

**Transcen
ADA Today
Conversation with John Wodatch - Part 2
Speakers: Caleb Berkemeier, Host
John Wodatch, Guest**

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>> CALEB BERKEMEIER: Welcome to ADA Today, a podcast of the Mid-Atlantic ADA Center. My name is Caleb Berkemeier, training specialist for the Center, and this is Part 2 of my conversation with John Wodatch.

Another issue that I thought we could talk about -- and I'm not so sure that this one is as much linked to any criticisms of the ADA, but people with disabilities are still having issues when they find themselves within the sphere of law enforcement and corrections. I'm just curious to hear your thoughts on that problem and how the ADA can help us with that.

>> JOHN WODATCH: We recognize that in our technical assistance efforts early on partly. Part of it was looking at how police officers in interacting with the public, which they do, and we're much more aware of this now with Black Lives Matter than we had been through most of the time that we're talking about the ADA, but recognizing how police officers could recognize the behavior that is a symptom of disability and not something that they would have to deal with, and so that was very much a large part. You know, someone recognizing behavior that is a symptom of disability and thinking it's criminal behavior. So we did training, and we did a lot of those issues. We still need to do work on that issue.

The issue of prisons are very difficult in terms of how they deal with people with disabilities and think of in terms of people who are deaf or people who have vision loss or people who have mental or psychiatric conditions and how you deal with that in the situations that exist. But you also have the other issue that we have an aging prison population, and most of our prisons are becoming nursing homes in a sense as the number of people

with disabilities increase in prisons and how do they deal with that. I think both of those law enforcement issue and prison issues are very important. And I think there have been some court decisions that were problematic at the time. There were people who said, well, the ADA can't apply to arrests. I think the Yeskey Supreme Court decision says the ADA applies to everything a state or local government does. How it applies in terms of the safety of a police officer is an issue to look at factually, but the ADA applies to those situations, and I think it's still an area that we have to work on. If you look a lot at the issues that have been in the public eye, you know, we have seen them as Black Lives Matter, a number of these people are, in fact, people with disabilities themselves who have been treated without respect to the -- understanding the nature of their disability. It is very much a work in progress at this point.

>> CALEB BERKEMEIER: Yeah, certainly. I also wanted to ask you about the education of children with disabilities, and maybe make this specific to blindness to begin with. It kind of connects, I think, to the employment issue. I would submit that one of the reasons why there's low employment for blind people is that, you know, a lot of low-skilled jobs, low-paying jobs are manual labor, something that is, for the most part, difficult for someone with a visual impairment to do. Where the good jobs are for people who are blind are, you know, the more information-type jobs, communication-type jobs. But to get those kind of jobs, you tend to have to have a little more education.

So I think that maybe that's one of the reasons why, at least for one disability group, that unemployment numbers are what they are. What's your assessment of how we're doing when it comes to educating children with disabilities?

>> JOHN WODATCH: I think you've hit on an analysis that I think is right. I'm by nature an optimistic person. I would point out that when I started doing this, the number of people with disabilities in colleges and university was minimal, if nonexistent. The last year -- I think a year ago we had numbers. 12% of students in colleges and universities are now people with disabilities. And I think you're right, the good jobs in our economy are information-related jobs. And to get to those, you need training and expertise. And so we need to start doing that at the most basic level of education.

I assume now with the COVID pandemic and the fact that you have almost every -- I have a three-year-old grandson who's learning

how to use his tablet to take classes -- I think we're getting a crash course in this at the point we have now. But I think you're right. I think it starts with education. The ADA has a role here, because we still have misperceptions. We have stereotypes. We have fears that employers have about hiring people with disabilities that we have to overcome. And if we do that through lawsuits, if we do that through education, there are a number of ways to do that, I think part of that will change over time as we have more integration of people with disabilities into everyday American life, including in the workforce.

And I think we have come to the point where we understand the idea of reasonable accommodation and the obligation to provide reasonable accommodation at work and to provide the special and related services that are needed in education, but it's a process, and it affects just about every group of people with disabilities. I think the idea that our colleges and universities have to have a slightly different notion, I think especially in terms of getting people with intellectual disabilities into the higher education system, whether -- it may or may not be in a degree-granting program, but it might be, and it might be in other programs that prepare people with disabilities for good-paying jobs.

>> CALEB BERKEMEIER: So let's switch topics here a little bit and go to enforcement. So, you know, I sometimes hear people saying that enforcement isn't what it used to be, but I haven't been around for 30 years to really know. So what do you think of that? Is there a difference now compared to the way it was in the past?

