Episode 5: A conversation with John Wodatch - Part 2

Voice Over:
(Hip-Hop music plays)

Barry Whaley::

Hi everybody. On behalf of the Southeast ADA Center, the Burton Blatt Institute at Syracuse University, and the ADA National Network, I want to welcome you to “504 at 50.” I'm Barry Whaley. I'm the Project Director of the Southeast ADA Center. “504 at 50” is a special interview series created in recognition of the 50th anniversary of the signing of the Rehabilitation Act of 1973. And in this series, we speak with people who are leaders in the disability rights movement, who advanced the cause of equal rights through their tireless work.

We're so very honored today to have as our guest, John Wodatch He's one of the nation's foremost civil rights attorneys, with more than 40 years of experience with the federal government specializing in the rights of persons with disabilities. Our host is Dr. Peter Blanck, University Professor and Chair of the Burton BLA Institute at Syracuse University. Peter, I'll turn the show over to you.

Peter Blanck:

Thank you, Barry. And so, John, you've told us about the important developments with regard to the passage and subsequent regulations of 504. We're not quite out of the seventies yet, and we have the first United States Supreme Court case, which you touched upon, Southeastern Community College v. Davis in 1979. Was that a shot across the bow or some sort of awakening to the community and to you that there was more litigation to come, and how did that come about?

John Wodatch:

Yes, I have to be honest with you that that was a shock to us. I like your description of it as a shot across the bow, because it was a reckoning looking at that and saying, "This is how the legal profession is looking at this in ways that we hadn't thought." But as we then spent a lot of time parsing the decision, which did introduce undue

burdens and introduce fundamental alteration, but I think I took from it, and I have often been accused of being a Pollyanna, but I looked at the language in it that said there was a zone between non-discrimination and affirmative action where positive steps would be required by Section 504, that idea was in there. And so I tended to -- even though I disagreed with the application of the decision to the fact situation they had at hand in terms of what an academic accommodation could be, even in a clinical setting, I looked at the general notion that some form of positive steps, yes, are required in order for it to be non-discrimination before it gets to be something that's affirmative action.

And so I think in the long run I could look positively at that decision and say, okay, this is a group of legal scholars that looked at this law as it applied to a difficult fact situation and come up with these concepts. And, in fact, in the middle of the Reagan administration in the early eighties, and when we were confronted with doing Section 504 ~~federally-conducted~~federally conducted regulations, that's when the Justice Department together with the disability community together with the White House came up with formulation of how we would apply that decision to 504 regulations.

And that was a series of negotiations that occurred between Civil Rights Division at that point. You may remember in the Reagan Administration, there was a presidential task force on regulatory relief that took up this ~~issue, and~~issue and was headed by Vice President Bush and Evan Kemp and the Disability Rights Education and Defense Fund were the chief negotiators of how you would apply the terms of fundamental alteration and undue burdens to a 504 implementing regulation.

Peter Blanck:

What terms, specifically, were not in the statute that were created by that line of cases culminating in Davis? Are you saying that these concepts were not in the law or contemplated by the law?

John Wodatch:

The disability community from the beginning of the law were adamant in the notion that there shouldn't be a price tag on their rights. And that was a key philosophy of the Disability Committee. If you looked at the regulations, however, those concepts, when you're actually looking at implementing the law, the idea of what the costs are of implementation to recipients of federal funds was always part of it. And I sometimes like to kid that there was not a right granted under 504 that didn't have some limitation in some way. Even “reasonable accommodation” has the word “reasonable,” and, in fact, undue hardship was a specific concept in the

employment area. We just didn't have an ~~across-the-board undue burdens~~across-the-board undue burden. It became for 504 undue financial and administrative burdens, writ broadly into the regulations.

And so the concept was there in a nascent way, but the Davis decision forced really the federal executive branch to look at it a little bit differently and try to realize that there were limitations on what was equal opportunity. We had recognized them in certain areas. I mean, certainly program accessibility had some limitations based into it. If you look at it with a cold eye, program accessibility does allow some forms of segregation, because you don't have to have every single section of English 101 at a university be accessible if cost was an implication or administrative burdens were an implication. That was already in Section 504. But I think the Davis decision made us look at the regulation and see where fundamental alteration fit into the picture and where undue burdens fit into the picture.

