State ADA Coordinator's Office's

2023 Virtual ADA Conference for State and Local Governments 2A

May 10, 2023

>> Johan Rempel: Good morning, everyone. Welcome to the 2nd day of the ADA conference. My name is Johan Rempel from center for inclusive design and innovation at Georgia Tech. I hope you all have your coffee this morning, especially for the folks on the west coast. I will briefly cover housekeeping and accessibility related details today. We are providing live captioning for all presentations, as well as ASL interpreters.

And so, if we can go to the first slide. Thank you so much.

So, with the captioning today there's two options here. The StreamText link has been dropped into the chat. That gives you access to a third-party application that you can access. The second way is through the closed captioning option on the Zoom tool bar. It's the bright red arrow pointing to the CC or the closed caption. That's the second way to access the closed captioning. We're providing CART services today. That's live captioning verses relying on AI captions. It's more accurate especially with critical content. Next slide.

So, here's powerful features within Zoom: Spotlighting and pinning. With spotlighting only, the host or cohost can spotlight someone. They will appear in speaker view. We will be using the spotlight feature for our ASL interpreters today. And pinning, any participant can pin any other participants video at any time, and it only impacts that person's display. You hover over the participant you want to spotlight or pin, collect the dot dot dot or the ellipses and then select spotlight or pin.

Next slide.

Here's another powerful feature available in Zoom. It's the interpretation view. And for today we have two ASL interpreters because of the length of the conference today. We're going to be relying more on the spotlighting today. But for interpreters when there's a single interpreter in the room, it's fairly straight forward. You can go to the meeting advance settings, host selects a sign language interpretation, desk top version must be used and for participants, sign language interpreters are shown in the dedicated video channels. Participants can resize or relocate the video window as needed and interpretation option on the Zoom tool bar.

So again, though, we're relying on the spotlighting feature today for our ASL interpreters.

So, the chat feature is disabled for participants. We ask that you submit your questions using the Q&A feature found on the Zoom toolbar.

There will also be a brief Q&A session following the presentation. All questions submitted during the registration process have been provided to the presenters ahead of time. The virtual ADA conference team will monitor the Q&A throughout the presentation. As time allows, the team will address as many questions as possible. If we're unable to get to your questions during the session, the team will make every effort to follow up after the conference. Please do not place any private or confidential information in the Q&A. There will be poll questions. We ask that you participate as much as possible and provide feedback. All presentations are being recorded and housed on the State ADA Coordinator's Office website in the weeks following the conference.

For any technical issues related to Zoom, you will have access to the Zoom support link in the chat in a moment. It may have been dropped in there. We invite the presenters to turn their cameras on temporally while being introduced and then at the Q&A session at the end. I will press record here. Give me one moment.

[Recording in progress].

I will now pass it on to Barbara Tucker. She served as the ADA services coordinator, and she will be the moderator. Take it away Barbara.

>> Barbara Tucker: Good morning and welcome to session 2A entitled ADA congressional findings and purpose. Mr. Wells is the executive director for the North Carolina council on developmental disabilities. Mr. Wells worked previously in Georgia as the director of Georgia apple seed and the integration project for the Atlanta legal aid. You can find his complete bio in the e mail blast. Good morning, Mr. Wells.

>> Talley Wells: I'm so excited to be back in Georgia. As Barbara mentioned I was an attorney at the legal aid society for 17 years. Atlanta legal aid in the Olmstead case. I worked for the majority of time. If you are not familiar with Olmstead, you will be familiar by the end of this session. I started the year after the Olmstead decision. I like to take credit for the decision, but I didn't really take part in the decision. Holm stead rights disability clinic at Georgia state law school and have dedicated my career to the vision of Homestead. As we think about in the United States the vision of brown V. Board of education and what it means to really have a country that does not discriminate and treats every single human being within our country evenly and fairly, that's what Olmstead is for and the disability rights movement.

I loved my work in Georgia, and it led to the work that I do in North Carolina as the executive director of the North Carolina council of developmental disabilities. I find myself right now in Greenville North Carolina because later today we will have a film showing of unmet which is on the waiting list that North Carolina has for the supports and services that enable people with developmental disabilities to live full and meaningful lives in the community. Georgia has a waiting list of up to 7,000. Here at North Carolina we are up to 17,000 people waiting for supports and services to be able to live full and meaningful lives in the communities. So, while we talk about how far we have come, we have a long way to go in both Georgia and North Carolina. So tonight, we will show a film called Unmet. It's similar to your film 6,000 waiting. Our film is about those waiting and their needs are unmet. We continue to do the work of the Americans with Disabilities Act and Olmstead. So that's what we will talk about today. I'm excited because we will be going back in this presentation to much of the history in Georgia and the United States that led to the Americans with Disabilities Act and really led to the findings and the purpose of the ADA. And we will talk about what impact it does or does not have to understand the history to really understand what's behind the congressional findings and purpose of the ADA as we either interpret the ADA as lawyers and advocates or as individuals at state agencies or wherever you are who are actually implementing and carrying out the ADA and the vision behind the ADA which we will get into today. So, today's session objectives:

Provide a comparison of the general rights of Americans with the history of discrimination of

people with disabilities.