>> JOHN WODATCH: I can tell you -- as a person who was in charge of the office that was doing enforcement when it started, I can tell you what our approach was. When we started with the ADA, our goal was to try to establish the law as an important law that people understood and didn't see as some crazy thing that was being foisted upon them, so we tried to keep to very important fundamental issues so that people could see that this law was going to bring about change that was important, and a lot of our early actions were in that area.

Some of them were symbolic. The investigation of -- well, take the Olympics. We had a lot of complaints about the Olympics, about the stadiums as they were being developed, and we ended up with, you know, major changes to how sports facilities are designed. We also did a lot of outreach with them, so press conferences and the like. We did a press

conference on the floor of the Olympic stadium in Atlanta to try to get people to understand what this was.

And in those early days, we did a lot of work on systemic issues, standardized testing issues, allowing people who were blind or deaf to be jurors, making structural changes in society, and so a lot of those were changed. And then something as important as the Olmstead decision, which came down in 1999 -- and I'd be remiss if I didn't say that the author of the Olmstead decision was Ruth Bader Ginsburg, whose life we are honoring this week -- you know, that brought about a recognition that people with disabilities in institutions who didn't need to be there could exist in their communities independently with their families and friends living their own lives, making their own decisions. And so I think over the 30-year period there have been a lot of issues that we have addressed.

Now, the issues were addressed by the federal government, by lawsuits by the federal government, but they were also addressed by organizations of people with disabilities, cross-disability movements, as well as, you know, lawsuits by organizations representing blind persons, organizations representing those who are deaf or hard of hearing, and those still go on.

I think a lot of our work was convincing courts what the ADA was and how it applies and why courts should take action. I think there has been a strong record over the 30 years of bringing about change. Certainly, in the past several years, the federal government's role has been diminished. You know, I think that there's -- I'm sorry to have to say that, but I think that it has, and I think that has its impact, but I think some of the other organizations have done some -- private counsel as well as organizations have taken up the banner and done a lot of important work.

There's still much to be done. I assume we'll get to talking about what the issues are that still confront people with disabilities, and lawsuits are a part of that, but I also think technical assistance and voluntary compliance and getting people to comply is part of that. And I think there are ebbs and flows. Also keep in mind that I think enforcement of the ADA sometimes is linked to how the economy is doing because many changes that the ADA requires are going to cost money. And when there is less money available for businesses or state and local governments, there is less compliance. And I think we're in a downturn in that area right now, and I hope it's a temporary one. Right now I'm just hoping that people with disabilities can hold -- the few that are employed can hold on to the jobs

they have as we face massive unemployment of people.

>> CALEB BERKEMEIER: Yeah, that's a very good point. Also curious, what do you think of the idea that when it comes to enforcement and, you know, the way it was done in previous decades compared to now that some of it might be a perception issue? Because back in the '90s, when the ADA was more new, there was a lot more stuff that had to be brought into compliance. And over the course of 30 years, there's less of that now. It's still a lot, but maybe comparatively less than in the '90s, and so people who are looking at enforcement now are remembering what it was like back in the '90s. Is there any merit to that?

>> JOHN WODATCH: I'm not sure there's merit. You know, the past always looks rosier, I suppose, in a sense. Also keep in mind when I was at Justice, we did -- we made a concerted effort to try to publicize what we were doing. We weren't always very good at that. So, for example, I mentioned the Olympics. After we did the Olympics, we put out technical assistance documents on line of sight over standing spectators so that new stadium design would have something to look at.

One of my fondest memories is a press conference we did with a car rental company when we were requiring them to have hand controls. And we did an event at the Department of Justice with Janet Reno, who was the Attorney General, driving accessible cars around the parking area of the Department of Justice with wheelchair users driving the cars. You know, that sort of riveted public attention on the importance of the issue and the changes that were being done. I don't think we do that as much anymore, so I think that might lead to that perception.

There have been some amazing agreements recently. The National Association for Deaf Persons settlements with Harvard and MIT in terms of accessibility of websites and applications and virtual teaching are important agreements. And I'm not sure if people even know about them or have the same sense of them. And it also may be the press isn't as interested in those issues now because they've been occurring over time.

But there have been major changes in our society. The ability to have a sign language interpreter at your doctor's office, which was a very hard concept to hammer out, or at hospitals, you know, is much more common now. It doesn't mean that there isn't discrimination, but the requirement has been established so we know -- you know, we know if you're building a building wrong now, you should be -- you know, that is wrong.

People recognize that. So that might lead to the perception issue, because the perception comes with how much you know about what's going on.

