had it denied either.

(Laughter.)

It's great to have you with us, and we're looking forward to ongoing work with you.

I notice that we're getting close on to the afternoon session. It starts at 1:30. We're going to be dealing with how to enable the participation of people with disabilities in the legal proceedings, so please be there.

(Applause.)

(Break.)

"How to Enable the Participation of People with Disabilities in Legal Proceedings."

1:30 p.m.

MARC MAURER: May I have your attention, please. And if I may have your attention, please.

We have two people for our afternoon panel. They are both judges. We have an hour and 15 minutes for this. So the judges are preferred. You notice the panels this morning were much more packed.

Richard Brown is chief judge for the Wisconsin Court of Appeals. He was first elected as an appellate judge to the Court of Appeals for district two in 1978 and was appointed chief judge in 2007. Judge Brown is a member of the Wisconsin law school board of visitors, the council of chief judges of state courts of appeals, administration of justice committee, and the ABA commission on lawyer assistance programs chairing the judicial assistance initiative. He has lectured on the Americans with Disabilities Act at judicial conferences throughout the United States.

Prior to being elected to serve on the court, Judge Brown was an attorney in private practice from 1973 to 1978, and was assistant district attorney for Racine County. He has a degree from Miami University and a law degree from the University of Wisconsin, and he has an LLM from the University of Virginia. He is the first participant in the panel. Here is Judge Brown.

(Applause.)

RICHARD BROWN: Thank you very much. This morning, Howard was talking about retirement. He let the cat out of the bag. I'm retiring August of this year. I got on the bench when I was 33 in '78, so it will be 37 years on the bench. It's time to go.

(Applause.)

I'll tell you how it came about. I went to the annual judicial conference last year of all the judges in Wisconsin. And it dawned on me that when I first got on the bench at 33 years old, I was the youngest judge in Wisconsin. I didn't know a soul. Back then, in 1978, they were all a bunch of cranky white men. I don't think there was one woman judge or one black judge. I think it was just the most interesting collection of people.

Five years later, I knew everybody. Every judge in the state. All 251 judges, I knew them all.

When I went to the conference last year, I saw these young people. I didn't know anybody.

(Laughter.)

So I figured, it's got to be time to go.

But I'm not retiring from this.

(Applause.)

There's a job and there's a passion. I always feel so alive being around people like you because we're actually changing the way this country works. And it's so uplifting. Personally uplifting to me to work with all of you.

Today I'm going to talk about how I look at enabling the participation of people with disabilities in legal proceedings. Now you've no doubt seen articles in the newspaper about Wisconsin and the polarization that's taking place in Wisconsin. You've no doubt seen articles about our Supreme Court and how they have trouble operating with each other. All that is going on in our state, and I'm not going to speak to it. But I can tell you this. And that is, the ADA is alive and well in our courts in Wisconsin.

(Applause.)

Now, I know there are other stories out there. I hear about them all the time. They exist in other states. But we've done something in Wisconsin that worked. This is a report that was done in 1994. I went to Reno in 1991. That's how I got started in this. It was called -- it was a conference called court related needs of the elderly and people with disabilities. It was a four-day working session. Kristin was there. That's when I first met her. We had four days of discussions and then came away with recommendations. Five of us were from Wisconsin. We came back and said, chief justice, we need to get an interdisciplinary committee started and get this thing working, and to our delight, both the governor and the chief justice were all in favor of that. We got an interdisciplinary committee started, and we met twice a month for two years. And in 1994, we came out with our report. I was looking through this report. Back then, the ADA had just been promulgated a couple years before. Actually came into effect a couple years before. And really, we were starting from scratch. We had nothing to go on other than what we thought would work.

And now it's 2015. It's like 24 years later and I can give you an idea of what we've done in Wisconsin.

The first thing -- I want to mention something before I do. You know I talk about horror stories, and there are some out there. The commission for disability rights has a book that's coming out sometime in the near future. It's being vetted now by the court administrators and then will be vetted by the conference of chief justices and then it will be disseminated to the public and I urge you all to get a copy of that. It's about accessibility and how to get accessibility in the courts. A lot of work was done on it, and I think it's going to be a good product.

Okay. Enough of horror stories.

The first thing about the ADA that stood out to me was the rule that every county, every governmental entity, should have an ADA coordinator. Sounds reasonable. But in actuality, what are we really talking about here? And we found this out. If the ADA coordinator is not a court-related coordinator, say somebody who works with things like sending people to the public library or how do we get people to a meeting somewhere, those people are not trained by the courts. And we've found in Wisconsin that those people do not really do a good job of being coordinators in the courts.

So in Wisconsin, we made sure that even if there was an ADA coordinator from the county, there would also be a court ADA coordinator in each county. And who is in charge of those people? The judges in that county. This is really not a secret. A lot of you who practice litigation know this. Judges run their own court, and they're not going to let anybody tell them otherwise. They set the calendar, they set the tone, and every judge is different. But what we found in Wisconsin, we've had training after training after training. We have now a huge interpreter pool. What we found in Wisconsin is that all the judges in Wisconsin are very sensitive to the ADA. And when something comes up, we have an early warning system so that people who have a disability let the court know ahead of time that they need an accommodation. The judge is right on it. And that judge informs, actually orders, the coordinator to get in touch with the state coordinator. We have a person in Madison whose main job is to provide the accommodations that the county wants. They have all the names, they know where the accommodations exist, they can move whatever needs to be moved. They know what occurs. They know whether a person will need CART services or sign language and they're able to do that.

So the first thing I can tell you, if you really want to make a change is to go to the people who make the ultimate decisions, the chief justice or somebody like that, and suggest that they have an interdisciplinary committee formed to actually make a construct that will work. And the first thing they need to do is empower the judges to use their courtrooms to provide the accommodations. That's what's happened in Wisconsin, and it works.

Back then, we had hearings all over the state, and we heard the horror stories back in 1994. The mobility problems, that people could not get -- people using wheelchairs could not get to the third floor because there weren't any elevators, or that the aisles were too narrow, or that they couldn't get through the doors or they couldn't get through the bar. Lawyers who use wheelchairs were having problems. And up until the ADA, no one was saying anything to the movers and shakers to get it changed. But now they do. The counters were too high. There were no portable ramps. The wheelchair users were often segregated. There were a lot of communication problems because there was a severe shortage of sign language interpreters and very few qualified sign language interpreters. There were fewer than 10 full time interpreters out of 200 -- I'm sorry. There were fewer than 10 people who did CART, realtime, out of 200 court reporters in the state. Only 10. And they had to pay for their own equipment, which was costly to them. The cost for realtime would be about a thousand bucks, just to get started. There was no financial incentive to learn realtime because they didn't get paid back.

There were no such things as large print documents. Actually, there were, but nobody used them in Wisconsin. There was no structure. And that's the main point I'm trying to make is if you're going to do something in a state that really works, you have to have a structure, you have to have a blueprint, you have to have a plan, and then it has to be carried out. That's how it's going to work.

There was no transportation for the elderly to go to the court. No transportation for jurors to get to the court if they had a mobility problem or psych problem.

So today, I look through this book, and today it's totally different. It's like night and day from 1994.

I'll start with building facilities. Back then, practically every courthouse was inaccessible to practically every person with a disability. It was a Herculean task to change things. I don't know who was responsible, probably God, but it just so happened that about the time we wanted to change the way things worked in Wisconsin, every county was thinking of building a new courthouse or an addition to the courthouse.

(Laughter.)

So we had a person, we hired a person to do -- actually it was a designer who went around and did a building facility workup for every county, on what needed to be done to make the courthouse accessible to persons with disabilities. 72 counties, and every county was visited.

I can tell you today, I was talking to the ADA coordinator for the state last week and asking how things were going with building facilities, and she said she hasn't had a complaint in four years. That's because when the new courthouses were built or new courthouses were added into, everybody took the ADA into account. Now you walk into a new courthouse, you have handrails, you have Braille, you have wide hallways, easy to get into, easy to get out of, you have elevators, all kinds of things that weren't even thought of back then. In fact, they have taken the old courthouses which had these huge, beautiful marble floors and ceilings like 100 feet high and they lowered the ceiling. Why? For a lot of reasons. Mainly for people with communication access problems. It made it easier to hear. They put in carpeting. They put in better lighting. And that made the courtroom much more accessible. Certainly it's not as beautiful as it used to be, but it's much more functional.

We instituted an early warning system. Back then there wasn't anybody. Nobody knew how to get in touch with persons with be disabilities, and now it's on every form. You want to swear in a small claim form? It's right on there. You want an accommodation, you let so and so know. You're answering a complaint? It's on there. You have a deposition? It's on there. You have a date for jury service? It's on there. And you're urged to get in contact with the court within a certain time.

Then actually came down because of a case that I wrote a few years back. Some judges didn't get the message yet about how to provide the accommodations in a timely manner. So they wouldn't have the hearing on whether or not an accommodation should be provided until the hearing came, which obviously made no sense. And we had a judge who steadfastly refused to have a hearing before the hearing date. And the reason, however, that he did that was because he didn't like the litigant because he thought the litigant was vexatious. And I said, well, vexatious or not, you have to have the hearing to find out it is the person qualified or is the person not claiming to be qualified but isn't really, which is actually what turned out to be the case with this guy. But you have to find out. You have to have a hearing and make findings. You've got to do this stuff.

Rising out of that case, we now have a rule that all the judges in the state use which says, if they can't -- if they have an issue about providing an accommodation, they have a hearing beforehand. But most judges don't even bother. They say, okay, if the person needs an accommodation, let's get the accommodation so that when we get to the courtroom, everything is taken care of and we can start the trial or the hearing.

Communications access. We now have in every courthouse, 72 counties, we have at least one CART reporter. In 1994, there were 10 in the whole state. And now there's one at least in every county. And what we did, the recommendation was of our committee, let's buy the equipment for the court reporters so that they don't have a financial hardship. And let's get them trained. Let's pay for their training. And that's what we did. And now the rule of court reporters, most of the court reporters, they want to use realtime. The exception are those who don't. So it's working.