Peter Blanck:

Now this next question, bear with me, it could be a law school exam and you'll obviously make an A on it.

John Wodatch:

Those are the best kind.

Peter Blanck:

So, we have understood, perhaps some of us, that if the Rehnquist Courts project was sovereign immunity to limit the ADA, for example, cases like the Georgia case, right? What was it, Garrett?

John Wodatch:

Mm-hmm. Well, Garrett was the Alabama case.

Peter Blanck:

Garrett was the Alabama case.

John Wodatch:

Mm-hmm.

Peter Blanck:

And we see the Supreme Court just this month issuing a decision about 504 looking at it from a contractual point of view because it was grounded in the spending

clause. So here's my question. Was 504, because it just involved federal funds, always conceived in the spending clause of the Constitution and not the 14th Amendment, which would have somewhat shielded it from these economic analyses? Does that question make sense to you, John?

John Wodatch:

Yes, it makes total sense. And my answer is mostly, yes it was. I mean, the idea~~--Remember~~-- Remember 504 is a parallel to Title VI of the Civil Rights Act of 1964, and when John Kennedy introduced it, there was a great deal of--the idea behind it was all Americans paid taxes, and these taxes came to the federal ~~government~~government, and they dispensed them out. And it was a violation to have this money that is spent out and basically is a contract between the federal agency giving the money and the entity that receives it. But the idea that an ~~African-American~~African American taxpayer could be discriminated against because the ambulance service didn't pick up African Americans, even though the Medicaid funds went to the ambulance service. The idea behind that was really contractual in nature, but it did have an overlay of that this is equal opportunity, which gets you into the idea of the 14th Amendment. But it was always viewed, I think, by the Federal Executive Branch as a spending authority responsibility.

Peter Blanck:

Now it's interesting because many laypeople will think of the early civil rights cases involving African Americans, involving the Commerce Clause, the famous counter, cafeteria counter, the ketchup comes across state lines. So even in that sense, I'm asking for your view on this. That was grounded in this sense of spending commerce and less in terms of a 14th amendment analysis? Is that correct?

John Wodatch:

That's true. Although I think 504... You're talking about ketchup brings to mind a funny ADA story, because when we go to the ADA, we are much more into Commerce Clause because of public accommodations, and the cases you're talking about, even under race, were in that arena. But 504, like Title IX and Title VI was really thought much more in terms of bending of the federal government not and it being equitable. If you'll allow me just to... One of our first cases under the ADA, I'm going to the 1990s, I apologize for the-

Peter Blanck:

Please. Please, please.

John Wodatch:

... shift. But we had allegations that one of the franchises of the International House of Pancakes was not engaged in interstate commerce. I always love this case, this part of this case. And we had to... this was the early days of the ADA. We got to use the FBI. We actually had FBI agents sit in the parking lot of the International House of Pancakes. You asked me if there was a story other people haven't heard. This is one, I think. We actually had FBI agents sit in the parking lot and notice where people who were going into the IHOP came from based on the license plates on their car. That became one part of the evidence.

We also had a hearing where the DRS attorney, in this case it was a fabulous attorney named Joe Russo, basically held up... I mean, it was the equivalent of holding up ketchup and saying, "Did you purchase this ketchup? Where was it from?" And so we had to establish in that case that they were in interstate commerce. I always loved it that the International House of Pancakes tried to maintain that they were not in interstate commerce, but we prevailed on that. But it was a very early ADA case and put that issue to bed for us at the beginning.

Peter Blanck:

Interesting. Now, if I can follow-up on just one current issue, and not to jump around, I want to come back to Davis. So, is it possible that Title III of the ADA, Public Accommodations, would be cast under the spending clause such that Cummings would apply to Title III of the ADA? You know what I mean?

John Wodatch:

No, I don't believe so. I think Title III rests more formally both with the 14th Amendment and with Interstate Commerce and the Commerce Clause.