And we're going to have a particular focus on Georgia but Georgia's history is American history and what happened here in Georgia is really similar experiences and stories across the south and across the country. And I'd be very interested to hear over time your experiences in whatever state you are in.

We're going to discuss the civil rights and legislative history that led to the passage of the Americans with Disabilities Act of 1990.

We're going to examine the Congressional Findings and Purpose of the ADA.

And hopefully we're going to be able to connect the dots between those congressional findings and purpose of the ADA with what led to the ADA. Both the history of segregation, discrimination and institutionalization. And then how it's been interpreted over time. We're going to discuss how we can interpret the Congressional Findings and Purpose of the ADA in providing reasonable accommodations to people with disabilities today, particularly with respect to people with mental health conditions and developmental disabilities.

We're going to start out with a poll question. In carrying out the Americans with Disabilities Act today, how important is it to understand its history and the history of disabilities in the United States? So we want to know what is your opinion of how important the history is. You can think of it from your own perspective and how those who are interpreting the ADA would look at it. I'll read the question in carrying out the Americans with Disabilities Act today, how important is it to understand the history... [Reading].

We will give it about 10 more seconds. And then if we can show the results in about 5 seconds.

And 58% say it's essential. 37% say very important and 5% say somewhat important. And I being a good advocate agree with all of you. Partly because it depends on who is interpreting the ADA and how much they are going to take the legislative history and the congressional findings into account as they make their court decisions. We will look at a couple Supreme Court decisions that did use the congressional findings as a basis for part of their decision and particularly in the decision that I'm most familiar with which is the Olmstead decision. So we know this great quote and also some of the hypocrisy from this quote. As we were declaring our independence from England and setting off as a new land Thomas Jefferson wrote these words that "

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with

certain unalienable Rights, that

among these are Life, Liberty

and the Pursuit of Happiness

"That is what we will talk about today. This vision that really started with Thomas Jefferson carried out through all of our civil rights movements, through the civil war and up through the civil rights, the Section 504 the rehabilitation act, the fairing housing act and the Americans with Disabilities Act are really all works to try to bear this out. That is because we as Americans have certain constitutional rights. We know what these rights are. I encourage you to think what am I missing here? What rights do we have as Americans that are so plentiful that may not be here. The right of freedom of religion, speech, freedom of association, freedom of petition, right to due process, protection, vote, bear arms, other rights to contract, rights to public education and own property. Some of these rights were more or less for various Americans through time. And even the right of public education developed considerably from the 1800s 1900s and throughout our history.

What we also know in the lead up to the Americans with Disabilities Act and many of the Supreme Court decisions that have been decided is that the history of Americans with disabilities is that every one of those rights have been denied historically. What Congress says in the congressional findings that we will get to later is that historically and up to the date of the passage of the ADA and I argue up until today May 2023 we have denied rights to Americans with disabilities. We're going to use Georgia for examples of that type of discrimination and exclusion. But that deprivation of rights has occur across the country. This picture is the reverend Jesse Jackson. A civil rights leader who ran for president and who was with Martin Luther King when he was assassinated. He was with Justin Dart who is known as the father of the Americans with Disabilities Act.

In Georgia you have a long history of institutionalizing people with disabilities, people with mental health, mental illness, and other disabilities as well. I want to spend a little bit of time talking about that history because it really is the history that when we're talking about people who have historically isolated and segregated and put into institutions that is a major part of what had to happen with the Americans with Disabilities Act and what Congress was trying to do as just as Ginsburg interpreted.

We're moving from a 19th century system of institutionalizing people and taking away their independence. The ADA is really about a 21st century complete transformation that is about inclusion, independence, community living, employment and being part of the community. We need to understand our history to understand that.

In the late 1990s in Milledgeville Georgia a group of disability rights advocates began finding all of the thousands of unmarked graves outside of Milledgeville hospital. Each of those graves represented a person who was sent away. When I gave presentations across Georgia people would tell me they had been taught as a child by their grandparents that if they were bad, they would be sent to Milledgeville. I heard that over and over again. The Georgia legislature

In 1837 Georgia Legislature created the “state lunatic, idiot, and epileptic asylum.”

That's what it was called. The Georgia sanitarium opened 5 years later. A lot of this history came from a book from peter Cranford. Milledgeville, a long history of from the largest insane asylum. Many of you know Andy Miller. Andy was an Atlanta journal constitution reporter who won awards for reporting on abuse and neglect inside Georgia regional hospital in 2007 where 119 people died who would not have died but not for being in that institution. Over time there was every decade from 1900 to 2007 and I argue into the 2000 teens, major scandal of abuse, tragedy and neglect. People

People were sent for having epilepsy, alcoholism, aged, mental health conditions, and developmental disabilities.

And sometimes, as we will talk about, people were just sent there for no good reason at all. Not that any of these are good reasons. As early as the 1840s, there were high death rates due to typhoid and overcrowding. That would be the case until the late 1900s. People were sent for mental illness. In 1910 1921 a physician report found that many patients were there that there was no reason they should be there. In 1916 law makers found they were sent to the hospital without cause and brutal treatment. Many of you who are older may have heard of the reporter Jack Nelson. He was a famous reporter. He won a Pulitzer prize on reporting on Georgia regional hospital.