I talked about the lower ceilings and the carpets and the better lighting. We now have large print production services. We have personal readers if requested. We have a tremendous sign language interpreter program with people who are qualified by the Registry of Interpreters for the Deaf. I think that's how that's pronounced. Howard could probably correct me if I'm wrong. But we've got qualified sign language interpreters, qualified to be in the courtroom, who know what they're doing. We didn't have that before. We had maybe one or two in the whole state.

And this is something else we've done. And something that you know, you talk about the future and Howard was talking about holograms before. There are some people who because of their mental disability have an issue with being in a place like a courtroom where they're way too anxious and they just can't function well. And so they like to be in a different place when they're deposed or when the lawyer is examining them. And I can tell you, the bar has not been in favor of this in the past. They want that person there in the courtroom. But slowly, the bar is learning to give and take. And what we're finding out is, on an individual case by case basis, the judge and the parties will get together and say, okay, we do want this person to testify, let's get a large screen superimposed on this person, so when the swearing oath is given, here's this person who may be in a building and in a room that is not in the courthouse but you've got that judge looming over, that person will know that when he or she is taking the oath, it means something. And that judge stays right in front of that person throughout the whole proceeding, so that there's a certain air of respect and confidence in the system. So we're starting to see that more and more. And I think that down the road, we'll see a lot of remote use of court interpreters, we're already starting to do that actually, of CART reporters, we're seeing remote use of video, which allows people to stay where they are and not face a problem with anxiety.

Jury process. Back in 1994, the main question was, where does the ADA stop. And many of the people on the interdisciplinary committee, in fact, many people on -- I remember in the commission of disability rights, we had that same debate. And we decided, wrongly, that it stopped at the courthouse steps. So all we did was we looked inward, from the courthouse steps inward. And here's people like me who were very interested in implementing the ADA in a way that was best for all the people with disabilities, and yet here we were looking -- not looking out. And that's all changed now. Now we provide transportation services for jurors who have a disability that creates a problem for them to get to the courthouse. So if it's a mobility problem, we have a van ready and the van takes the person to the courthouse. Same thing with persons who are blind, whatever. We make sure in Wisconsin that the person who is a juror gets to the courthouse.

We have a jury handbook that has access issues in the handbook so that when the person who is going to be called for jury duty gets that handbook like a month or two before, that prospective juror knows that he or she can get an accommodation. All he or she has to do is call a number and it will be done.

We didn't have this in 1994. We ensure now that people who are using wheelchairs are not segregated. We make that clear. In fact, the judges in each individual court make it very clear that they will not stand for segregation in their courtroom.

And we've changed the statutes. The statutes used to call for things like you have to raise your hand to give an oath. Well, some people can't raise their hand. So we took out the language that required the person to raise their hand.

We had language in the statute that said that the juror had to be able to read. Well, there are some very intelligent people who aren't able to read because of learning disability or whatever. That language is now out of the statute. So we've changed all those things that could create a barrier for people with disabilities.

Now I want to come to something that is a personal thing for me, and that is the claim that there are overhead expenses which are so draconian that they can't possibly provide the services requested. You get a lot of county boards saying we don't want to spend the money. Or you've got lawyers out there who are single practitioners and they see a person coming in with a disability and they say, like a hearing disability, and say, if I paid for a court interpreter in my office, I won't make any money. So why should I take that person on. So undue burden has been a big issue.

What I found out was that it is inappropriate to compare the cost of an auxiliary service with the payment received from a client. We said, you can't compare it with whether or not you're going to make a profit. The proper comparison is between the cost of the interpreter and the resources or overhead you have in your office. That changes the equation.

Undue burden means significant difficulty or expense, and we tell the county board, you have to show a significant difficulty or expense. We do that with the county boards, we do that with the lawyers.

Interestingly, Colorado's bar association, God bless them. What they've done is they put together a fund from which lawyers can receive compensation if they provide services for people with disabilities that come out of their pocket, they can get their money back for that. I think that's a wonderful thing. And I urge all the states to do it. When I go back to Wisconsin, I'm going to urge our state to do it because we don't have it either.

There's also an IRS tax incentive for public accommodations that incur expenses for access. It's called the disabled access credit, and it includes reasonable amounts paid or incurred, and you get 50% of the eligible expenses that exceed $250 but not more than $10,500. I never knew that before, but that's great. And I think it just helps provide the services for persons with disabilities, legal services for persons with disabilities that we didn't have before.

Then it comes down to a fight between agencies sometimes, because if you've got a person who is a criminal defendant and they're in the courthouse, of course the court takes care of that. But what if they're having a meeting in the state public defender office? Who pays for that? Well, that's still state money. But the state public defenders, comes out of their budget. Or if it's police department, it comes out of their budget. If it's DA's office, it comes out of the DA budget and that's the way it's worked out in Wisconsin.

Now, how does that bode for the future? I mean, I can't prognosticate another 25 years, but I can tell you this, I told you at the beginning and I can tell you this now, if you get a group together that comes up with a blueprint for the state and you have all the movers and shakers buy in to that blueprint and you start formulating how that blueprint is going to work, then my prediction is, all those horror stories are going to dissipate and that's my hope for the future.

(Applause.)

MARC MAURER: Our next person on the panel is Richard Teitelman, appointed judge on the Missouri Supreme Court in 2002 and was retained in the 2004 general election for a 12-year term. He was elected chief justice for a two-year term from 2011-13. Prior to his appointment to Missouri's highest court, he served on the Missouri Court of Appeals beginning in 1998. Before his appointment to the bench, he served as executive director and general counsel for 18 years at the legal services of eastern Missouri. Early in his career, he was a sole practitioner representing clients such as the St. Louis tax reform group and the united farm workers of America in litigating a number of first amendment issues. He is a graduate of the University of Pennsylvania and the Washington University School of Law in St. Louis.

Here is Judge Teitelman.

(Applause.)

RICHARD TEITELMAN: Good afternoon. That was a wonderful introduction. But like Jack Benny said when he had a wonderful introduction, he said, that was great, I didn't deserve that, but I got arthritis too and I didn't serve that either.

(Laughter.)

Thank you, Marc. And thank you for the great presentation from Judge Brown. I learned so much, and so many things we can take back to my home state of Missouri. Can you all hear me here? Okay. Good. Did I bring materials from our office state court administration of what we do in Missouri, and also a report from our bar examiners on what we do in Missouri to accommodate people.

They're at the desk, where the materials are.

Couple of things. When I was -- just to give a little background, when I was 13, they took me to the home for the blind and they said, I was with my mother who had cancer, they said, well, he's not going to be able to go to college, he needs to go to the home for the blind and stay in the sheltered workshop, there's no way he's going to college.

And my mother told me, actually, the story is in the judicial publication. I didn't know who I was talking to, I guess. But my mother pulled me aside at age 13 and said, son, I'm not going to be there. Your father can't afford to keep you. And your brothers will have their own families and won't give a damn for you. Their own families will take precedence. So you're going to have to work 24 hours a day 7 days a week, and by the way, no girls. You have no time for girls.

(Laughter.)

You have no social life. Your life is to study or else you're going to die.

(Laughter.)

Now, I said that to a bunch of people, parents who are sweet and nurturing to their kids who are blind, and someone said, well, what if little Johnny doesn't want to study? I told her, well, you know, I had two options. Either I studied 24 hours a day 7 days a week or I was going to die. And it was very clear. It wasn't a success thing. It was a survival thing. I said it wasn't necessarily some kind of hypothetical dying. My mother was going to kill me. I knew that.

(Laughter.)

There were no options. So I was afraid. I actually said the same thing to a group, my good friend Scott LaBarre, my hero, shout out to Scott.

(Applause.)

He arranged for me to speak to a group of like 3,000 people and I said, oops, am I encouraging child abuse? I hope not.

In any event, that was my options. Life went on. I could have gone into the sheltered workshop. When I graduated law school, they wouldn't provide a reader. Now, we're same generation. Judge Brown and I, same generation. I graduated law school in '73. The ADA was a dream in Mr. Dart's mind but it was not at all used. But they told me the head of the bar examiner said, well, you can't have a reader. And then going into industries and asking for a job, they said, you're overqualified now. If I had gone to the home for the blind 12 years before, that would have been fine, but now I've graduated, I can't practice law because I can't take the bar exam without a reader, and I go to the sheltered workshop because I can't get a job, no law firm will hire me, and they say, you're overqualified, we won't hire you.

Fortunately, like Streetcar Named Desire, I relied on the kindness of strangers and a number of people were helpful. And that's why I try to pay it forward. Can't pay it back. A lot of those people are dead. You have to pay it forward.

(Laughter.)

I know because I had a wonderful math professor. Even though I was so lucky because of Sputnik. Sputnik really said you know, we needed more scientists and mathematicians. So I couldn't read, I was in remedial reading, but math, we didn't have to read anything. I could do things in my head. And I overcompensated with math. And that's where I put my 24 hours 7 days a week is solving problems. And I had a teacher in high school, I never solved the problems according to the way the book said to do it. I know there's such an emphasis on do the right way. No, no. When they said there's a box, look outside the box, I said, where's the box? I can't even find the box.

(Laughter.)

And so I always did it differently. But this professor liked it. He said, well, here's another problem book. So he arranged for me to go to University of Pennsylvania as a high school student and take all the undergraduate requirements in math at the University of Pennsylvania while still in high school. Because the emphasis, like I said, there were no ifs, ands, or buts. I never got less than 800. And at that time, they did have large print, but I never got less than 800 in any math test or anything else that happened.

So that carried me forward because of Sputnik. It was all Sputnik. The Russians helped me.

(Laughter.)

And I didn't know any Russians, frankly, but Judge Brown is absolutely right about judges. There's a joke that goes around in Missouri that says, these hunters, they go to the same hunting place every year, and they had a dog. The dog's name was Lawyer. A great dog. It pointed out the birds, it caught the birds, even went for beer for the hunters. Great dog. They would come back every year and ask for this dog.