Peter Blanck:

And would the same be true for the other clauses, the other titles--

John Wodatch:

For Title II, I think so, because remember, Title II applies to everything a state or local government does, whether or not it receives federal financial assistance. So there could be an overlap with 504 coverage, but there are going to be entities that are covered, and especially because of the reach of the Civil Rights Restoration Act of 1988, because of the reach of that. Even though that's broad, there are going to be parts of state and local governments that aren't covered through the receipt of

federal funds, and therefore are covered under either the Commerce Clause or the 14th Amendment.

Peter Blanck:

So Mr. Lane, who had to crawl up steps in Tennessee in a State County courthouse, that case would not be in jeopardy still?

John Wodatch:

I don't believe so. I would certainly argue that they are not.

Peter Blanck:

So Davis ended the seventies, and the next major case, of course, in the eighties is Alexander v. Choate, which we can talk about, an important 504 case that's heavily cited. What was happening in the early eighties, particularly as we started getting into the AIDS epidemic, the beginnings of the Women's Equal Rights movements even more so, what was the ADA's posture during those early years? Pre 504 posture?

John Wodatch:

Of course, yeah.

Peter Blanck:

Yeah, pre-Choate? And did you see Choate coming?

John Wodatch:

There are a number of factors in this period of time. First of all, we had a change in the presidency, and Ronald Reagan was elected. George Bush was his Vice President, and one of the things that they established was this task force on regulatory relief. The idea being that the government had allowed too many regulations that hampered business in the United States and that some of these must be unnecessary. And they started this task force and one of the things they looked at was Section 504. Another thing they looked at was the Education of All Handicapped Children's Act, which is now IDEA, Individuals with Disabilities Education Act, and whether, in fact, these should be taken off the books. And, in fact, I was called to OMB to meetings where the idea was to look at whether we should get rid of Section 504.

The Department of Justice, even in the Reagan Administration, took the position that that was wrong, that there was a need for Section 504, but I think there was a

very legitimate attempt by the Reagan Administration to seriously undermine what is now IDEA. And I think one of the highlights to me of the eighties was the work that the disability community did building off its successes in getting the 504 regs out. I think their next major effort was to basically save Education of All Handicapped Children's Act, IDEA, this whole very important and very successful program.

Peter Blanck:

Now, was Dick Thornberg the Attorney General only under then-coming President Bush or had he been the Attorney General under Ronald Reagan?

John Wodatch:

I don't have easy recall on if he was at the beginning of... He was not the attorney general at the beginning of the Reagan Administration, but he came in during the Reagan Administration, and was held over, reappointed by President Bush in 1989.

Peter Blanck:

What sort of groups were pushing to get rid of 504 during that time?

John Wodatch:

Well, I think it was an academic push. The Hoover Institute at Stanford University was looking at a whole series of regulations that they thought were too intrusive. And I think 504 just got cast into the others. I don't think it was very thoughtful, and it wasn't heartfelt by them, because I think we were able to stop that, at least the 504 part of it, early on, for some of the same reasons that 504, the idea that people with disabilities were, if you wanted to look at from Republican themes, were an untapped resource. And what we were talking about were their rights, the rights of individuals to be empowered and to become employed and to be part of American society. And there was a recognition that people with disabilities were in every strata of American society, rich and poor, Republican, democrat, urban, rural. Disability was recognized as just a part of life, a part of every person's life.

I think early in the 80s, the US Civil Rights Commission did a report on the scope of disability. That was 1983, and I think that was very helpful. I think a wonderful gentleman named Chris Bell had a role in the development of that and the US Commission on Civil Rights, which does have a place to advance ideas. I think that was a very important part of the thinking that went into that. But I think 504 became much more an issue of the money that was being given by the federal government to states to ensure the free appropriate public education for children

who had been identified as having disabilities. It was much more their focus because it was a money issue.

Peter Blanck:

I see. So in 1985, you have Alexander v. Choate, and you must have had a run up to that in the lower courts for a couple of years. That is a decision that's often contrasted with Southeastern Davis on some levels. That was a bit of a retrenchment, wasn't it?

