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20 Years of ADA: But Where Are We Now?

A Conversation with Marc Fiedler

July 26, 2010 marked the 20th anniversary of President George H.W. Bush's signing the Americans with Disabilities Act (ADA) into law, to ensure the civil rights of people with disabilities. But while this milestone has been marked by significant achievements in increasing full participation in community life for people with disabilities, many within the disability community believe that the ADA hasn't quite fulfilled its promise.

One of those individuals is Marc Fiedler, a Washington, DC attorney and disability rights advocate, who filed several of the first lawsuits under the ADA.

In 1975, while a student at Harvard University, he was in a serious car accident, from which he sustained permanent spinal cord injury, resulting in quadriplegia. Returning to Harvard in 1976, he and several other students with disabilities formed Advocating a Better Learning Environment (ABLE), to seek to improve accessibility and accommodations for people with disabilities on the Harvard campus. As a result of ABLE's efforts, several buildings on campus were renovated to improve their accessibility, courses in which students with mobility impairments were enrolled were assigned to accessible facilities, an on-call, wheelchair-accessible shuttle service was established, readers were provided for students with visual impairments, and sign-language interpreters were provided for students with hearing impairments.

In 1992, Fiedler co-founded the Disability Rights Council of Greater Washington (DRC) in response to what he and his colleagues saw as widespread noncompliance with the ADA by private businesses and by state and local governments. "We knew that the US Department of Justice, which has statutory authority to sue on behalf of individuals, simply didn't have the resources to pursue all the legitimate claims it was receiving," Fiedler said, "so we put together an organization that could fight back against even the biggest and best-financed violators."

In the nearly 18 years since its founding, the DRC (which in 2005 merged into the Equal Rights Center) has filed approximately three dozen actions under the ADA against places of public accommodation and local governments that have engaged in a pattern or practice of discrimination on the basis of disability. The lawsuits that the DRC and Equal Rights Center (ERC) have filed involved regional or national chains, as well as single

restaurants and other businesses. As Fiedler explained, “The common element in all of our cases is that the defendant business or government has shown a pattern or practice of violating the ADA (rather than a mere isolated infraction) in a way that discriminates against an entire class of people with disabilities (such as people who use wheelchairs or those who are deaf).”

Almost all the ADA cases brought by the DRC and the ERC that have been resolved settled on terms highly favorable to the plaintiffs and other people with disabilities. Several of the cases and settlements were among the first of their kind in the nation, such as:

- *Disability Rights Council of Greater Washington v. Washington Hospital Center*, which required the largest private not-for-profit hospital in Washington, DC to: improve and increase the number of accessible patient rooms, place inpatients with mobility disabilities in accessible rooms, examine patients with mobility disabilities in an appropriate manner by trained personnel, and make accessible equipment (such as adjustable exam tables, Hoyer lifts, wheelchair scales, and accessible call buttons) available to patients who need it;
- *Equal Rights Center v. Zipcar*, which required the car-sharing service to provide vehicles equipped with hand controls for members with mobility disabilities;
- *Savage v. City Place Ltd. Partnership*, which required a clothing store chain with hundreds of stores nationwide to provide accessible means of emergency egress for persons with disabilities; and
- *American Association of People with Disabilities v. District of Columbia*, which required the District of Columbia to acquire and install at least one accessible and audio-equipped voting machine in each precinct, enabling persons with impaired vision and persons with impaired hand function to vote independently.

While Fiedler recognizes the progress that has come as a result of the ADA, he believes that there is still some distance to go. As he explained, “Government services are still being denied to people on account of their disabilities; just recently, the ERC settled one lawsuit against the government of the District of Columbia requiring it to improve the accessibility of its city hall for people with mobility impairments.” He continued, “Many buildings that were constructed before the ADA took effect have still not removed architectural barriers that could be eliminated without much difficulty or expense, and many newly constructed ones don't comply with the ADA Standards for Accessible Design.”

But despite those shortcomings, Fiedler shares the sense of celebration of the disability community as it marks this significant milestone. “We clearly have made substantial progress. As a wheelchair user, I can attest that many more buildings are at least partially accessible to me than was the case two decades ago; there are far more curb ramps on our sidewalks; buses, trains and the stations that serve them are much easier to use. As the built environment has become more accessible, more people with disabilities now can—and do—get out and about. And as we participate in greater numbers and more fully in the mainstream of our economy, society and culture, so also has the level of acceptance

of us as full-fledged citizens increased. So while we haven't yet achieved the ADA's lofty goal, we are moving in the right direction."

In order to overcome the barriers to compliance which still remain, education and public awareness are key. While the Department of Justice (DOJ), Access Board and other federal agencies have a great deal of information about the ADA on their web sites, Fiedler feels that public education needs to expand beyond web site information. He believes that the DOJ should subsidize the revision, reprinting and wide dissemination of older ADA resources and publications, as well as the development and dissemination of newer resources. And the responsibility for education doesn't just fall on the DOJ—Fiedler believes that trade associations need to better educate their members about their role in ensuring ADA compliance and bar associations should conduct more programs for lawyers to assist them in advising their clients about the ADA. Disability-rights organizations also have a role in the educational process, as Fiedler believes that they need to do a better job both in educating people with disabilities about their legal rights as well as in providing training about how to effectively self-advocate for the enforcement of those rights.

One of the marked improvements over the last 20 years is the shift in the dialogue between people with disabilities and those in the power structure within the US. In addition to seeing more people with disabilities entering the power structure and becoming members of Congress, governors, judges and high-ranking government officials, Fiedler feels that as a result of closer coordination and collaboration of organizations across disability types, the political voice of those with disabilities is becoming more unified, sophisticated and potent. "As a result," he said, "governance in matters related to disability rights is now being done less *for* people with disabilities and more *by* people with disabilities."

Fiedler's expectations with regard to ADA compliance are clear. "Before 1990, inaccessibility was commonplace and therefore not unexpected. With the ADA's enactment, accessibility is expected and inaccessibility is unacceptable. Architectural barriers that may have been overlooked in the early years of the law are now being seen as intolerable. Financial resources that may once have been insufficient to require removal of those barriers may now well be more than sufficient."

Looking toward the next 20 years, he is hopeful about the potential for greater accessibility by individuals with disabilities. But he also has become less tolerant of those entities that continue to shirk their responsibilities relative to ADA compliance. "I'm less willing now than I once was to give the benefit of the doubt to businesses that have fallen short of their legal obligations," he explained, "and I'm more insistent on scrupulous compliance with the ADA's requirements. I suspect that other people with disabilities feel the same way, and will act accordingly."