One year they came and asked for Lawyer, and they said, we can't give you Lawyer.

Why not? This is the dog we like. Where is Lawyer?

They said, well, someone made the mistake of calling him Judge, and all he does is sit on his ass and bark.

(Laughter.)

So I've taken that to heart. I bark a lot. I bark a lot. And again, another quote from Helen Keller, "For life to have meaning, you have to have fidelity to a noble purpose." I try to bring that to the floor. The law profession is moving more towards a trade profession. I like barbers, but without fidelity or that sense of justice, we're no different than barbers. It's part of the Deuteronomy justice. "Justice shall thou pursue."

I have a friend who is a young gentleman, a young lawyer, he's in a wheelchair, horrible accident when he was 16 or 17, and he goes to the ABA meeting and marks his form, need an accommodation. Well, so they're supposed to provide -- sadly, there's only like three people in wheelchairs that come to these meetings of thousands of people. First day, he wants to go to the reception just like everyone else, to make contacts and get himself going and do some good. They didn't send the bus. The bus was supposed to transport him to the reception.

The next day, they sent one that was malfunctioning. There was no one. I have three people who make sure I don't walk into the walls and they're good at that. But they go ahead of me and check out the paths, make sure I have easy access and get there. There was no one in Dallas, Texas, who was there from the ABA to help this guy get to the meetings he should go to when he marked the box for accommodations.

Sometimes -- I had a great secretary. I dictated a letter, and sometimes she would hold it a day because you know, maybe you didn't want to say the way you said it.

(Laughter.)

And she was right. So I had a new secretary and she has the same policy. I would dictate a letter, angry as heck. But I knew the president of the ABA very well, so I toned it down. Laura Bellows. I sent her a letter. Wonderful person. I suggested a way of working with mine and Scott's committee of making sure this is followed through with. It's not just something on the words that we accommodate. You get the thing done.

To her credit, she followed through and whenever I see her, she thanks me for bringing it forward. She says, you know, you're not only bringing it forward, but you bring a solution with you. I said, yes, we need to get it resolved.

So my friend went to Houston and that was much better. Minnesota next and then Houston, and they did a good job of accommodating him.

Ultimately, my friends, I didn't even know I had lawyers representing me, and the law school really went forward on it and got the rules changed in Missouri, but since then, we've had 22 people with accommodations and we had a bar exam with three blind people passing the bar. I asked, could you please ask them to stand, and she wouldn't do it, but I was the chair of our committee too, like Rick. I was a Court of Appeals judge, and I said, yeah, this is a great idea, but then they said, but there's a wonderful person in the court administration who is very principled, and you have to change the courthouses. And my chief justice at the time, really nice guy, he said, that might cost money. All of a sudden my report, which is like two volumes thick got lost. I don't know where, but it got lost. And they didn't pursue it.

Then I was elected to be president of the Missouri bar, 32,000 lawyers in Missouri, I was elected unanimously by the board of governors and then I got appointed to the Supreme Court. And I had a committee set up. People might try to stop me, but I never get stopped. I keep barking. But probably at least sometimes I get my chance. So I had a committee set up to promote legislation changes and administrative changes throughout the state courts and for people with disabilities by the leading people in the state. It was a 3-3 vote and the Supreme Court said you cannot be president of the Missouri bar. So I just kept on marching forward. And legal aid, following Judge Brown's thoughts, we did a lot of work for people with disabilities. One of the areas, like one of the new accessible courthouses, we had jails, all locally financed and paid for. We had jails that were unconstitutional. And so legal services in Missouri, when I was the director at that time, we had seven counties and seven jails. We sued all seven counties to say these jails were unconstitutional. And the judges, not missing a step, of course the entire community railed against this. They called us liberals then. They said we were trying to cost them money and take down the system for these prisoners. But you know, the law is the law. That's the good thing about the law. The rule of law. So the federal court said, we may not like it, but we have to provide jails where if they have a fire, people aren't dying because there's no fire extinguishers. So once we got orders saying they had to build a new jail, we said, you know, this is an opportunity to build a new courthouse. So they lobbed the courthouse on to the new jail, which of course being new they would be accessible. So we built seven accessible courthouses. And the nicer ones, the sheriffs didn't want to run dungeons. They wanted professional jails. They invited us to the ribbon cutting. They wouldn't say who we were because we were pariah in all these counties with the people who were the leaders because we forced them to do justice. But by God, we did it. And a lot of other areas. There was a Governor Ashcroft, and he said, we had 2,000 people who needed AZT. And at the time that was the only drug that could help people who were afflicted with AIDS. And he said, no, it's an experimental drug, we're not going to pay for it. So we sued. And we got them to pay for it through the eighth circuit Court of Appeals.

We had another case where Ronald Reagan -- that shows how old I am. Ronald Reagan's administration had a regulation that said no inmates at publicly held institutions should receive Medicaid. Well, in Missouri, some people call it St. Louis and Kansas City and Mississippi. Pennsylvania they call it Philadelphia, Pittsburgh, and Alabama. But it is a different mindset. And in Missouri, the big cities have nonprofits or profit making, these nursing homes are very profitable. And in the rural areas, there are no nonprofits. So municipalities actually own the nursing homes. And the people in the nursing homes are residents in a public institution. And Ronald Reagan's administration in its infinite wisdom said, well, we're not going to pay Medicaid. So all these nursing homes with people with dementia and Alzheimer's and other afflictions in nursing homes are going to be set out on the street because there was nothing to take care of them because the federal government would not pay the Medicaid.

And we sued and we won in the district court and then the eighth circuit, but then the federal government said, very wisely, that's fine, we're not appealing it, what's your next case. Our next case was a class action. And that way they couldn't avoid paying. But that's the absurdity of bureaucracy. That happens all the time to us and to the folks we work with, and I've always said, yes, I may be legally blind, but I'm not like often you see someone, a child with a disease, but it's not just about us. It's about everyone else around us. And justice anywhere say threat to justice everywhere. That I'm legally blind doesn't mean I don't feel the pain of someone who is in a wheelchair who needs accessibility or the person who can't hear and needs to be in court. I've insisted on interpreters. Everyone knows I will keep barking. Maybe up the wrong tree sometimes, but I'll keep barking until something is done. And even though I'm meeting agnostic, I hate going to meetings, so much time seems wasted, however, to get in a position where I can be of help like to that gentleman who went to the ABA meeting or we had a situation in St. Louis where the court appropriated $35 million to fix something up and the chief judge, a friend of mine in a wheelchair, David Newburger, he wrote a memo and brief to the court to say we need a ramp that's accessible and we did have accessibility, but it was in the back door. He had to go down this ramp, no one knew you were coming, there was no button, and he would go through the pipes. I said, these are Missouri citizens and people, we need front door justice. So like I said, being in a position, I did become president of the St. Louis bar association and we had a bar foundation, and the judges wanted us to raise money for whatever projects they wanted, discretionary money, we raised a million dollars. At that time, I was president of the bar association, the money was proposed, and I called the chief judge in, probably one of the stupider things a lawyer could do, but I was born to be stupid. I was head of legal aid. Not in helping my clients but as far as your career path. Almost no practicing lawyer would do this to the chief judge of the circuit court of the city of St. Louis, but we called him in and said, you know, chief, I am going to give all that million dollars back to people if you don't give us front door justice, if do you not give me a ramp in the front of the court so people can come in to the court with dignity as citizen of the state of Missouri, I will not allow that and I will give that money back. I will send the check back to everyone.

(Applause.)

And you know, that judge, you know, when you do stuff like that, people have enemy lists and long memories, but we're good friends. It's just a matter of standing up for what is right. I see people who are afraid. When you stand up and do what's right, fortunately, enough people in our society and in the legal system appreciate that. That judge and I are good friends, but it was still we needed to do the right thing.

So the right thing now is to leave you time to ask questions. And I thank you so much for your patience.

(Applause.)

MARC MAURER: Thank you very much, Judge.

We will now take time for questions. There are mics on the tables for you two and we'll work on these questions.

I noticed in certain courts that it's hard to get your documents filed if you're a blind person, and it's hard to read the documents that other people file if you're a blind person. How are you folks doing in Wisconsin and Missouri on that? I thought I would ask the first question.

(Laughter.)

RICHARD BROWN: Well, Wisconsin, we have a very strong foreign language interpreter program as well. So we've taken a page out of that. With foreign language interpretation people who speak and write Spanish, get English translations, and the question isn't whether they're going to get them, the question is which agency will pay for it.

We do the same thing for people who have vision problems. Same thing with people who have other kinds of disabilities. We try to accommodate them by providing a translation that they can use. Large print maybe. And we've done that. We've done our appellate work decisions and provide them in large print. So we're very proactive in that area.

MARC MAURER: Can you do electronic filing? Can you get electronic copies of your documents, Judge?

RICHARD BROWN: We have electronic filing in Wisconsin. It's growing all the time. In fact, it's probably one of the most frontrunner issues that we have. The question is, how soon can we activate getting the circuit courts, the different counties, to get on electronic filing and send the stuff to central filing in Madison with appeals and how soon could we get the lawyers on board. So it's an ongoing thing, but yes, electronic filing is a big deal.

MARC MAURER: Did you want to comment, Judge Teitelman?

RICHARD TEITELMAN: Yes. I'm a Luddite. I'm not very computer oriented. I came before computers. But not really. I really support technology. We do have electronic filing in almost every county. In fact, it's mandated. Sometimes too much. But they have these things, Zoom Tack and things like that. Once it's in the computer, for a lot of people you can make the type grow, you can do a lot of different things. So it can really help make that accessible to people. But we have actually in the cities we have very sophisticated migrant immigration programs, and they have computers where you can have 34 languages. You can interpret 34 languages through the computers. We have 34 different kinds of groups in St. Louis. They can interpret it. So we have those interpreters available. That was hard to get.