John Wodatch:

It was. Not full enough retrenchment for me, but it was a retrenchment, because it did recognize the basic ideas. They used the phrase "meaningful access," that people with disabilities had to have "meaningful access." So there were some limitations on that in terms of how you looked at the programs and the access to them, but it clearly was an advancing that people with disabilities had rights. There may be some limitations on these rights; you may not get full access, but you have meaningful access, a term that we have probably never fully come to grips with. But it was an advance, certainly.

Peter Blanck:

I see. I never really understood, maybe you can help me, the idea in Choate that there was not discrimination on this limit of days on this hospital stay, I think it was, that Medicaid would pay for.

John Wodatch:

Right.

Peter Blanck:

And that was because it was not discriminatory, I believe it said, as compared to coverage that non-disabled people would have. But I always thought the touchstone would be whether or not that was meaningful for the comparative group of people with disabilities. Am I reading that wrong?

John Wodatch:

No, you're not reading it wrong. They certainly looked at it, and I think one of the important features of the ADA is that we can look at a comparative group as not just people with disabilities versus people who don't have disabilities, but you can look at subcategories or different ways of having ... all of these civil rights laws are a competitor. You must give people with disabilities the same rights as the general

public, as another group, as a program that's been designed. So I think you're not wrong in looking at it in that way. It was a narrower way of looking at it. And I think sometimes you look at a court decision and the court wants to go a certain way and they look for reasoning that works for them to get them there. And I think that was what they were doing there.

Peter Blanck:

It actually is quite an interesting time, because then that takes us to the school board, NASA County v. Arline. I never know how to say it.

John Wodatch:

Well, it's Arline, but Arlene Mayerson had a lot to do with it. So it's okay to think of it way.

Peter Blanck:

But it’s-

John Wodatch:

No, but you're right. That was Peshley. That case was important because although it didn't deal with HIV disease, we are dealing in the 80s with the HIV epidemic and whether people who are HIV positive should be covered by Section 504 or by disability rights laws. Are they people with disabilities? And there were people who were opposed to that, and they were using the fact of contagion as a way of trying to limit the protections of 504, and the Arline case put that theory to rest in just saying that contagion is a symptom, it's a condition of a disability condition. It's not a reason to exclude someone. Very important.

Peter Blanck:

That's fine.

John Wodatch:

Arline was a very important, and still remains a very important case.

Peter Blanck:

And I read Arline also, even though it was not the main thrust, that reasonable accommodation has to be tried before she would've been discharged, right?

John Wodatch:

Yeah. Yeah, you're right.

Peter Blanck:

And did it further develop the case law of reasonable accommodation?

John Wodatch:

Oh, it certainly did. It was very important across the board and was fundamental for our thinking of the ADA, which was going to be, as it was being developed at the same time. I mean, we're also talking about the eighties and the National Council on Disability and the work that Lex Frieden and Bob Bergdorf were doing there on thinking through, because I think the other thing that was happening in the eighties was a recognition that although 504 was precedent setting and important and foundational, it didn't go far enough. Partly because it was tied to federal financial assistance.

And so if you think about, we're used to school districts which get federal funds every year or hospitals which get federal funds every year, but there were a wide range of entities that sometimes got money from the federal government, think of a police department or a fire department. So they might be covered in 1983, but the grant ended, and so they didn't get a grant in 1984, so did that mean they could discriminate on the basis of disability the next year? I mean, people were beginning to recognize that 504 was important but didn't go far enough, and it certainly didn't cover most of the private sector, which didn't get federal funds. There was a recognition that more was needed and the National Council on Disability, certainly under Lex Frieden's leadership and Bob Bergdorf's talents, really brought about a change in the thinking of what we needed in terms of a comprehensive civil rights law for people with disabilities.