>> CALEB BERKEMEIER: Yeah. And speaking of perceptions, you know, another criticism that we tend to hear from people who think that the ADA goes too far is that they claim that it has loopholes in it. And we just recently saw this several months ago when there were articles being written about the requirements to wear masks into stores and places like that. And, of course, businesses have to consider making reasonable modifications if someone has a disability that prevents them from wearing a face cover. And so you had people who were going into these stores and just saying that they had a disability and that's why they couldn't wear a mask, and then there were articles written that this is an ADA loophole. What's your assessment of that argument?

>> JOHN WODATCH: That's not -- let me unpack that a little bit. You know, the CDC guidance, for example, on the requirement that you should wear -- the recommendation to wear a face mask recognizes, at least in those, that people with breathing difficulties may not be able to wear face masks. I don't see reasonable modifications, which is a very important part of the ADA, is not a loophole. I thought you were going to say that the fact that a CVS may have to deliver medications to the home free of charge of a person who can't wear a face mask in the store is not a loophole. That is just another way of the service being required.

I think the difficulty comes when there's not a reasonable modification that works, and what does a person do in that regard. And the other problem is that the federal government hasn't led on this issue. There's not guidance from Justice, from HHS, or from other agencies on what to do when you are confronted with a person who needs healthcare but can't wear a mask because of their autism or because their PTSD. How do you address that? We haven't been given the kind of advice that we need to make that work. But I don't think of it in terms of a loophole. It's looking at the tools that the ADA and the courts have given us. The direct threat analysis, is someone a direct threat to the health or safety of others because they can't wear a mask, and how do you deal with that?

>> CALEB BERKEMEIER: Yeah, yeah. I think it's -- I think that those articles were misusing that term, because the issue is not it's not a loophole, it's that people were abusing the ADA and lying about having a disability.

>> JOHN WODATCH: It is interesting to me that -- we've seen this in other areas. We've seen it with service animals. We've seen it in Disney World and other places, people attempting to say they have a disability when, in fact, that they don't in order to have the services available to people with disabilities. I think we just have to seek out the fraudulent behavior and deal with it.

>> CALEB BERKEMEIER: So when it comes to the kinds of things that the ADA covers -- you know, employment, access to goods and services from public and private entities -- would you say that the United States is leading the way, or are there other countries that might be doing it better than us? And what are some of the countries that you think are doing a really good job of disability rights?

>> JOHN WODATCH: I don't want to be jingoistic. I still think we are leading the way even now, partly because I've seen -- when you look at the total package of disability issues, there are other countries that are pioneering in some other areas that we haven't done yet, but I think the problem that I see most countries have not yet adopted the full -- they have a much narrower definition of person with a disability. They don't want to include some psychiatric conditions. They don't want to include HIV. They may not want to include some seizure disorders. Their mindset yet isn't a broad civil rights approach, one issue.

The other issue is they often don't want to regulate the private sector, and they don't have in place mechanisms for ensuring enforcement. So those are the short comings that I see even in some of the best countries. But put that aside, there are individual issues that are occurring in places that point out some of our shortcomings. A country like Sweden or some of the other Scandinavian countries that have very sophisticated service provisions so that we could learn a lot in terms of personal care services that allow people to live independently at home with the right services instead of being in an institution that we can learn from countries like that in terms of having systems that work, so another area.

I think England has worked to deal with what we might call the issue of visibility -- visitability in terms of accessible housing more broadly so that people with disabilities not only have their own housing, but can visit some of their friends in their homes so that they are accessible. So that's another issue.

Another set of issues that are developing in some countries, dealing with guardianship and issues involving the independence of people so that we have supported decision-making process rather than guardians. And I think some countries have moved ahead of that, and we have not done that as much.

An area where I see problems with other countries, though, is the integration of people with disabilities in education. Ensuring integration in education is something that isn't occurring in even some of the most developed countries. Japan is a good example of that's just not something -- that is something that is just anathema to their culture. I think there's -- we can pick pieces that are occurring. Germany has moved ahead in many ways. I mean, the developed world is one set of issues.

And the developing world has a separate set of issues in terms of ensuring services and access. We -- early on I spent some time with Afghanistan and was talking about making buildings accessible, and these people said to me, "You don't understand. We want a wheelchair so we can get out of our own building, never mind another building."

I mean, so there are some very basic issues in terms of -- I talked to a woman in an African country. We were talking about accessible buses, and she said, "I can't get from my house to the bus." There are a variety of issues in different countries that are more elemental. There are some countries which still have a religious view that someone with a disability is marked by God and therefore is different. And dealing with that kind of cultural issue is not something that we have often had in this country. That has to be overcome in some of those places.