The deaf interpreters was easier because we said it was mandated by -- oh, there was a lawsuit in Rhode Island or something, and I said, you don't want that to happen here, it will cost you money. So we got the legislature to put in money for sign language interpreters and interpreters in trials, and even before, like Judge Brown says, absolutely true, the problems occur before you get into the courts. Sometimes it's too late once you get into the courts. So that they're available early on to people that need those services.

MARC MAURER: For those who are geographically challenged, you mentioned a little country near Ethiopia.

RICHARD TEITELMAN: I had read a lot of cases in St. Louis where people were seeking asylum and didn't want to go back to Ethiopia and be killed.

MARC MAURER: Other questions?

>> I'm Joe Tolman from the University of District of Columbia. My repeated theme. We incarcerate 5-14 times more people per capita than the other advanced democracies. We're more incarcerated in the juvenile system than the next highest country, which is South Africa. Most of the people getting locked up don't have what might be considered obvious disabilities. They're not deaf or blind. 75% of incarcerated people in Australia have a language processing disability. Not an obvious disability to people not aware. Most people crammed through our overcrowded criminal court system are not following the proceedings well, they're into the sifting their attorneys effectively, they may have PTSD or TBI or language processing problems. We're not accounting for or accommodating any of those disabilities that I've seen. So I would like both of you to react to that problem.

MARC MAURER: Who would like to begin? I'm asking the judges which wants to start.

RICHARD TEITELMAN: I'll give Judge Brown a break and I'll start first. He'll do a much better job than me.

Couple of things. I just fought this out last week on an execution. The gentleman was lobotomized when he was 74. He had a piece of his brain taken out in an accident. He had a measurable IQ of 71. The cutoff point was 70. And there was a vote of opinions, 36 opinions written for the majority, 26 for the dissenting and it was the published opinions. Our side said 71? And you're going to execute someone on one point? And these IQ tests are so wishy washy, who know what's they say. 71 and the cut off is 70, you're going to execute them? Four judges said yes and three of us said no. So that's an obvious position of disability, and in fact a friend of Scott and mine, Jim Ellis from New Mexico, argued the case in the Supreme Court and said you should not execute people with disabilities.

And I also am an outlier. I actually like Wisconsin. Not that that's an outlier, I like cheese too, but I want to eliminate the bar exam. Because --

(Applause.)

-- it's one thing for people who need a reader or large type, but people who are ADD, people who have learning disabilities, people exactly who you're talking about, they don't know how to accommodate, and these bar exams, I use this analogy and no one questions me on it. I live in the inner city in St. Louis. City schools have a magnet school which is actually an amazing school, top rated school in the state, and it's 80% minority, and I say, you give me five kids from that school, high school, and you give them a bar review course, any bar review course, standard bar review course, and they will pass the bar because they can take standardized tests. There are people who are limited, and there's no way of defining whatever people's accommodations need to be. They don't know. And they complain about it. People pay $150,000 in some cases to go to law school. Put the burden on the law schools. They're going to charge us that amount of money, make sure they're good lawyers. But you're going to charge them a fortune and then bar them because the accommodations aren't there for people with learning disabilities? And I mentioned Wisconsin because they don't have it. If you graduate from Wisconsin Law School, you are a member of the bar. So I've been fighting for that. And no one has taken me up on this. Five any kids, give them a bar review course and they'll pass it. Because what's law school? What's the law school degree and what is the bar exam? Northeastern University, work-related jobs, as opposed to the bar exam, it's an unnecessary bar.

>> That's not my question.

MARC MAURER: Yeah, you might want to get back to the question, there, Judge.

>> I object!

(Laughter.)

You're pushing a lot of people with disabilities through the court system and locking them up instead of accommodating their disability. That's what I'm asking.

RICHARD TEITELMAN: You're right.

MARC MAURER: Okay. Judge Brown has a comment.

RICHARD BROWN: In Wisconsin, we have more African-Americans incarcerated in our prison than any other state in the United States. And Wisconsin is a pretty white state. So you can imagine what the problem is with people with disabilities that are in the prison system.

It's been something that's been a topic of serious discussion with judges at judicial conferences for years, and we've asked legislatures to do something about it. We've asked people from the department of access to do something about it. But we're not making much headway. And, in fact, there's a case now, I can't talk about it at length, but it's in our court and I could tell you what it's about, and the issue is whether or not they can give drugs to people that they think need it even though there has not been a finding of dangerousness. So there are issues that are coming up. There's no answers. But I can tell you that many, many judges in Wisconsin's courts are concerned about it. So concerned that they are talking to people that they think could make a difference, but nothing has happened yet.

MARC MAURER: Other questions?

>> Yes. My name is John Waldo. I would like to address this primarily to Judge Brown but certainly would be happy to hear from anyone on this.

First of all, Judge Brown, do you allow voir dire questions about the existence of a disability of a juror?

Second question, do you excuse people for cause because of a disability, like hearing loss?

And then I also have a comment. You tell me that you say in all of your papers and so forth that if you need accommodations, call a number. Calling a number doesn't work very well for me and it may not work very well for you. I mean, it's a little bit like saying wheelchair entrance on second floor. Do you have a website where people can ask for accommodations?

RICHARD BROWN: Yes, there is a website. There's also the handbook that is given to all prospective jurors. As I said in my original remarks, Wisconsin is pretty proactive in getting those people to the courthouse. If they have ambulatory disabilities. Because we want those people to serve.

I probably have run 1,000 voir dires, and I have not yet seen one question asked to a prospective juror about the person's disability, because what happens is, usually the person with the disability asks for an accommodation, the judge sometimes will talk to the person with the disability with both lawyers present and say, if you have this disability, if you have this accommodation, are we okay here, and what do you need to do that. So we've had jurors who use CART. We've had jurors who have sign language interpreters. We haven't had any major problems. I haven't seen one case out of our courts. That's the best I can answer.

MARC MAURER: All right. Did you have comments or shall we see if there's another question?

RICHARD TEITELMAN: My concern with it is that the jury commissioner stage, if someone comes up with a disability, they'll say, we excuse you. So you have to find someone who wants to serve on a jury enough to pursue it. So you have a lot of juries, we have people with disabilities appearing before the juries as plaintiffs but not many people with disabilities on the juries. And the jury commissioners do that.

MARC MAURER: Other questions? We have time for one other.

>> Hi. Excuse me. I'm Jasmine Harris. I teach at the American University Washington College of Law. And my question is primarily for Judge Brown. You mentioned that there are hearings on the accommodations themselves. And so it's a two-part question. The first is, are there rules in Wisconsin and are they court based on is there a statutory provision that deals with the process by which an accommodation is to take place? I'm more concerned about the hearing itself.

And second, the question has to do with the hearing. You mentioned that judges tend to grant these without the hearings themselves. In the cases where there are hearings, and how many do you think still take place, are these opinions publicly available?

RICHARD BROWN: Okay. Thank you for that question. No, there's no statute. It comes from a case that I just happened to write. And what I did was I set out what you do first, what you do second, what you do third. Now, usually what happens is the judge doesn't question the need for an accommodation. Usually when somebody asks for an accommodation, the question is how could we get that accommodation. So the judge will talk to his or her clerk who is the ADA coordinator for that judge, and that clerk then calls the person in Madison and they get it done. So that's usually what happens.

However, there are times when the judge doubts that this person is qualified under the ADA. Usually it's somebody known in the community, somebody who is vexatious, they say they need a sign language interpreter and then you see the person out in the hall talking on the phone and the judge says, what's going on here. So they'll have a hearing. And at the hearing, the person could bring a doctor in or have a letter from a doctor saying I have this disability, I need this accommodation, and then the judge makes findings of fact on whether or not that person is qualified. If the person is qualified, then they get the accommodation.

The issue is, once that is done, the issue is what kind of accommodation. We used to have those issues. For instance, we're not going to have a sign language interpreter here because the person can get notes, get note taking, or we're not going to have a problem with people speaking who aren't able to speak because it can get done another way. What happened was the person in Madison, she's very good. And she just comes right out to the judge and says, you can't do that. And the judge usually accepts that. So we don't have that issue anymore.

MARC MAURER: Most people don't say that to judges. Except other judges.

(Laughter.)

And cutting off judges, this is very unusual --

(Laughter.)

RICHARD BROWN: The question was, this person had a learning disability. So the judge called in our ADA coordinator and said, I need to give this person extra time with this learning disability. And she said, is there any reason why you can't take any longer in this instance? Why would it be such a hardship for allowing this device? Any reason why you can't explain it later? Any reason why you can't allow frequent breaks? You know, if the issue comes up, they say, why can't you do this or that. And pretty soon the judge pulls back and says, okay, I'll do it your way. So long story short, we nip it in the bud.

MARC MAURER: Thank you, Judge Brown and Judge Teitelman.

We are now going to have a break, but as soon as we're done, we have some workshops. We have update on medical school cases and we have parental rights and guardianship and then we have the impact of state laws that require medical practitioners to provide information on Down's syndrome and making a prenatal diagnosis, and we have an assessment of reasonable accommodations in employment cases since the passage of the ADAAA and we have successes and challenge inside making electronic court documents accessible. And after that we'll have a break. And then we're going to be back here, so please make your way to those various places.

Very good to have you judges with us.

(Break.)

“An Overview of the Unique Challenges Faced by Criminal Suspects and Offenders with Intellectual and Developmental Disabilities”

4:15 p.m.

MARC MAURER: All right. Now, this afternoon, we have an item on this program entitled: An Overview of the Unique Challenges Faced by Criminal Suspects with Offenders with Intellectual and Developmental Disabilities.

We have three people to present on this topic. Leigh Ann Davis is program manager for the Arc National Center on Criminal Justice and Disability. She has 20 years of experience at the national level on intellectual and developmental disabilities in the criminal justice field.

Then we have Beverly Frantz, who is the project director for Temple University's Institute on Disabilities Criminal Justice and Sexual Health Initiatives. She is a faculty member.