Also, there were a number of other factors that led into this. The HIV epidemic and the Watkins report, a report looking at the HIV epidemic and coming up with, I think, over 400 recommendations. There were 10 basic recommendations, and one of the important ones was that we needed a non-discrimination law protecting persons with HIV. Now, they looked at this from the idea that if we're going to deal with this epidemic and stop it spreading, we have to protect the rights of people who come forward with HIV so they are not discriminated against in our society, which was happening. The other part of that recommendation that was very important was the recommendation that this non-discrimination law shouldn't just single out people with HIV. It should be broader. It should be a non-discrimination law generally. So you had an arm of the Reagan Administration coming up with a

recommendation that we needed a civil rights law that protected people with disabilities broadly.

Peter Blanck:

That's very interesting. And as you read my mind, in the eighties there was a failed bill, which preceded the 1990 ADA.

John Wodatch:

Right.

Peter Blanck:

There was right Lex Frieden working. There was Frank Boe, who had written some important books, and Arlene Mayerson and DREDF and others. Where was the Justice Department at this time in regard to the development of the ADA? I know you had your hands full with 504.

John Wodatch:

Well, I was in the Justice Department. Remember, it was a much more conservative administration. We were dealing with, if you look at that period of time federally, there are over 120 504 regulations that were issued in that period of time. We were spending a lot of our time doing those, because you tend to think of 504 federally assisted programs... There are 25, 26 agencies that give federal financial assistance. There are 120 or even more federal agencies that were covered by 504 federally-conducted. So we were spending a lot of our time on those issues. We were also dealing with complaints that were coming in. Federal agencies were dealing with their own complaints.

But I had my own view that it was clear that 504 wasn't enough, that the federal government wasn't doing enough enforcement, that more was needed, not just in terms of broader coverage of entities, who would be required to be non-discrimination, but a more vigorous enforcement approach was certainly needed. I think that was my own perspective at that period of time.

Peter Blanck:

Just as an aside, 504 covers the executive branch, I believe.

John Wodatch:

That's correct.

Peter Blanck:

But why wouldn't the ADA have also been asserted to cover the... maybe because it was not necessary?

John Wodatch:

There was that view, but I think it did eventually. There was a rider to cover the... It was viewed that 504, in 1978, when they amended the 504 to cover the federal executive branch, there was the view that needed to be covered. Of course, Congress wasn't covered by it, nor were congressional entities. And there are congressional entities. If you think of the Library of Congress, a fairly significant part of the government, isn't part of the Federal Executive branch. So, it was not covered by Section 504. So when the ADA was enacted, there wasn't a need. And they did, in fact, cover... It's been a while since I looked at that part, but to cover Congress and its entities.

Peter Blanck:

What about the federal courts?

John Wodatch:

The federal courts are an independent act dealt with separately, not under these, yeah.

Peter Blanck:

Yeah. And, of course, Section 501 of the Rehabilitation Act-

John Wodatch:

Covers all federal employment, right?

Peter Blanck:

Employment, with not very strong teeth to back that.

John Wodatch:

I think the EOC years since then have tried to ensure, and there have been changes to 501, both to ensure that people with severe disabilities are considered in the affirmative action obligations of federal agencies. So there's more that has been done as that has gone along.

Peter Blanck:

In the late 80s, in the run up to the ADA's passage, what do we and our listers not know about what you and the Justice Department were doing to participate, of course, in that historic passage of the law?

John Wodatch:

One of the things I like to talk about is the importance of what candidates for presidency... And if you remember the 1988 election, George Bush was running. He had been associated with Reagan and was trying to break himself out as his own person, and so one of the things that he did, we can trace this history, I think he had a role starting in '82 and '83, in terms of saving 504, in terms of saving the Education of All Handicapped Children's Act, IDEA, and working on disability issues, partly through Boyden Gray, partly through the work of Evan Kemp. In running for president, he was running against Michael Dukakis who was the governor of Massachusetts, and he took the initiative and said, "If I'm elected, I will seek out a comprehensive civil rights law protecting the rights of people with disabilities." Very important thing, because when he got elected, one of the first things that his administration did was say, "What are our promises?" That was a promise and he was going to keep it.