So I think overall there are pieces we can learn from other countries, but I still think that when you look at the totality of the experience in the country, we are still -- we have -- many countries have a way to go to get to the level of accessibility that we experience here.

>> CALEB BERKEMEIER: Yeah. I'm also wondering when it comes to the economic aspect of it, despite the protest of some in this country who would claim that the ADA is too expensive, the United States is, you know, a very wealthy country, and, you know, there is money available, lots of money available to make these kinds of broad societal changes. And maybe in some other countries the economic situation is not as good as it is here. So would economic constraints be a reason for why some countries limit or seek to limit the definition of a person with

disability so that less people are covered?

>> JOHN WODATCH: I can tell you that early on at the UN when we were arguing about the definition of "disability," China and India fought our definition. And the reason was, their view was if you were a person with a disability, you were entitled to income supplements. They only saw disability that way. And so trying to get them to say, no, that's a piece. There are people who have a disability and will need income supplements for you, but that doesn't include all people with disabilities. And trying to get them to understand rights, civil rights, I think that is one -- and I have had that aspect dealing with governments in the Republic of Georgia and Armenia and countries like that that have come from sort of an old Soviet-style view or Chinese Communist view, getting them to understand that you can be a person with a disability and have rights and need accommodation, but you are not -- you're not going to be a ward of the state. So that is one issue.

But I think the economy issue is in some ways a false one. And I've made this argument with any number of countries. You know, the ADA didn't require retrofitting of buses because it was expensive. The idea of buying a new bus and making sure it's accessible is an infinitesimal cost for a country. So if a country is going to order a hundred buses and they have so much money to buy it, well, then they should order 95 buses and make sure they're all accessible. They can do that without difficulty in terms of their financing.

If we're talking about making a new building accessible, every study shows that the cost of making a new building accessible is less than one half of 1% of the cost of the building. So if you require and actually require your new buildings to be accessible, it's not a cost issue. It's really an issue of how you go about that. And a lot of other ADA issues are really management issues, not cost issues.

So I hear that all the time when I talk to poorer countries in terms of their resources, but there are ways to comply with ADA-type principles and do it in a cost-effective way, not the least of which is the end result is going to be people with disabilities who will be citizens who are paying money into the country as opposed to just taking money from the country.

And I think that argument works with even the poorest of these countries. They do see people with disabilities as an untapped resource that they should be investing in and that it will benefit their country. I don't buy into the "We're poor."

We have no money. We can't do it argument" at all.

>> CALEB BERKEMEIER: Yeah. That's a very persuasive view. Why don't we wrap up the interview talking about the International Disability Rights Movement and the CRPD. What's been your involvement with that, and how do you think things are going outside of the United States?

>> JOHN WODATCH: I was lucky enough to be included in the U.S. delegation that went to the U.N. to negotiate the CRPD and so got involved with that. It was my first -- you know, I was -- I'm really a domestic disability rights lawyer. I was until that point in the early 2000s. And spent a lot of time at the U.N. and was educated by some of my colleagues at the State Department, who are brilliant. And what our goal was was to try to introduce some of the concepts of the ADA, the breadth of definition of person with disability, the idea that reasonable accommodation is required in employment, that to provide services you had to have accessible buildings, accessible buses, getting those concepts. And they are included in the convention itself, which has now been ratified by over 180 countries around the world. We are not one of them.

There are over a billion people with disabilities in the world. A lot of them are in very poor and developing countries. I think there is a worldwide movement of people with disabilities and a worldwide awakening by governments that they have neglected an important resource in their own countries and a recognition that they have to take steps to ensure that people with disabilities can be educated, that they can have opportunities to be employed, that they will produce for the country so that their gross national product will grow.

And now I've worked with a lot of countries over the past nine years, and I can tell you that it's a process. The movement is there. People with disabilities and organizations are organizing and representing their interests. We are changing laws, but we have a long way to go to get over some ideas. The idea of an expansive view of people with disabilities should get to the idea that the private sector should be regulated.

And most of these countries that I've worked with, they might have a regulation that says buses have to be accessible or buildings have to be accessible, but they have no enforcement mechanism. So getting them to change is a very important job that's being done, and I think it will continue to be done, but I think great changes are being made across the world, and

people with disabilities are beginning -- are a force to be reckoned with in all of these countries.

>> CALEB BERKEMEIER: All right. Well, that's about all the questions that I have, so I think we can go ahead and wrap up the session. Good-bye, everyone. Thanks for joining us.

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