And the third person presenting on our panel is Kathryn Walker, a criminal justice fellow at the Arc's National Center on Criminal Justice and Disability. She completed her graduate work at the University of Miami. She worked in the health rights clinic.

These three have a coherent presentation to make. We will begin with Leigh Ann Davis, and she will help the others fit into the presentation. Please welcome this panel.

(Applause.)

LEIGH ANN DAVIS: Good afternoon. We are very excited to be here. And in the spirit of the 12 steps, we had an earlier speaker, Howard, talk about, hi, my name is Leigh Ann Davis, and I am not an attorney.

(Laughter.)

However, we did hire an attorney for this project, so I think we should get some kudos for that. I am the program manager for the Arc's national center on criminal justice and disability. It was actually the passage of the ADA that brought me to the Arc originally when I was about 24 years of age and started working in this field. We got a grant through the Department of Justice to create materials for police officers, attorneys, and people with disabilities about how to communicate with each other and what different kinds of accommodations are needed when all of these different target audiences intersect.

So one thing we do want to point out is even though we are focused on intellectual and developmental disabilities because we are with the Arc, we really see this as an opportunity to have cross-disability impact. Within the national center, we have people from autism society, we have all kinds of partners that cut across disability fields. We also work with the police executive research forum, PERF, and IACP, the international association of chiefs of police. So we have American Bar Association. I mean, we try to get as many partners as possible to really start looking at the issues around criminal justice and disability. And in that, we'll talk more about the things that we're offering now so that we can really provide solutions and not only just discuss the issues and the problems.

You know, many issues have surfaced that draw attention to this issue in general. The Ferguson case and the Sheehan case. One of the things that Justice Sotomayor said, we have to discuss these issues before they jump to violence. We're looking at how to train law enforcement and attorneys around victim advocacy issues.

This really started a number of years ago as we looked at and finally got some funding to look at how the ADA applies to criminal justice, people in the criminal justice field. And it started with Delores Norley, an attorney out in California who had a child with a disability. She wanted to get training for her police officers within her state. Because of her advocacy work, she was able to get statewide training and that really laid the foundation for us to then take that information and develop full curriculum around how do we provide training to police officers. And that was just a three-hour curriculum.

But since that time, we've been able to get additional funding, which is what we have now, through the bureau of justice assistance. What's exciting about this grant in particular is that we're able to look not only at offender suspect issues but also victim's issues all under one roof. This really provides us a new opportunity to look at the full gamut of issues that people with disabilities are facing, whether they're victimized or a suspect in the system.

And just some of the statistics that you may already be familiar with, is that we do know that this is a population over represented in the system. One statistic found that they represent 4-10% of the prison population, as an example. With even more in juvenile justice facilities and jails. We will be speaking at the American jail association coming up very soon to make sure that they're educated around these issues.

Also a national survey that was done of education services in juvenile corrections found that 33% received special ed services.

And then an estimated 70% of justice-involved youth have disabilities. We don't have near enough research that we want to have on this, but we know it's an issue. The funding has not been there, so we continue to advocate that we have more funding to follow these cases and really try to identify exactly how many people are in the jails that are affected by disability.

And these are just some of the overview issues that we are faced with on a daily basis as we try to provide help to families and training to others around this. So some of the challenges, as suspected, are people often don't want their disability to be noticed and will try to hide it. Many times people with intellectual and developmental disabilities know that they could be even more taken advantage of or have a fear around disclosing their disability. They often don't understand their rights but they pretend to, and that really is an issue when it comes to reading the Miranda rights and things around this. They'll say what they think others want to hear. They have little options for alternative sentencing once they're in the system and/or treatment.

And I did want to include victims in this talk even though that wasn't in the title, because the fact is, most of the time people with disabilities are going to experience both. And we know that the rate of victimization is very high. The national crime victim survey now has within their survey a slot where you can put if you have a disability. So based on that data, we know that the amount of people with disabilities being victimized within our country is much higher than most people had realized before. And, in fact, when you look at different types of disabilities, we know that people with cognitive disabilities face the highest risk, and that's one of the things that we're looking closely at in the center.

So they're easily victimized and targeted for victimization. They're less likely to report victimization or be able to. They may not even realize that what is happening to them is a crime or that it's even abuse, because they don't typically get the same kind of education around those issues. They're easily influenced by and eager to please others. They think the perpetrator is a friend. And this really gets to the issue of wanting that acceptance, needing that peer group, and that's things that they don't often get, so they'll be more apt to do whatever is necessary to feel like they're keeping that friend, even though that person is victimizing them. And another big issue is not being considered as a credible witness. This continues to be something that actually Bev will talk about because of the communication issues around that and how difficult it can be to convince attorneys or the courts to say that this person is credible, but it's just a matter of providing those accommodations that are needed in order to make sure they're able to communicate.

And then other disadvantages in the system. They're frequently devalued, ignored, and their cases are rarely prosecuted. Routinely excluded in criminal justice system due to the stereotyped views. They're often denied due process and effective representation. And then abused, exploited, and often excluded from rehab programs when they are incarcerated.

I think a big issue to raise is that the first one here, that does often not identified. This is important I think to make sure that people in the criminal justice system understand and one that we've been talking to ATF agents about when I give a training to them in Florida in the past year. Many times these disabilities are hidden, and we know that, for example, people with intellectual and developmental disabilities, approximately 87-89% of all people that have that type of a disability, they have a mild disability. So it's not going to be immediately seen, unless you as an officer or attorney start asking specific questions. You could miss that there is a disability there and that it's impacting your case or impacting that person's ability to receive access to justice in some way. So we have to be about training around these issues and making sure that we are identifying those disabilities.

False confessions are common due to a desire to please. Again, the officer or the investigator. We've seen many times where people are placed in institutions in order to regain competency and they can end up there for years. So it's basically like having a jail or prison sentence because they're stuck in a place waiting to regain that competency.

Often unable to assist in their own defense. Their rights are waived unknowingly. Or denied the right to speak when testimony is deemed not credible.

With all of these issues, which probably many of you have heard before, one of the things that we had been wanting for a long time is to develop a national center that could really bring all of these issues under one room. And I have a picture up here of a person sitting in front of a big sea, and the quote is, "There is nothing more powerful than an idea whose time has come." And we feel like within the disability field, our time has come. And now is the time for us to be able to come together. All of us within different sectors of the disability field, but also creating a community where people who are in criminal justice can come together and the legal profession, and in victim advocacy. We're really excited to have that opportunity with this national center so that we can start bridging the gap between, whether it's we use different language, different terminology, we have different viewpoints on things, but if we can start talking about that more often, specific to this issue, we feel like we have a chance to really make some inroads.

So just a little bit about what the national center is. And we do have flyers on the back that you can grab on your way out. So the national center on criminal justice and disability is a training and technical assistance center funded by the bureau of justice assistance. As I said, it's the first national effort of its dined address both victim witness and suspect offender issues. We're a national clearinghouse for information and training on people with disabilities in the criminal justice system.

And our goal is to really build capacity of the criminal justice system to respond to gaps in existing services for people with disabilities, with a focus on intellectual and developmental disability.

We have strategies to build capacity around this. What we've seen is that even when we've tried to get something going around this issue, you know, many times our grants are very short sighted, and we don't have opportunity to gain momentum so that we can take what we've learning into many years down the road. So we've seen that there's really no nationally unified group of advocates or self-advocates able to take this on at the level it needs to be over a long period of time. In response to that, first of all, we created the center, but secondly, we created the pathways to justice training with disability response teams to sustain the training throughout the country. We're having our first pilot throughout 2015. So we have five pilot sites and we're going to use those teams to really create multidisciplinary response to the issue.

I've heard throughout the conference that training is a big key to make sure that we're addressing this issue across the board, but you know, training in itself is not really going to make the kind of impact that we need to see happen. We need to make sure that there's buy in around the training, and in order to do that, we have to bring together all the different players and find out what motivates that officer to get training on this. Does that person have a specific reason to be motivated? Do they have a child with a disability? I mean, what is their desire around that?

Same thing with the legal profession as well as the victim advocates. And making sure that from the get go, we already have a committed group of people that want to see this happen. And we're thankful for the training around mental illness with the CIT training and the crisis intervention training, but one of the issues with that is that most of the time the area of intellectual developmental disability is only touched on or out of a 40-hour week training you only get maybe two hours dedicated to that topic. So we're really looking at ways to make sure that officers understand other disabilities like autism and mild intellectual disability which a lot of times they're not even recognizing.

So in order to give you a more of a global view and understanding of the kind of issues that we're addressing, we developed this pathways to justice video. What's really important to us is that you know the stories behind the statistics, and that you have an understanding, which many of you already do working in this field, but just how critical it is whether the person is a suspect or a victim, that we're able to provide the information and training around their cases. So we're going to show this video. And hopefully it will work.

(Video.)

So with that video in mind, we do have a number of resources I hope as attorneys you will consider coming to the national center to get support and more information around these issues. We have I&R service, and we have probably logged probably around 300 now since the center originally opened where we support anything from assisting in death penalty cases, sex offender cases, cases around sexual assault victims. Any case that's out there where a family is needing help or attorneys wanting information or providing information to police, we are here to provide that support for them.

We also have a webinar series all archived on our website. We first looked at victims' issues and then moved over into offender issues. Our next one is on violence and bullying of people with disabilities. That will be one that's very exciting for us because we're also having a white paper released at the same time, and that's on April 30th.

Then we have many publications as well. We have fact sheets specifically around autism spectrum disorder, FASD, and other specific diagnoses. And then we have an online resource library and state by state map to find resources in your state.

>> What's the website?

LEIGH ANN DAVIS: Well, it was on the last -- it's just www.thearc.org/nccjd.