At the same time -- you had mentioned the bill that NCD... There was a public hearing that was held on that bill, and there was a great deal of support for the ideas in it. And so we were familiar with that, had been following that. But when he was elected, both Ted Kennedy and Tom Harkin reached out to the administration and basically said, "Mr. President, you have promised this bill. We are working on a bill. We want to work with you." And so very early on in the administration, we, at Justice, were given the responsibility to work with the Senate and others who were working on the development of what would become the ADA.

And keep in mind the Attorney General at that point was Dick Thornberg. Dick Thornberg himself, he's now deceased, was a parent of a child with a disability, and his wife was a well-known disability rights activist. So, he was someone who understood the need for this law. He also had been Governor of ~~Pennsylvania, and~~Pennsylvania and understood how programs were for or were not sufficient for people with disabilities. So, we had in place at Justice leadership that understood the issues. You had a President who gave the Attorney General the marching orders to see what he could work out with the advocates and the Congress. So we were, at that point, very heavily involved.

Peter Blanck:

Do you think that some pundits say the ADA would never have passed today? It was a unique political time. Obviously each time is unique, but do you think that that was an extraordinarily unique time or that it was just the time of that period where things came ~~together~~together, and we potentially could do that again under other circumstances?

John Wodatch:

I think it was a very unique time, but I don't think it was the only time that there... I mean, the ADA Amendments Act of 2008 are another example where things came together that didn't look like they would ever happen. I am not so much of a pessimist that I don't think it could happen again. But I think it was an amazing time in terms of the people that were involved in a variety of ways. The disability community had come of age. It had a wide-ranging cross-disability. You mentioned Frank Boe as one person. I sometimes think we wouldn't have an ADA without the leadership of Pat Wright, who is at DREDF, who is an unbelievably accomplished strategist and able to marshal resources in a way, both within the disability community and as a leader of the disability community.

But there were others. You had Dick Thornberg, you had Ted Kennedy and Tom Harkin. There were others as well. There were Major Owens in the House and Tony Coelho who was in the House for part of that time. There were a variety of people coming together who had developed an interest and knowledge in this area. So, I think it was unique in that regard, but I don't think that doesn't mean it can't be duplicated, and I think the 2008 Amendments is an example where the Chamber of Commerce and the disability community and the EEOC came together to work on... I think it was incredibly unique and there were a number of reasons that it worked, but I don't think we're forever lost with trying to do it again.

Peter Blanck:

Now in the 90s, of course, the first case before the court on the ADA was Bragdon, which was an HIV case, which was a positive case.

John Wodatch:

Right.

Peter Blanck:

And then you get into-

John Wodatch:

Which came out of something that I was happy to work on, and at that point I was the head of the section at Justice charged with doing the ADA, and that was a case that we worked on from the district court on up.

Peter Blanck:

Some people say Bragdon was actually a test case. What don't we know about Bragdon v. Abbott and how that played into the whole fabric of the development of this area?

John Wodatch:

I don’t know—I can tell you we were very careful at the beginning of the ADA in terms of how to present the ADA to the American public. We looked at the success of what had been done in race and sex discrimination, and certainly were looking for cases that presented important issues that people could understand, but I don't think of it as a test case. We had a lot of HIV complaints coming to us, and a lot of them were lack of access to healthcare or dental care. And they were important to us because they were fundamental. One of the political advisors at Justice in this era was a woman named Liz Savage who had worked in the Epilepsy Foundation, and then with Disability Rights Education Defense Fund, and was a political appointee in the Civil Rights Division in this era. She is now a career employee in the Department of Justice, and I'm happy to say I was helpful in hiring her in that capacity. But she was a very influential person in trying to ensure that we focused on fundamental issues that the American people could understand, because we wanted people to understand why this law, the ADA, was so important and why it was important to people with disabilities.

And so sticking to fundamental issues that were important to people with disabilities was important. And the facts of that case: someone who has HIV disease being denied dental care, when, in fact, there was no reason to be denied dental care, and it was clear from the CDC guidance that there was no risk to a dentist if certain precautions were taken. So it made sense that that case... And sometimes cases become important only because they make it to the Supreme Court. Usually some of the most egregious cases get settled early on or there's a district court judge. It's only when someone's pushing the case does it get to that level.