In the 1970s Georgia legal services brought a case that went to the U.S. Supreme Court called parm verses JR. That was on behalf of two children at Gracewood hospital in Augusta. In the early 19 hundreds Gracewood was developed as the hospital that would have people with developmental disabilities. Many children were sent there. Other children AADD all about developmental disabilities, a disability activist group discovered 250 children that nobody knew about except those at the hospital.

Georgia legal services brought a case on the 14th amendment because due process and probate rights were about the only laws that people with disabilities could bring to get out of institutions. In the JR cases, Georgia legal services argued these two children had been dumped by their parents because their parents decided they didn't want them or weren't able to care for them. So, the question is whether or not the children had a right to have a court case to decide whether or not they should be in the psychiatric hospital at Gracewood. The Supreme Court decided they did not have that right, but they did have the right to have a medical practitioner look over their records to decide whether or not they needed to be there. That was the only right they had. I remember when I first started at Georgia legal services Atlanta legal aid the reviews that were happening. The legislature put some rights into the law for what folks could do to try to fight being put into an institution but still most folks didn't have hardly any rights before the Americans with Disabilities Act to challenge their being put into the institution for many decades throughout our history in Georgia.

So, I have another poll question if we could bring that up. All right. How many people do you think were sterilized in Georgia based on the legalized eugenics law between 1937 and 1963. In Georgia as of 1937 it was legal to sterilize people and most of it happened in the Georgia institutions. So how many do you think? 250, 800, 3200 or over 10,000 people. Let's see the results.

Yes, good guess. We will go on and reveal the answer now through our presentation. A majority of you said over 10,000 people. The actual answer is approximately 3200. Georgia became the 32ened state to legalize eugenics. [Reading].

The state in 32 states at this time allowed essentially because somebody had a disability and there was a fear that they might have a child with a disability that they could surgically make it impossible for them to have children. We often think of the 1930s and eugenics in Nazi Germany but it was happening across the world and specifically happening in Georgia and Georgia's institutions. It went from 1937 up to 1963. Most of the people who were sterilized were African American. There was not only disability discrimination but racial discrimination. So when we think about the rights that we talked about in the beginning of today and the developmental disability, traumatic brain injuries, physical disabilities being put into state psychiatric hospitals and the nursing homes that started to grow across the country and think about people being put into those institutions sometimes by their guardians with little say, we start to think about all of those freedoms whether it the right to go to church, the right to vote, the right to the right to have freedom to make choices about your life. All of that gets taken away. I spent year after year going into Georgia regional hospital in DeKalb county off of Panthersville Road, every time I visited my clients in those psychiatric hospitals they would tell me they wanted to get out, be free and work and have opportunities like everyone else but their rights were denied.

As we talked about what happens when your rights are taken away because you are put into an institution or guardianship sometimes that is necessary but one of the great things that's happened because of the disability rights movement and the Americans with Disabilities Act is a lot of alternatives to guardianship. We have that in our law in North Carolina and likely to pass. If a person needs support with decision making because of a mental health disability, developmental disability it doesn't mean you have to take away every right that they have. Traditionally and up until as we were about to pass this law in North Carolina and across the country, often times what is taken away when a guardianship occurs is all of these rights. The right to vote, the right to contract, the right to be free and out of an institution. We all know that many folks who are denied public education are a picture of Elaine Wilson. Elaine was one of the two parties in Olmstead case. Elaine was sent to Gracewood in Augusta. She was sent as a child because her mom was told that the only way that Elaine could get an education was if she was put into an institution because she had intellectual disability. There were not opportunities for her to get an education at home in her home district in Georgia and we know that the history across the United States particularly because the IDEA was passed, before Section 504 of the rehabilitation act came into effect was many children were denied the right to go to school, certainly and any accommodations in school. Civil commitment continues to be a discussion and issue up to today. There continues to be debate in the Georgia general assembly this session and previous sessions of when should people be put into an institution. Not for breaking criminal laws but what the probate court and whoever is bringing the case and what the medical doctors say is for their own safety and needs. And there's also a lot of discussion about outpatient civil commitment. There are obviously important discussions and debates as someone becomes potentially self injurious as we don't have the infrastructure in our emergency rooms and crisis services and in the community to provide people with supports that they need. Whether or not their rights should be taken away through civil commitment and should be put into a sort of institution and how long they should be there. These are discussions that are happening as we speak in New York City, in California, in Georgia, North Carolina. Other ways of course that people were being denied access was the ability to enter a building. The ability to get on a bus. The ability to use public transportation. The ability to be on a jury or denied employment or housing. If we had the chat feature, I would ask what other ways have been rights been denied over time.