So we definitely want to get also within our resource library, we want to have expert witnesses in there and experts who are in the legal profession that work on these cases. We're trying to build a whole database so that when questions like this come up, we have people that we can refer others to, because right now there's really no such database, and if you go to the American Bar Association and try to find this information in other ways, there's no such resource that exists around helping on cases involving victims and offenders with intellectual disability. And finally, our pathways to justice training curriculum, and it's really a full program because we are building disability response teams along with this, and that's what Kathryn will talk more about now. So I'll hand it over to her. Thank you.

(Applause.)

KATHRYN WALKER: Thanks, Leigh Ann. This is an exciting and intimidating audience for a new lawyer. But I would like to tell you a little bit about the pathways to justice training curriculum that NCCJD has been working to develop. What we have up here right now on the screen is a chart representing what we hope it get out of disability response teams, the multidisciplinary teams we're hoping to get into action around the country. The Arc has almost 700 chapters across the country. We're hoping that each chapter will recruit a disability response team leader and we can kind of be home base in Washington, D.C., but that they will really take ownership in their community.

So we have disability response teams hosted by chapters across the top, and then those DRTs are split into two categories: Criminal justice professionals and the disability community. And criminal justice professionals are law enforcement officers, victim services providers, and attorneys. On the disability community side, family advocates and disability advocates other than the Arc and self-advocates which we think are very important to making our training effective. And as Leigh Ann mentioned, we are -- our expertise is intellectual and developmental disability, but we are very open and excited to make this a cross-disability initiative, and we that I this framework is very tone that kind of collaboration. So definitely pick up our stuff off the back table and talk to us. That's why we're here.

So the disability response teams will be recruited in a specific location, and they will attend a day-long training. We'll start with everybody in the same room together, all these professionals, self-advocates, other disability professionals, family members, etc., everybody together. And we're going to talk about disability with them. We're going to start with kind of the social model talking about some stereotypes that people might not even know that they have and move forward to the medical model because the reality is our criminal justice system still uses that model whether we like it or not. And then we'll have a break for lunch and then have our specific criminal justice professionals. I'll take the attorneys, Leigh Ann will take the service providers and the law enforcement officers and get into the nitty gritty of how to do their job well.

Then we all come back together at the end of the day and go through case studies and talk about the things you just learned and apply some of those things.

This is the pathways to justice model. It's based off of the sequential intercept model from the mental illness world and we have adapted it for intellectual and developmental disabilities. On the screen is a complicated model I'll do my best to explain out loud.

The middle line is tier one. On either side above and below are flowchart lines comprising tier two. The central line has multicolored rectangles with a path through the criminal justice system. Each box is a different intersect. The middle line starts and ends with a white community box, and there are five intercepts in between. The first is purple. That's first contact. The next is blue, the investigation stage. Then green for jail. Red for trial and plea agreement. And orange for transition. And then a white box at the end, back to the community.

From this central line naming the intercepts, the model expands out to flowcharts above and below. The one on the bottom provides details about victim/witness pathway through the system and the flowchart on the top does the same for suspects and offenders. There's a yellow triangle in the background that is wider in the first intercept at first contact, and then narrows towards the transition stage, indicating the number of people in the system at any given time. So we think that it's more at the beginning and then it narrows out towards the end.

And what we hope to use this model for is really just to facilitate discussion among criminal justice professionals and disability advocates to start bridging some of those cracks in the system that you saw in the video. And we're hoping that at each stage we can talk to these professionals about the need to identify, accommodate, and support people with disabilities. So we're hoping that those three actions will be right on the top of the list after professionals have had our training. And in addition, that people will start talking to one another across some of these intercepts so that the police officer that is primarily involved in first contact is talking to the defense attorney who is working with someone in jail currently.

So again, not exhaustive, but a way to start talking about things.

I'm going to give you one example of an information and referral call that we got out of Illinois. Young man named Jack had intellectual and developmental disabilities and he was charged with felony assault right after moving to a new group home. So he had an altercation with a new house mate, and a third house mate called the police. When the police arrived on the scene, he ended up striking a police officer. What happened was Jack tried to leave the scene because that was one of the coping strategies that he had been taught to use when he felt stressed out, and the police officer was not pleased with that response and grabbed him by the hoodie from behind and threw him to the ground, which Jack did not take very well. He ended up being Tased and it was a very ugly scene. He was read his Miranda rights on the spot which he promptly waived, had no idea what happened, no assistance.

So for us that's an example of a failure and breakdown at first contact.

Then Jack was transported to jail. He spent 24 hours in jail without support or access to his medication. His parents called the jail after they found out he was there. The jail did not call his parents. And they tried to inform the supervisor of Jack's needs, and the response from jail staff was that Jack should tell them what kind of medication he needed and how to get in touch with the pharmacy, which Jack was not able to do. So he sat in jail without anything that he needed. So that is obviously a breakdown in the green intercept, in jail.

Then he was assigned a public defender for bond court. Initially bond was set at $30,000, which Jack certainly couldn't pay nor could his family. Now, this is where we actually have a positive outcome. The public defender and an advocate in Jack's family reached out to us. We got together a plan for them, a way to outline supports and services that he had in the community in a way that the court could see it, read it, acknowledge it, and understand that there was a safety plan in place and that Jack was going to come back for court.

So then bond was reduced to $10,000 after the family and everyone spoke to the judge and he felt comfortable there was a plan in place.

While out on bond, Jack was evaluated by the state psychiatrist and was found incompetent to stand trial. At that point, the state attorney still didn't want to dismiss the charges. So then Jack had to go back to the same state evaluator for a second evaluation for his sanity at the time of the incident, and he was found not sane at the time of the incident. So now we have someone incompetent to proceed and found not sane at the time of the incident and still they're moving forward with the charges.

Eventually, with this plan, we were able to get a successful outcome. In this case, the charges were dismissed. However, Jack and his whole family were in and out of court from March 2014 all the way through October. So this was months of stress for the family, of use of resources in the system. Again, over this charge resulting from an incident at a group home.

So I have a couple of quotes from the family. When the case was finally dismissed, the family felt Jack had been misunderstood from the beginning. They believed the court did not understand the difference between mental illness and developmental disability because the judge would speak to Jack as though he had a normal IQ but experiencing mental illness. We see this systematically. There is not necessarily a clear job of distinguishing between intellectual and developmental disability and mental illness. And a quote from Jack. "My heart was racing because I was in the back of a squad car handcuffed and then at the police station. I pretty much felt like a nervous wreck. I felt sick to my stomach because I was around people I didn't know. A couple days before court, I felt scared and nervous. I felt really scared that I was going to jail. The judge calmly talked to me and explained what would happen the next time I got in trouble, but I was still edgy. I feel more calmly now that it's over." So it was a traumatic experience for the whole family.

This is just one of many case examples. Now I'll turn it over to Beverly Frantz who will talk about complex communication and autism and child pornography and provide us with a couple more case examples.

(Applause.)

BEVERLY FRANTZ: Well, I think it's always good to start with sex, and I think it's always good to end with sex, so we're going to end talking a little bit about pornography. I'm not an attorney. My husband is an attorney. And so we have very interesting discussions. My daughter would say they were a little bit more than discussions when we talk about some of these issues.

So the two issues that seem to be emerging from my perspective is I want you to think of a bell curve. These are the issues that fall outside the bell curve. And one are victims and offender was complex communication needs, and the other that we're seeing a lot of are young men between the ages of, well, we see more adults than juveniles, so from 18 to late 20s who have been arrested for child pornography.

And so I want to talk first a little bit about complex communication. It's a big definition. But because of lack of time, I want you to just think of complex communication being somebody who has a very, very difficult time enunciating, speaking, that it's hard for you to understand. So it could be a significant speech disability. And you've all met people like that. So one of the questions we're faced with is if you are a victim of a crime and you have significant speech disabilities, does your case ever get to court? Can you even retain an attorney? Will a prosecutor take your case?

If you're a suspect or an offender, we think the pathway to jail is pretty easy because people can't understand you, you just kind of go zipping right through, and if you're a victim, you don't even get to go to court.

So what I would like to do is just very briefly, I want to introduce you to Kathleen.

(Video.)

This isn't the right video. Let's see. Unfortunately, it's not going to work and the holocaust won't do for this particular one.

So I want to talk to you about two different cases. The first case was a 16-year-old girl who went to a segregated school. She had multiple sclerosis and she had significant speech disabilities or complex communication needs. She told someone in her school that she had been sexually assaulted by her mother's boyfriend. She use what'd we call an AAC device, an augmentive and communication device, where she could point to icons or letters to say what happened. The school did a wonderful job. They notified the police. This is in Philadelphia, so this really is important. The police listened. They took a statement. Although, when we went to court, and I guess they call them the ante rooms before you get into the courtroom. There was a gentleman there in a suit, and I didn't know that he was the detective at the time. And he had a piece of paper kind of like this. And I'm holding up a piece of paper that's folded several times. And he said, these are my notes. And I said, your notes about what? And he said, my case notes for the trial. And I looked and there was about two sentences. And I said, really, that's all the case notes you have?

Now, he didn't know who I was, and he said, well, if you can't understand them, then you don't have anything to write. And actually, he was called was a defense witness, not a prosecution witness.

What happened was over a period of three years, this young woman who in the beginning was able to use an AAC, by the time it came to trial, she didn't have the muscle strength to use the device. And we had to find a way to be able to have her voice heard in court. And in the three years, we had three separate prosecutors and each one was terrific. They really took it on and went, I don't know, they were just fabulous in helping to get a conviction.

But what we found was that even though we heard earlier that courtrooms have made great strides with lowering the ceiling and carpeting, courtrooms are noisy. Even if the judge asks everyone in the gallery to leave, three still noisy. All the court personnel. Now, maybe in rural communities, they're quieter, but in a Philadelphia courtroom, they're really loud.

And so this young woman was not going to have her voice heard, and so we talked about using a microphone, and that wasn't going to work. But working with the district attorney's office, we came up with a protocol that we called Voice. We created it together so that somebody, now in this case we used a speech pathologist because that's what the defense said we had to use, actually stood to the right of the victim and just repeated every word and every utterance that the individual made. And she was able to tell everything that happened to her.