Peter Blanck:

Yeah, I mean, Bragdon could have been decided in a court today in a very different way, just being knocked out on threshold issues that she didn't have an actual disability or that somehow future reproductive capability was a major life activity.

John Wodatch:

Fortunately, we had science on our side in terms of this became clearer later. But the idea that you're right about the reproductive health issue, because that would not cut across every member of our society. But what we have since learned is that HIV disease, as the nature of it, it really does affect the bodily systems as soon as you have it. And anybody who has it has certain limitations because of that. So that was helpful, but, you're right, that developed later on.

But I think it was important... The one thing that we had in this case, the ADA went through six hearings. It went through the Senate, it went through four major committees in the House, and the Small Business Committee, and so we had a very strong record. The issues had been considered very carefully. HIV was certainly front and center, certainly in the Chapman amendment in the House that tried to really, in my view, gut the ADA. We lost another ADA advocate in the past couple weeks, Senator Orrin Hatch, whose role, together with DREDF and others, in neutralizing the Chapman Amendment that led to the passage of the ADA in the Senate and the House.

Peter Blanck:

Now, we've come full circle, John. We're coming on next year, the 50th anniversary of the Rehabilitation Act. 50 years ago, actually this year, Roberts established the first Center for Independent Living in Berkeley. Do you have any further reflections that would be of interest with regard to the untold story of 504? And the second part of that question would be the untold future, if you're a prophet, what's to come?

John Wodatch:

I'm not a futurist exactly, but we all think about that a lot. It is amazing to me to look back and think that 50 years ago we were working on these issues at what was HEW, and learning what is discrimination against people with disabilities? Who are people with disabilities? These are questions that still are important to us today. And although I can get on my soapbox and talk about all the advances and the changes, and the changes are immense in certain areas, the physical environment we have certainly improved. Does that mean it's perfect? Oh, God, no. I think I can probably go into any building that's built that's covered by the ADA and find some way that they haven't made themselves accessible according to the standards. But I think life has changed and our perspective has changed.

One of the things that I'm most optimistic about is what, I think, Rebecca Cokley came up with the term, the ADA generation, which is a generation of people who

have been raised with the ADA as part of their fundamental rights, both people with disabilities and without disabilities. But despite that, despite this cadre of people who are willing to enforce their rights, we still have people with disabilities being denied access. The problems are profound in a number of ways. We do not have enough accessible, affordable public housing, which limits the ability for us to implement fully the Olmsted decision. We have inappropriate mental health services for people with disabilities in our country, including young people. And I think the COVID-19 pandemic has exacerbated some of these issues. We still don't have full employment of people with disabilities. We have underemployment.

Certainly, there are changes being made in all of these, but I think the thing that's troubled me most, and Judy Heumann and I have discussed this a lot together and with others, the invisibility of people with disabilities is amazing to me. People with disabilities are anywhere between 20% and 25% of the American population. I think it's probably even higher than that if you factor in people with severe psychiatric conditions. But the knee-jerk reaction to new things is not to include the needs or wishes of people with disabilities, whether it's development of technology, whether it's devices, whether it's even in architecture, and that has to change. I think the change of that comes from a couple sources. It comes from integration of people with disabilities being integrated fully into society, which we have certainly improved, but more needs to be done. But it needs also to come to people with disabilities being in boardrooms, being in charge, being in charge of government agencies, being in charge of corporations, being out there in the public.

And I think we are working towards that, but we've got a ways to go. And we're also dealing with a society that there is a backlash against some of this. You referred to the Supreme Court decision the last couple weeks, the Cummings case, which held that emotional damages, damages for people with disabilities, is not something that we can get in a 504 case, and by implication by race cases under Title VI and sex discrimination cases under Title IX, I don't think this decision has been publicized or thought through enough, and we're beginning to do that. And it is based, as you've said, on the contractual theory in that whether entities had enough notice of that, which I disagree with, but I think we need to. But it shows that the work is not done yet. That people don't understand the basics of this life. That people with disabilities just need to have the same kinds of opportunities, the same kind that everyone else in our society has. And we're still working on that.