So, what happened? It's the same thing that happened for the civil rights for women and LGBTQ. They developed over time a disability rights movement. And the reason we have told this history of Georgia, the reason we thought about institutionalized and the extreme ways rights have been taken away is because it is a similar but different history to the history of African Americans who were segregated, who were put into "separate but equal" but we all know were unequal schools, forced to eat at separate lunch counters, to use separate water fountains. Who often traveling across the south could not find a place to go to the bathroom. I recently took a friend from Switzerland to the international civil rights museum in Greensboro and even though I had studied that history over and over again it is jarring and unamerican the way in which we discriminated during slavery by taking people's rights away to the extremes, forcing them to work and live based on the slave holders decisions and the torture and other things that occurred. And then as we moved into the Reconstruction and began to pass laws that would be the basis of the laws that civil rights lawyers including Sue Jameson would use to fight for people to get out of institutions. Those are the same due process rights and laws that were used to try to bring about rights for African Americans. We know in Plessy verses Ferguson those rights were taken away.

So civil rights movements began to develop to take rights back for all of our various discriminated populations across the United States and that included people with disabilities. The disability rights movement grew up. There were groups like all about developmental disabilities. Groups that would become some of the most important self-advocacy rights groups that would get passed. The Section 504 of the rehabilitation act of 1973. This would become the framework for the Americans with Disabilities Act but as happened every time a law was passed, just because it was passed doesn't mean anybody did anything about it. They didn't even get the federal regulations issued for several years. So, once we had a law in the books there was a huge movement about what did this law mean and how did it need to be implemented. The Section 504 rehabilitation act of 1973

Banned discrimination of people with disabilities by all who receive federal funds.

So, think of all the different systems who receive federal funds. This was a major act. They could not discriminate against people with disabilities but what did that mean? So the

Critical next step after passage was for the regulations to define who qualified as having a disability, what discrimination was. There were various cases that interpreted this law differently when a bus stopped for a person in a wheelchair. One case said the bus needs to stop and open the door. As we all know, a person with a wheelchair is not going to be able to get on to the bus. They won't have access to the public transportation if that is all this law means. Just having to stop and include them like they sort of include everyone else. Another decision said no, in fact they had to create a way for the person to get on the bus. The real question was what were the federal regulations going to be that would interpret the rehabilitation act. How would they be developed? So, disability rights activist, led

by Judy Heumann, Kitty Cone, and

There's a great Netflix series about Judy Heumann and all the other disability rights advocates and a great series that I encourage you to check out. But Judy and Kitty Cone and other held sit ins at the department of health and welfare and had the responsibility to say what is meant to not discriminate. Basically HUE didn't issue these regulations for a long time. So, these civil rights actors had to do sit ins. They held sit ins across the country. You will see this throughout the movement of the disability rights movement as the need for some sort of civil action to raise awareness of the needs for the state and the federal government to move forward.

So, this is a quote from Kitty Cone talking about that federal sit in. It lasted 28 days. It was the San Francisco building. They had buildings across the country. It began with a rally outside of the building. Between 1 and 200 people until the end.

The composition of the sit in represented the spectrum of the disability community with participation from people with a wide variety of disabilities, from different racial, social, and economic backgrounds, and ages from adults to kids with disabilities and their parents. We all felt that we were acting on behalf of hundreds of thousands of people who were not able to participate, people all over the country who were institutionalized or stuck in.

They were really standing up for the people or advocating or sitting in for the people in Milledgeville and across the country. Ultimately, the health education welfare did issue the Section 504 reg regulations and they followed what the disability rights movement had advocated for. I believe it wouldn't have happened if advocates had not stood up.

This The Section 504 regulations developed definition that a person with a disability (previously called “handicapped person and when you read the original regulations that's what it said is a person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment.” They also defined reasonable accommodation and many of the other provisions that would be the basis for the Americans with Disabilities Act.

So those of you who practice in the ADA, I'm sure you are familiar the regulations mimic what would be in the ADA. So, Section 504 developed is a testament and declaration of where the ADA would ultimately go.

So, this next picture is of Justin Dart. He is often called the father of the disability rights movement. He is sitting next to George H. W. Bush which we saw in the opening slide who signed the ADA into law. One of my favorite stories about George H. W. Bush is that he was proud to have been the president to sign the Americans with Disabilities Act. He thought he was signing it for those other people and not for himself. When he was in his late 80s and early 90s he began to be a person who used a wheelchair. All the ways in which the ADA enabled people with disabilities to be part of the community suddenly he needed and was taking advantage of and receiving those same accommodations. He wrote that he suddenly understood that the ADA wasn't just about those people but about himself and all Americans who may develop their own disability. So, Justin Dart was a prominent businessman and came from a pretty wealthy family. He was a major part of starting Tupperware in Japan. As being a prominent businessman he was able as a person with disabilities to make a lot of connections inside Congress. And ultimately got [indistinct], and many other leaders to enact the ADA. He held hearings across the country. He led a national disability organization and created the framework for what would become the ADA. Along with all of the unnamed advocates who did not get a chance to sit next to President Bush or have the hat that became so noticeable as Justin Dart but who were equally responsible for getting the ADA passed.