And without that voice, revoicers, her case would have gone nowhere. They said, we'll get an interpreter. We were like, this isn't an interpretation. This is simply revoicing every utterance and sound.

So the revoicer met with her many times. She knew this was a sexual assault case, but that was all she knew. And she met with her and they just talked about the weather, what school was like, what she liked to watch on TV, just to really become familiar with her voice pattern.

Interestingly enough, when I mentioned sex, I think this is something we're missing the boat on. Because one of the big issues was the first speech pathologist that we had that was going to revoice, we said, this is a sexual assault case. We have no idea what words you're going to hear. But generally, in a sexual assault case, you might hear the words vagina or penis and we gave other words. And we just want you to be familiar with them and that you can just say them as naturally as you say cookies or milk or anything else.

And she said, I can do that.

And when she came and we actually had a mock trial, she couldn't do that. She said, these are dirty words and I don't say them. And I said, these are body parts and you just say them.

And she said, not in my house.

And I said, well, go home and shut your bathroom door and say vagina 150 times and you will be okay.

(Laughter.)

And she came back the next day and said, I can't do that. Somebody might hear me.

So it became really evident that just saying a word, and only repeating it, was something that some people can't do. They're just uncomfortable.

And when we did the mock trial, and these were all law students who were working in the DA's office during the summer, they said they would have found the destine owe sent simply because every time the revoicer said a sexual term, her body language got really tight and she hesitated. And they read that as the victim wasn't telling the truth. And so we couldn't use that revoicer. And we had to look for a speech pathologist. It was hard to say, are you comfortable using all these words and giving them a word list. But we needed to do that because that was an important part.

There was a conviction. And I think he got like 9-12 years. He got higher than the average sentence. The judge really made sure that the ADA was enforced and looked at this as an accommodation. And so when people, when victims, have complex communication needs, it's like where are they? And we don't see them because we aren't willing to listen to them. So I wanted to mention about that young woman.

And then the other types of cases that we're seeing a lot of are young men, as I said, who are caught watching child pornography. These young men all have autism. They are high functioning. This particular case, he was 19 years of age. He was in community college. He had the kind of I want to say common characteristics of autism, although everybody with autism is different, but he didn't have any friends. He had significant social deficits. He was very computer literate. And what happened was, at the age of 18, he asked his parents to take off the parental blocks on the computer because he was graduating from high school and his parents agreed. They said, he's 18, and they took the blocks off.

And what he did is he did file to file peer sharing. So one day, while he was at community college, there were seven ICE agents who came to his home and presented his mother with a search warrant, asked where his bedroom was, went right up, and took his computer and all his other equipment that he had, gadgets that he had.

When they left, one of the agents said, you know, ma'am, if I were you, I would call an attorney right away.

This family had some means, so they did call an attorney. The question is, the attorney really didn't know anything about autism. And for something like six months, the attorney kept talking with the family, and one time I said, you know, has he ever met your son. Don't you think he needs to meet your son.

And the response was, but we're paying for him.

And it's like, I don't care who is paying for it; he needs to meet your son. I said, if he doesn't want to do that, maybe you need to look for another attorney.

Now, sometimes I say things that people don't like, and that was definitely one that didn't go over real well. But the reality was, attorneys need to meet the individual and they need to get to know the individual.

And so they did eventually get a different attorney, who saw their son once in a while but it was better than not at all. He had a lot of charges. It came down to, they were only going to charge him with one count of possession. The case has been going on now I guess sentences is due next month, and I think it's been about two and a half years. It is a federal case, and the federal government doesn't want him. The federal courts don't want him in jail, but they feel they have to do something. So we're trying to develop something like what Kathryn and Leigh Ann were talking about, a criminal justice plan. We're trying to get the buy in from probation and also the prosecutor. And they're not biting. They're just not going anywhere.

Now, I don't know if the attorney knows enough, and I say that with all due respect to attorneys, but it seems that we all know our own area of expertise really well, but people with disabilities, particularly autism, it crosses over. And so I think that we should be able to collaborate and ask for other people to help out and help us understand what autism is, what the social deficits are.

We're trying to understand what level of child pornography he actually looked at, because in the Canadian system, there are like five tiers, from just images of children to images of children in suggestive positions to acts with other children, adults, bestiality. We want to know at what level, what was he really watching.

And we want to know for how long he was watching. Whether he was actually watching the screen or was the screen on and he was doing something else. And, you know, for everybody who does the WebEx and all these webinars, we can tell when you leave your computers. So, you know, did they look at that. And we don't know whether they did or they didn't. We don't know -- well, his parents did say he had a sex ed class in high school, but as a young man with autism, we don't know what he got out of that class. We don't know if he understood anything.

So their first idea, because the attorney said we're going to send him to a sex therapist right away, and my response, and I have my doctorate in sexuality, so I get to call myself a sexologist, is, I don't know if he needs it. I mean, I don't know that he needs to see a sex therapist. But before we jump in to that, I mean, the prosecution can come or the defense can come and say, hey, you know, he's got a problem because he's seeing a sex therapist. And I don't know if that sex therapist knows anything really about autism. And people are guinea pigs. It's like, well I don't really know anything about autism, but I'm willing to learn. Well, learn on somebody else, not somebody who has been charged with a sex offense, especially child pornography.

And so these are the types of cases that we're seeing. The institute on disability does not provide direct service. We provide training and technical assistance, and we get these kinds of calls because parents don't know where else to call and they go through the phone book and they'll see disabilities and they'll see criminal justice and they'll call and say, can you help. We try provide them with support, with networking with other people. We know attorneys who are willing to call and talk to families or another attorney. We've never had an attorney say no to us. They always have said yes. But they've always said, we will never initiate the call; the other attorney has to call us, but I'll take their call. And it's like, that will work for us.

So when we think about disabilities, I really want you to think that there is some really complex cases out there. And with people with autism, we're seeing so many more young men get arrested, and normally it's for some type of sex offense. And there are probably people with autism who are sex offenders. I'm not suggesting that there aren't. But I'm also suggesting that we don't know what their intent is and that maybe like this young man, once he gets fixated on something, he's going to stay on that for a long time.

Now, maybe he's being gratified by watching it. We don't know. And no one is talking. I mean, of course the prosecution won't say a whole lot, and his defense attorney has to be very careful of what he says, but in the meantime, we're doing an injustice to this young man and other people, because if we could answer some of these questions, we would be in a better position to provide information, to attorneys, to families.

And in closing, what happened was this family, the mom and dad went on vacation with some other family members. They went to one of the islands. They were coming back and they were stopped by security, and all their electronics were confiscated, their phones and computers. They were told they could either wait five to six hours while somebody went through all their electronics and they would miss their flight, or they could take their flight and get their equipment whenever they got it. The reason was, the family was flagged. The father was flagged because his account, the computer was registered to his account. So whether -- I don't remember if it was Verizon or Comcast or whatever, it was the father who had the bill and he was flagged. And the family was shocked, surprised. They were with other people. And so they missed their flight. And they said, no one told us that this was going to happen. And it's, again, it's falling through the cracks. Because the ICE agents weren't going to say that. I don't think his attorney knew that or he would have shared that information. And so it's only through the families that we are learning these things and trying to share it with others.

So thank you very much for your time.

(Applause.)

MARC MAURER: Astonishing set of presentations, and I'm sure there will be many questions. I appreciate the three of you making the points that you have and I know that they have stirred a wish to be helpful. I suspect there are numerous questions in the audience.

So if you have questions, you will identify yourself, please, and we'll do what we can.

>> Hi. I'm Anita Bells. I have a friend who has two autistic sons. Currently there's a legal thing going on and they are in foster care.

The oldest boy ran away from his foster home, came home to his mom, and told her he had been raped. He was probably about 10 or 11 at the time.

She took him to the emergency room and you know, the whole process.

Long story short, I guess the investigator had that little piece of paper you were talking about. They claimed that they don't have any reason to believe him.

What should this parent do to try to get some justice? Right now there was a reunification process in place, and now all of a sudden, bam, boom, they're talking about putting both boys up for adoption. But they keep trying to sweep this rape under the rug. So what should the mom do? Her rights are going to be taken away pretty soon if something doesn't go right for her.

BEVERLY FRANTZ: I'm not sure, but there's something missing. There's a big piece missing. And I wouldn't want to just say something off the top of my head. But there seems to be some facts that either you don't know or you don't want to share with this large group. But there seems to be something else missing.

What we experience, we will get many calls from family members who only tell us part of the situation and not the whole situation. Especially when there's anything to do with sex. I mean, they just kind of sanitize the past and go forward.

So I would be happy to talk to you afterwards, but that's all I could offer right now. Maybe Leigh Ann?

LEIGH ANN DAVIS: Yeah, sure.

>> Can you talk to me? I won't be able to find you.

BEVERLY FRANTZ: We'll find you.

LEIGH ANN DAVIS: I would agree with Bev that many times around cases like these, we don't get all the information. So the first thing we do, if this I&R came in to us, we would start asking more questions. We would try to contact the attorneys directly that are involved and get as much history on the case as we could. And really make sure we have all the facts straight before we even know what questions to ask. But we definitely understand that things like there are swept under the rug and that many times crime victims with disabilities, their voices aren't heard and the families are very frustrated around that. In fact, we are developing right now we just finished doing a blog piece from a person whose sister with Down's syndrome was raped by someone in their family. Someone they trusted this their family. And this is one of the few cases where the family actually supported and rallied around the sister that has Down syndrome to really bring this case to light. And we thought, wow, we don't get these stories very often. We are making sure everybody sees the right way to do this, because unfortunately, like you just said, most of the time either families aren't comfortable, they don't know what to do with that. You have two problems. You have the issue of not wanting to talk about any kind of sexual abuse or rape because of the stigma around that. Then you've got to add disability to it. So it's really a difficult thing for families to address or different professionals to address. And we would definitely want to get more information on that case and figure out exactly what role do we play and make sure we connect attorneys with the right information that they need. We've written letters to judges, to the courts. We're kind of the advocacy piece coming in and saying, this is not right and this is why. We're getting funding and we're seeing problems like this across the country, so people realize it's not just happening in our community, this had is a nationwide problem. And then that way we get more advocacy. So we'll definitely get with you afterwards.