Fortunately, I think we have many more tools now than we did when 504 was first enacted. We have certainly the ADA National Network, of which this is a part, is an important entity to have people understand what the laws require, where they fall short, what we need to do. We have lawyers and disability rights leaders in wide

spectrums that are there to bring about change. So, I remain optimistic that the goals that we have, that we started with in 1973, that we have added to with a variety of statutes, whether it's the Fair Housing Act amendments in '88 or the ADA or other laws dealing with technology, we will continue to have laws that will take these basic concepts and expand them. And I think that we just need to keep doing it, because change, what I've learned over time, change is hard and it's not accomplished without people pushing for that change and pushing forward across the board, both inside government and outside government.

Peter Blanck:

Do you think it was possible that we could not have had an ADA or a 504, or were they really inevitable byproducts of a changing American culture?

John Wodatch:

I think they are sort of byproducts of that, but I don't think it was possible without the work, without pushing. The phrase, "Power exceeds nothing without a demand," is an important concept. And I think without people pushing for their rights, without people organizing, I think of a number of things that were important. I think Justin Dart crisscrossing this country, going into every state, talking to people with disabilities, having them do discrimination diaries, so that people who could understand how discrimination worked against people with disabilities, was very important.

If you'll allow me a story, I love this story. When we were considering the ADA, and I was at the Department of Justice and working for Dick Nordenberg, and we were certainly pushing the administration to accept the ADA. One of the issues was accessible buses, and the Department of Transportation was really concerned about the provision that every new bus would have to be accessible, and they just thought it wasn't necessary and that it was too expensive. And I remembered this seminal meeting; we were at the White House. It was an OMB meeting, and I was there representing Justice, and there were some people from DOT, and they came forward with the facts and figures. And at the time, -- my memory's getting hazy, -- but at the time it was something like a new bus would cost $300,000, and at the time DOT paid 80% of the cost of buses. So, this was a big federal expenditure. And they came forward and they said, "And a bus costs $300,000. Having a lift equipped bus is going to be $330,000."

And the OMB official who was there looked at them and looked at us and said, "You mean to tell me that Justin Dart chained himself to the fence at the White House over $30,000 a bus?" And they said, "Yes," thinking they had won the argument

when, in fact, they had just lost that argument, because they said, "This is not a cost issue. We are going to make every bus accessible." It was an important meeting. One other part of the bill became policy for the administration, and that was because of the work of people with disabilities, particularly Justin Dart.

So, I think that speaks to me, to the importance of people with disabilities working together to push their rights, because you never know when the payoff is going... when the argument will be made, and you just have to keep at it.

Peter Blanck:

Well, John Lancaster, you truly are an American hero. You have helped shape and improve the lives of so many Americans with and without disabilities, their children, their family members, which has resulted in change around the world. And on behalf of this project and all our listeners and those around the world, we thank you, and it has been a great honor to speak with you and to learn more about your important work as part of this larger endeavor called the Disability Rights Movement.

John Wodatch:

Those are lovely words, and I thank you for them, but I also have you join me in that, because the work that you have done through this period of time has provided the one part of the foundation for people understanding what discrimination is, how it can be fixed. And I think your role in that, and the role of other people in the academic world, is just essential to where we are now and where we're going to go in the future. And I thank you for your part.

Peter Blanck:

Thank you, again. I look forward to future conversations, and I thank very much the Southeast ADA staff and all our folks at BBI for helping put these important programs together. Thank you to all our listeners. Thank you for joining us for this important conversation. Barry, I'm delighted to turn it back to you.

Barry Whaley:

Thank you, Peter. Thank you, John. You're so generous with your time. We really appreciate it. Listeners, you can access this interview and more interviews at the Section 504 at 50 website. That web address is section504at50.org. The “504 at 50” series is produced by the Southeast ADA Center, the Burton Blatt Institute at Syracuse University, and is a collaboration with the Disability Inclusive Employment Policy, Rehabilitation Research and Training Center.

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