The Americans with Disabilities Act was developed after substantial litigation. Just because it was passed didn't mean that people with disabilities actually got their rights enforced. A lot of times the Supreme Court and the court courts would interpret Section 504 to mean a lot less than it did. You will see this happen through Section 504 once the Americans with Disabilities Act was passed and even leading up to the reason why the amendments to the Americans with Disabilities Act was passed approximately 20 years later because every time just because the law was passed didn't mean the courts interpreted the laws in a way in which the disability rights community, advocacy communities and Congress would make clear how strong and effective the ADA was. In my opinion, all the courts really needed to do was look at the congressional findings which we will get to I promise that really show the comprehensive nature of the Americans with Disabilities Act.

And over and over again disability rights advocates would not only need to use the courts but also use different types of civil actions to raise awareness of the need for the ADA and that happened even at the time of the Olmstead decision. The national council on disability

developed early draft of the ADA and across the country.

And a national campaign called the discrimination diaries was held for people with disabilities to document their experiences of confronting barriers and discrimination.

I live so much within the disability rights and disability community how often folks don't even think of or consider the barriers that keep people with disabilities from being included in the ways in which we as a country have promised that they can be included through all of these laws and even going back to the declaration of independence.

So once again and this is not only about civil protest, but I think with just like with the civil rights movement for African Americans, the disability rights movement which followed but also led different ways in which there was civil disobedience and raising awareness the disability rights community held a Capitol Crawl at the United States capitol. And people essentially people got out of their wheelchairs. A good friend of mine took some of the iconic photos. They got out of their wheelchairs and said these steps are a symbol of the way people with disabilities are not included in this country. The most basic forms of government. We know the song I'm only a bill and how a bill gets passed but if you have stairs that do not allow people with disabilities to get into the building to access their leaders to be included then we're not living up to our ideals. So, the Capitol Crawl was a great way of demonstrating to Congress at a time when the ADA was getting close to passage but there was rising resistance to getting it passed there was a statement that comes up over and over again of unintended consequences. What would be the consequences and impact to physicals and budgets of including people with disabilities and providing those reasonable accommodations. So, the Capitol Crawl was and thought of in one of the great ways they got Congress to listen and pass the ADA. So, we will do our 3rd poll question now.

So, I want to know before we get into it how familiar are you with the congressional findings in the Americans with Disabilities Act? How familiar are you with the congressional findings?

We can close the poll.

All right. So, a little familiar. So great. That's why you are here. I was hoping that. I'm glad to see 12% of you are very familiar. And not surprised to see 1/3 of you are not familiar at all. The history, the stories that we've just discussed of people institutionalized in Georgia and the rise of the civil rights and Section 504 of the rehabilitation act is really the basis for the congressional findings and I would argue the basis for how you and we should both be interpreting the Americans with Disabilities Act, as well as advocating whenever we have a case we should always be going back in our advocacy to the congressional findings to understand and illuminate to whoever the decision maker is. Whether there's someone making a decision about doing a curb cut in Georgia or someone at Stacey's office, whether it is a judge or lawyer making an argument, whether it's a person with a disability asking for an accommodation. Going back to these congressional findings is a great way to start to be able to make that decision and argument.

We talked about that the ADA uses the framework. We talked about it in the history that the ADA essentially used the framework of the civil rights of 1964 and Section 504 for what constitutes discrimination.

We've had all sorts of sessions on the general parts of the ADA. Let's get into the congressional findings. They find that physical or mental disabilities in no way diminish a person’s right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been Subject to discrimination. Fully part in all aspects of society. This is a critical first statement from Congress to say just because you have a disability does not in any way mean that you should not be included in society. But the reality is as we look at the history and think of the thousands and thousands of people in Georgia and across the country who were institutionalized, denied public education and all aspects of things we cherish in society today that is what Congress is saying they should not be discriminated against. This second statement is the basis of justice Ruth Bader Ginsburg decision.

Historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem.

Every time we do advocacy, every time we advocate for someone with a disability who is being left out, who is being put into a classroom or an institution or some other way separated and segregated because they have a disability Congress wants to say that's a serious and pervasive problem. When we think employment, sheltered workshops, they are beginning to go away but they still exist. Whether individuals with disabilities are paid less than minimum wage and often only people with disabilities are working in those workshops. That's isolating and segregating.

(3) Discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health justice Ginsburg focused on the institutionalization. Did institutionalization apply and justice Ginsburg said absolutely. Health services, voting, and access to public services.

Basically, every part of society is where discrimination exists. We will talk about how Justice Ginsburg talked about discrimination. Just because we have the ADA, do these things continue to exist and how should we use these congressional findings to say that is discrimination. That was a question in the Olmstead case. Is sending someone in an institution, having them separate from society is that discrimination and the answer is absolutely yes. That's what Congress said in number 3 of the congressional findings.

(4) Unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination.

I believe over and over again seeing Sue Jameson's papers. Before the Americans with Disabilities Act she had to rely on probate law and the 14th amendment to the United States constitution as their own basis in law to argue often on behalf of people with disabilities and most of the time it didn't work. The rights were very minuscule. In order to enforce their most basic rights.