>> Just an idea and then I had a question. I'm Will from Nevada. I have a case with a sexual assault victim. We're suing in civil court. I filed a motion for her to proceed anonymously because of the stigma. There's a lot of case law that supports the notion that if you're a victim and you have to go through the courts, that you can petition the court to proceed anonymously.

Earlier you all were talking about the police officers who violated the ADA. I have a different case. In another break out session, the question was raised as to whether or not somebody with diabetes is considered a disability. Let's just presume for the sake of the question that diabetes is a disability. I have a client with a 1983 claim under the eighth amendment for failure to provide medical care. He was perceived by the medical doctor at the jail to be on drugs and the person was in a diabetic reaction, never did drugs in his life. He's like Richie Cunningham. But the question, in addition to my 1983 claim, are you suggesting there's an ADA claim as well? Thank you.

MARC MAURER: Which of will you tackle it?

KATHRYN WALKER: So to qualify any response that I would give, I'm about a year and a half out of law school and I've been doing criminal justice work the entire time.

I would optimistically like to say yes, an ADA claim there. I don't have case law to back up that, but we have a resource and technical assistance center to help you out with that. Pick up the literature on your way out and then I can give you a better response.

>> Thank you.

MARC MAURER: I noticed that you referred to NCCJD, and I'm supposing that means National Center on Criminal Justice and Disability. For those who are, as I am, very low on the capacity to follow acronyms.

>> I have a question. My name is Paula Pearlman. I would like to talk to you about your choice of language for the young people who are involved in the juvenile justice system. To call them suspects and offenders is sort of reharming them or stigmatizing them. I think that, you know, calling kids youth or kids. You know, it's like in probation, they say, the minor, the minor. And I'm like, oh, no, they're kids, they're my clients. All my clients have disabilities.

So I'm kind of offended with the term offender and suspect. That's my comment.

LEIGH ANN DAVIS: That has been brought up by another national organization before, and that's the terminology that's been use the since we started working in the area in 1994 with our first DOJ grant. We do know that people with disabilities can be offenders as well, so we want to address that portion of the population. And suspects is definitely a term that's used to show that, you know, they're a suspect, not necessarily that they've done the crime. But if there's better terminology, I mean, we're open to looking at ways to address it so that it's not pigeonholing anyone and saying specifically that that's what this person is doing. But we do have to use terminology across the board too that all people understand and that we can all relate to the same topic. But I appreciate your comment. Thank you.

>> Just a follow-up on that. I have a client --

MARC MAURER: And your name?

>> Larry Berger. I have a client who during the time that he was the guest of the New Jersey division of developmental disabilities was on several occasions criminally charged with, quote, assault, unquote. Because of the behavior which was actually a manifestation of his disability it. In fact, he had been a student in public schools at the time. So I don't have an easy answer to what the right terminology is, but the terminology is problematical in various ways and I've had endless arguments with people about the fact this behavior was not assault because assault involved intent and all those kinds of things which he certainly did not have.

LEIGH ANN DAVIS: Right. Well, and I think one of the issues is just getting to the point where we're even talking about these issues to the extent that we were able to sit at a plenary today and talk about criminal justice and I/DD issues. That back 20 years ago, nobody would have come to this kind of a workshop or session. So I think it is developing over time and that using the only terminology we've this is where we've gotten at this point. So I think it will continue to evolve, and hopefully we can find other terminology that isn't so, you know, as I said before, just almost judging a person.

There's another term called counterfeit deviance that's used with sexual offenders to show that, you know, and I know Bev you probably are familiar with this term too, but it's another term to show that people who are involved in sexual activities or sexual crimes, I'm sorry, are not necessarily doing that because they have a sexual offending behavior going on. So it's finding those terms we can use to take out any of the judgment calls that typically come to mind whenever we say suspect or offender.

MARC MAURER: So you say the incidents of disabilities are underreported. How do you suggest it be properly identified?

LEIGH ANN DAVIS: One of the things that when we go to the American jail association next month or next two months is talking to jails about how are they identifying the number of people coming into the jails. How are we screening for people coming to the prison systems. If they do have a specific type of disability.

And while some of that is happening, it's not happening on a national scale. So that's one way that we're trying to identify that.

BEVERLY FRANTZ: I wanted to address the gentleman. We're seeing more people who are adults, 18 and over, living in group homes who are arrested for assault because basically one of the lowest paying jobs is to work in a group home as a line staff. The training is minimal. And so when somebody is misbehaving, for lack of a better word, what will happen is, instead of the staff trying to deescalate the behavior, they simply call the police. And then the police come and if the behavior hasn't been deescalated and the police get the call, what police officers have said, if we get sent on that call, we automatically assume that there is a heightened issue because if it wasn't, the staff would have been able to handle it. And we're trying to say, but the staff doesn't handle it; they call you. But it's like, but they're supposed to. And it's like, well, yes, there's principles and there's practice.

And then the police come in and they come in ready to use force. Maybe minimal, but with force. And these individuals then will respond to that, and staff is like, well, that's okay with me because now they're gone and I have one less person tonight.

We're seeing a lot of that. We try to address agencies and talk about the need for training, but it comes down to the dollar and how much training they provide, but we're seeing actually staff, I want to say set up people to become involved in the criminal justice system when their training should to be deescalate that and keep them out.

>> And it's possible someday I may call you. But at the time this happened, he was at a developmental center and was therefore arrested by a unique institution in the state of New Jersey called the human services police.

BEVERLY FRANTZ: They can be worse than the regular police.

>> Yep.

>> Ellen, and my question is or comment is that you were talking, and I guess this goes to the point of calling people offenders, because I think preventing the 911 call is important, in one area, going with the school to prison pipeline is calls from schools about students with disabilities. I was representing a child, age 16, who had an IEP, had autism, and had a behavioral incident which basically involved property destruction. They were able to get everybody out of the classroom, and the school resource officer called the police. The police just took him to an emergency room, but it was very traumatic for him and his family for the police to be called and him dragged out of school in handcuffs.

So I think that preventing the 911 call is what's important. And I guess that goes with the group home too. So I would like you to comment I guess on the school issue.

LEIGH ANN DAVIS: That's one area that we're seeing a huge need for training is with the school resource officers. And they're getting training on some other things because you know, we didn't used to have all these school resource officers in our schools and we didn't have the need for police. And so now that that need is so high, you know, how many of these folks really understand different types of disabilities and what kind of training are they getting around that? So we're looking at ways to use the pathways to justice training and making sure that they have some way to get that training. I did CIT training a few weeks ago in my hometown, Arlington, Texas, and they talked about a situation of a child with autism who just took off running down the hall I believe naked through the school and nobody knew what to do. Nobody knew how to handle it. And it was just a -- there's just a big disconnect really to understanding disability and knowing, like Bev said, when is the appropriate time to call police and when is it not. And these are huge issues because of the use of force that we're looking at and how quickly it seems like violence is a common thread in much of what is going on on both sides in terms of how the police are responding to these incidents. And one of the thing that we have in the training say wallet card that has three steps for law enforcement or if it's a school resource officer, to keep in mind. The last one is, think about is disability playing a role. And that might be something they never have thought about before and really considering how could disability be playing a role here. So we are definitely hoping to provide more training to school resource officers around that.

BEVERLY FRANTZ: I would argue, I would really argue that I think that our educational system helps to create victims and offenders. And I say the word "offenders" deliberately in this case because we know that kids with disabilities may have behavioral issues. They can have IEPs. But what we see is, for the most part, people will look the other way and say, oh, well, this person has this need or this person is special. And people with, students with disabilities need to have consequences for behaviors just like a typical student. Now, it needs to be appropriate to the individual and what they've done, but there needs to be a consequence. If there isn't an appropriate consequence, the behaviors continue to escalate. And we see that when we are involved with something and we say, tell us about their past and they give us all these events. And it was like, wasn't there any consequence for that behavior? And consequence could be someone just sitting down and talking to them. But just understanding that you can't do this. That in this situation, you can't do it, and kind of help them figure out how to be able to deal with that situation in a social lay appropriate way, because we see kids in school who do all kinds of sexual offenses, and everybody kind of looks the other way and they do the same offense when they leave school and all of a sudden it's a criminal act. And it's like, you know what? You can't go up and just caress somebody's breasts. And we have so many cases of that. And the teacher, now sometimes they will report it and the person will have other consequences, but a lot of times it's like, well, he didn't mean to do it. There are all these kinds of excuses. And it's like, if a typical student did that, what would you do? And so we can't -- and this is very difficult. But the argument is, if you want people with disabilities to be treated as a typical person without a disability, then there needs to be consequences for behaviors that aren't socially acceptable. We need to be understanding, we need to be compassionate, we need to have programs, but by simply saying this person had a disability therefore that is why they did X, Y, and Z, that's why I would argue we see them when they're 20 and 30 in the criminal justice system. And I've had guys say, I don't know why they arrested me. I've done this all along and nobody of said anything. And it's like, well, maybe there needed to be a consequence.

And again, a consequence is not something that has to be harsh. It's just helping that person understand what is socially acceptable and how we figure out a way to have them understand that.

MARC MAURER: I want to thank Leigh Ann Davis, Beverly Frantz, and Kathryn Walker for a very thoughtful presentation.

(Applause.)

It is good to have you here, and we will take away what you've said and see what can be done with it.

Tomorrow morning we're going to start with workshops from 8:30-9:30.

At 10:00 we have a plenary session. And right now, we have the reception which I gather has to do with beverages and other manner. So if you want to step over for the beverages, lawyers are accustomed to this, I know. So please feel free. It's been a good day. Thank you very much.

(Applause.)

(Meeting ended at 5:32 p.m.)