(5) Individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, think of that bus that we talked about with the interpretation of what Section 504 meant. Did nondiscrimination mean you just stop the bus for people with disabilities and not allowing them in like what would happen to African Americans sometimes. That you gave them the open door. Or did it mean more than that? You had to have a bus that enabled a person with a disability to get into the bus. And communication barriers, overprotective rules. I want to stress this. Sometimes our rules can be overprotective for people with disabilities. A lot of times people are sent into institutions because there is a concern for that individual's safety. Often time those overprotective rules cause someone to live separately or have barriers to normal life. The department of health and human services passed not too long ago a home and community base settings rules. I think it was under the Obama administration saying if a person is in a group home with a disability, they still have a right to live an ordinary life as possible. They should be able to lock the doors to their bedroom. They should have access to the refrigerator. They should be able to come and go as appropriate to their needs. For the most part they should be able to come and go. They should be able to go to work and church. All of those things and a lot of times what happens in order to have "safety" for individuals with disabilities we create rules that are overprotective that separate people from their ability to live like everyone else. So overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities.

Think of segregation and lesser services I think about Plessy verses Ferguson and the U.S. Supreme Court decision that allowed separate but equal for African Americans which we all know was lesser services and segregation. Congress was saying if we go back to it the earlier part of this phrase that that is a form of discrimination. Whether it's outright intentional exclusion, lesser services, exclusion or overprotective rules and policies are all forms of discrimination.

(6) Census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally.

What Congress was trying to change, it was all of these severe disadvantaged. And that the nation’s proper goals let's go back to the nation’s goals.

Regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals.

My work, the state independent living council in Georgia and in North Carolina and across the country are all about ensuring that people with disabilities have the right to live independently and have economic self-sufficiency. That's what Congress was trying to cure and ensure and to make better through the Americans with Disabilities Act.

And (8) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis. Often people think of the ADA is giving someone something more but really it is enabling folks to get equal protection and an equal seat at the table, an equal opportunity to be a juror, an equal opportunity to get their law passed in Congress and to pursue those opportunities for which our free society is justifiably famous and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

The ADA is often attacked and was attacked by the state of Georgia in the Olmstead case as costing the state a bunch of money. That's an argument we're having in North Carolina as we speak. There's a question of how much is it costing us to support people in the community. It cost us a lot more to institutionalize people. What Congress is saying is that we have lost out on billions of dollars in each of these states in unnecessary expenses and dependency and nonproductivity. So those are the congressional findings. I encourage you to spend time. I spent time going over every word to make sure we're going back to the text and looking at it in our advocacy and tying it into the purpose of the ADA which is to provide a clear and comprehensive mandate it is not a suggestion. It is the law of the land. It is required to be followed by every local government, every state government, every facility, every restaurant and place of business across our land to eliminate discrimination against individuals with disabilities.

It is to provide clear, strong consistent, enforceable standards addressing discrimination against individuals with disabilities. And ensure that the federal Government plays a central role in enforcing the standards. In Georgia and North Carolina there are major Olmstead cases that were based on the Americans with Disabilities Act brought by the United States Department of Justice and see the federal government is to play a role in ensuring the ADA is enforced and invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of Discrimination faced by people with disabilities.

Low S Curtis was a hero of the civil rights movement who died recently lived most of her life in the stone mountain area. She was put in the hospital in DeKalb because she had a dual diagnosis. The state of Georgia said we want to serve her for her developmental disability but she sees in the mental health hospital. Even though she has developmental disabilities we can't give her services. So, Lois Curtis called Sue Jameson and said get me out of her. So, this young African American woman from DeKalb county would have her case go up to the federal court up into the 11th circuit court of appeals, up to the Supreme Court and it would become that the Americans with Disabilities Act would become what it said. Segregation was discrimination and had to be ended. People with disabilities had the right to reasonable accommodation and that reasonable accommodation and the right to integration meant that if you were a person with a disability and confined in a Georgia institution like Milledgeville or Georgia regional Atlanta and put with all people with disabilities just like if you were put with all African Americans that was discrimination and segregation. Justice Ginsburg went back to those findings and said, "historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem."

When she looked at the ADA, separating someone in an institution represents two forms of discrimination. One we're segregating them from society. Two, we're creating unwarranted assumptions from everyone including me when I walk into a nursing home that somehow individuals with disabilities are lesser because they are not capable of living in the community. That reaction that any of us have is just flat-out discrimination. She said that ultimately in her decision which was for most of the decision was 6/3 and part of the decision was 5/4 that Georgia had to provide those services in the community for Lois Curtis and Elaine Wilson and ultimately what I want you to know is that once again the disability rights movement rose up to say this is what the ADA means. When Sue Jameson and Lois arrived at the court, there were thousands of people with disabilities who were on the steps, waiting to get in line holding up signs. Even before that, many of the states took Georgia's side in the Olmstead case. Most of those states the vast majority withdrew those and ended up taking Lois Curtis side. They talked to their states to see how important it was that the Olmstead case be found in Lois Curtis favor.

Another time the congressional findings was the PGA tour verses the martin case. It was whether or not Casey martin had a right to play golf. He needed to use a golf cart. Is the accommodation that's being requested reasonable accommodation or on the other side of the coin which they say states don't have to do is it a fundamental alteration. In the PGA tour the question was walking which everyone has had to do in the PGA tour was that part of the game and did it alter the game by allowing him to use a golf cart alter it.

Justice Stevens found that "Discrimination against individuals with disabilities.”

What that meant is outright intentional exclusion, failure to make modifications to existing facilities were the basis of Congress intend in passes the ADA and a major part of the court's decision in a 7/2 majority that Casey martin had a right to use a golf cart. ADA Title II holds that no qualified individual with a disability shall be excluded or denied benefit of the services or programs or activity of public entity or discrimination by any such entity. What does that mean? We go back to the congressional findings to show how broad that is supposed to be interpreted.

One of the things I have the most concern about right now is the U.S. Supreme Court has taken on to look at the Chevron decision. With Section 504 and the ADA, regulations are at the heart of how we understand the Americans with Disabilities Act, how the Supreme Court has interpreted the Americans with Disabilities Act and two of those most basic parts are the integration regulation which requires a public entity to administer programs in the most integrated settings appropriate to the needs of qualified individuals with disabilities. And reasonable modification regulation. It does not require fundamental alter of the nature of the entities programs. These are under Title II.

So, as we take these congressional findings as we take Title II of the ADA which many of you who work in the public entity sector will be most looking at Title II, what does it mean for how we accommodation people with mental health and developmental disability. The use of a wheelchair is more obvious how we provide an accommodation. If you put in a wheelchair ramp someone will have access to get in. If you have a way a person using a wheelchair can get on a bus is more often clear cut. What is the reasonable accommodation for a person with a mental health or developmental disability?

>> Barbara Tucker: This is your 15 minute time check.

>> >> Talley Wells: Great. We're almost done. We will have time for questions. Some accommodations we can make sure that we're looking at to do and living up to congressional findings and make sure we're not isolating and separating them. That we're including and taking on the broad sweep of congressional findings. One way is use plain language. A lot of times if a person has a cognitive disability, an intellectual disability, if for whatever reason due to some other disability are not as able to interpret language, a speech language deficit, the more we use plain language the more we include everyone. That is a basic accommodation we should be using throughout government. We're about to get a training for all North Carolina folks at our division of our developmental disability and DHHS to make sure we're using clear and easy to understand language. There's a fantastic resource at plainlanguage.gov. Also, to speak slowly. Use pictures and visual tools. I want you to take a second and look at these potential accommodations and think of how you have or have not in your own work used these things to make sure you are including everyone. How do we ensure that directions are understood. Sometimes that means we need to ask someone to repeat them back. Make sure they understand how important it is if you are going to court and talking to someone in the clerk's office that you understand the directions. Whether or not you fill out the paperwork correctly. We need to make sure that we're really providing those accommodations. A lot of times what I do is ask someone with expertise in that particular disability or has experience in that disability to help me determine what are those ways in which we can accommodation and include individuals with mental health disabilities, traumatic brain injury, substance abuse disorder. Sometimes they can include scheduling modifications, alternative formats, allowing individuals to assist. Sometimes that's challenging because we don't necessarily want someone else to be interfering with an individual with a disability. Sometimes they have someone they rely on who is with them and who can help. I have my counsel chair has a very significant speech disability. And he has people close to him who often do what is called speech interpretation for us to understand what Brian is saying so he can lead us which he does so well. Allowing service or comfort animals. Sometimes when it's appropriate, asking an individual who is a loved one or connected with that person for the ways in which to accommodate someone. But always starting with the person first and it's a delicate balance to get that right. Modifying your documents and forms. Look at your documents and forms and see how you are or are not including people with disabilities. We send out Medicaid documents all the time that are incomprehensible.

We talked about in terms of assistance of other individuals and allowing them to be included. It's important to maintain the individual with a disability’s privacy. That has to come first. Letting them tell you what they want or don't want. Even when a guardian exists, an individual has a right to respect and interact with who he or she chooses. That goes back to all the things we talked about today. Even though Brian asks his loved ones or direct support professional to interpret, that's his choice. We should not expect that interpretation would be done by the individual who is with the person. We need to provide those interpretive services like are being provided today through ASL. I will leave these up. These are some of the organizations that you can reach out to in Georgia that can also be there to help provide advice and various services in Georgia. And we have just a little bit of time left over for questions. I will turn it over to Barbara.

>> Barbara Tucker: Talley, thank you so much for the wealth of knowledge that you have brought to our second day of the conference. We do have some questions for you. We will start with the first question that was sent to us by William. Were men sterilized in some fashion?

>> Talley Wells: I have always assumed and I'm pretty sure that I'm right that did occur. I can find out and get that answer to Stacey afterwards. I see we have some questions answered. There's a lot of good material on eugenics in Georgia and that could be the other way in which I get some resources to you. There's a pretty good Georgia encyclopedia article, a Georgia state law school professor who have done a lot of research on eugenics. The answer is out there.

>> Barbara Tucker: The second question: How do individuals or organizations demand through enforcement of standards. This is a two-part question. Who do we go to support this as advocates when the findings are not being implemented in Georgia?

>> Talley Wells: Just because you have a right and that right is being violated doesn't mean there's a way to snap our fingers and get our rights to be validated. The answer is multitudinal. There's so many different ways that one can try to enforce their rights. As a lawyer, if it's possible, I encourage someone if they really have a legal dispute to answer getting a lawyer. But the reality is, and I work at Atlanta legal aid for 17 years and we were not able to take the majority of cases that came to us. There were times where people had rights that were being violated. So how do we enforce the rights? Some things we would do in addition to taking the case and bringing a lawsuit, the first is to ask for the reasonable accommodation to put it in writing. Second, if you are not clear about what to ask for or put in writing, reach out to the southeast ADA center. They are a good resource for talking to. There's an extraordinary amount of good information. There's a lot of bad information on the Internet but places I would go the United States Justice Department has put a lot of interpretations of the ADA on their website. HUD has those as well. There's an organization called wrights law that talks about rights under the IDEA and Section 504 of the Rehabilitation Act. So that can help in terms of how to ask for the accommodation or that reasonable modification. The reality is that it's not just judges that are supposed to enforce the ADA. It's actually government officials. Every public entity is supposed to follow the ADA. So, making those requests explicit. And each federal agency has a civil rights division that you can write a civil rights complaint and ask them to look into it. In Georgia there's also the Georgia Equal Opportunity Commission that you can file a complaint with. So, HUD or the United States Department of Education and fill out a complaint and ask for an investigation. Stacey Valrie Peace and the ADA group advises the state entities on compliance of the ADA. So, you can remind folks to go to Stacey and Stacey will talk about at some point I'm sure but they don't tend to communicate with citizens. That's not their role. But we need them to help keep the state agencies following the Americans with Disabilities Act. So those are some of the options.

>> Barbara Tucker: Our next question: Do you see group homes as institutions?

>> Talley Wells: That's a loaded question and a very important question that we are wrestling with in North Carolina right now. What I say is everyone has the right under the Americans with Disabilities Act to live as independently as possible and in the least restrictive environment appropriate to the person's needs. So, think about most of the individuals you know don't need to live in a group home, need to live in a home that has more people in it. There's economic reasons sometimes people live in group homes. There might be preferences because so many people with disabilities are isolated, the opportunity to live with others. The Olmstead case is to live as integrated as possible. Are group homes institutional settings? It depends on the group home. I have been in some group homes that feel like an institution. Where everything is regimented, whether they are allowed to go out of the house. Whether they are allowed to go to church and work. I have been to some group homes that are phenomenal. Homes where people with and without disabilities live together. These are places that my wife and I have thought about living. I think it depends on the context. I think most group homes are not where people want to live or need to live.

>> Barbara Tucker: Thank you. Our next question: At the California division of workers compensation, should the state provide CART or other accommodation services to attorneys that appear regularly.

>> Talley Wells: Yes, if the attorneys have a disability. They have the right to do their job and have access just like everyone else. To the division of workers compensation. I worked closely with a civil rights attorney in Georgia and that was often part of her request for accommodation and part of making sure she was being included.

>> Barbara Tucker: Next question: Can you talk about ADA Title II program access and other civil rights law protections from discrimination?

>> Talley Wells: That is a broad question. It's basically can we talk about Title II and other civil rights acts. That's what today was all about. Really tying the ADA's history to how Title II is interpreted with how the ADA was developed. Really, I think the main take away I would say from the congressional findings and purpose is the broad mandate that Congress was trying to eliminate every form of discrimination and ensure that every type of accommodation that is reasonable should be provided in order to make sure everyone is included. Sometimes modifications and accommodation and who bears the cost can be a question but most time for public entities, the public entity needs to provide the cost, bear the burden and ensure that every citizen has a right to those supports not supports and services. That's my field. To whatever services are being provided by that state entity. So, the broad mandate sweep and how that is really supposed to root out all of the vestiges of discrimination and segregation that has occurred throughout our country's history that we hopefully are able to eliminate today.

>> Barbara Tucker: This is our final question: What if a person with a disability cannot speak for themselves? How do we interpret the level of assistance PWG will be comfortable with if they cannot speak for them self?

>> Talley Wells: This is a powerful and challenging question. It all goes back in my mind to the real movement that's happened around person centerness and ensuring as much as possible that we're listening to folks who may be are not who have challenges due to their intellectual ability or communication or some combination. That we have to develop a close enough relationship and connection to them and that can be challenging if you are in a bureaucracy type place but that we take the time. That that's part of the accommodation to understand that person as much as possible. There's great guidance that various organizations that work with people with Alzheimer's have and not listening to a person who has Alzheimer's but listening to what communication you do get from them. I have a friend with severe Alzheimer's but she is able to talk about what foods she enjoys and when she see uncomfortable or when she has certain needs. So just because she has substantial memory loss and challenges with communication there's many ways, she is able to communicate her needs and her wants and so we need to accommodation the person as much as possible to get as close as we can to understanding those so that we can be including them as much as possible.

>> Barbara Tucker: Thank you so much, Talley and again for all that you have done, all of the information, your experience that you have brought to our session second day of our conference. We will break for lunch and return at 1 p.m. eastern standard time for today's afternoon session entitled the ADA legal update 2022 in review. Thank you all and we will see you all this afternoon.

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