

Clearinghouse

September–October 2007
Volume 41, Numbers 5–6

REVIEW

Journal of
Poverty Law
and Policy

RECOMMENDATIONS FOR PEOPLE WITH DISABILITIES AND LEGAL COURSES

- Public Benefits Puzzle
- Americans with Disabilities Act
- Disability and Work
- What Employers May Ask
- Protection and Advocacy
- School Discipline
- Diminished Capacity
- Age and Disability
- Immigrant Eligibility for Benefits
- Social Security Changes
- Protection of Exempt Benefits
- Affordable Housing
- Eviction Defense
- Medicaid Managed Care
- Medicare and Medicaid
- Lawsuits Against States



Sargent Shriver National Center on Poverty Law

Disability Law: Another Tool for Advocacy on Behalf of Low-Income Seniors

By Daniel B. Kohrman

Daniel B. Kohrman
Senior Attorney

AARP Foundation Litigation
601 E St. NW Rm. A4-240
Washington DC 20049
202.434.2064
dkohrman@aarp.org

Nearly any account of civil rights advocacy worth our attention features at least one stirring account of a coalition born, dissolved, reborn, challenged, or reorganized. Annals of the links between advocates of older persons' rights and the rights of people with disabilities are no exception. I will resist the temptation to recite such stories and offer oft-repeated advice that we will hang together or hang separately. Fortunately, in the year the Age Discrimination in Employment Act turns 40 (the minimum age at which workers are covered by the Age Discrimination in Employment Act) and federal disability rights law approaches 35, links between these two constituencies, which from many angles resemble a single organism, continue to ripen and mature.¹ The same is true of connections between their advocates. In ways legal, practical, and political, advocates for older persons and people with disabilities continue to find that they have more in common than not, much to learn from one another, and a great deal to gain from closer collaboration.

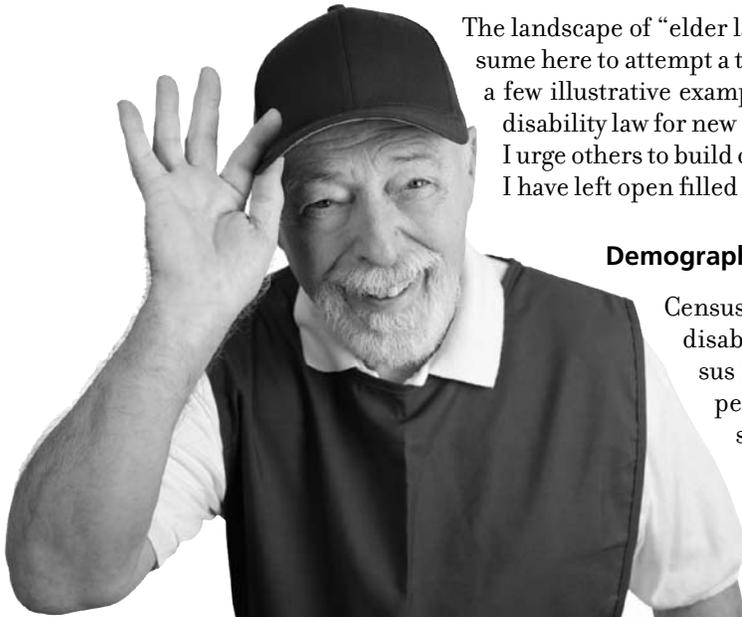
The landscape of "elder law" and of "disability law" is broad. Hence I do not presume here to attempt a thorough survey of the terrain either. Rather, I sketch out a few illustrative examples of reasons to believe elder advocates might look to disability law for new ideas and answers to long-standing advocacy challenges. I urge others to build on this modest beginning. I look forward to seeing spaces I have left open filled in.

Demographics—21st Century Facts of Life

Census data powerfully demonstrate the link between age and disability. In 2002, for example, as defined by the U.S. Census Bureau, rates of "disability" ranged from 8 percent to 11 percent for groups of the U.S. population age 0 to 45; the share of people with "disability" grew for persons 45–54 to 19.4 percent, for persons 55–64 to 28.1 percent, for persons 65–69 to 38.4 percent, for persons 70–74 to 46.9 percent, for persons 75–79 to 53.9 percent, and for persons 80 and over to 71.7 percent.²

¹The Age Discrimination in Employment Act, 29 U.S.C. §§ 621 *et seq.* (2002), was enacted in 1967. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (2002), bars discrimination on grounds of disability by the federal government and by any recipient of federal financial assistance, principally state and local governments. The Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq.* (2002), bars disability-based discrimination in employment (Title I), public services and programs (Title II), and public accommodations (i.e., private services open to the public at large) (Title III).

²U.S. CENSUS BUREAU, NO. P70-107, AMERICANS WITH DISABILITIES: 2002 tbl. 1 (2006) (Table 1: Prevalence of Disability by Age, Sex, Race, and Hispanic Origin: 2002), www.census.gov/hhes/www/disability/sipp/disab02/ds02t1.html. For the Census Bureau's "[d]efinition of a disability in a communication, mental, or physical domain," see www.census.gov/hhes/www/disability/sipp/disab02/awd02.html#tbox. In general, each component of the Census Bureau's three-part definition identifies a few specific conditions that qualify as a disability (e.g., "[h]ad difficulty seeing" for the "communication domain"; "[u]sed a wheelchair" for the "physical domain"; and "[h]ad difficulty managing money/bills" for the "mental domain") and a variety of "related conditions" "one or more [of which have been identified] as the cause of a reported activity limitation."



Social Security data confirm that age significantly overlaps with “disability.”³ That is, about two-thirds (65.1 percent in 2005) of all male recipients of Social Security Disability Insurance—the program that requires recipients to declare they are unable to work because of disability—are between 50 and 65. Those between 45 and 65 encompass about four-fifths (78.5 percent) of the total.⁴ The shares are just slightly lower for female recipients.⁵ Of course, the share of older social security recipients who receive benefits because of disability actually is much greater, as disability insurance recipients continue to receive benefits after they reach 65 under the social security retirement program. Thus likely well over two-thirds of all social security recipients with Social Security Disability Insurance—qualifying disabilities are 50 or over.⁶

Income differences also correlate with disability status, according to the Census Bureau. In 2002 median income for persons without a disability, not receiving social security, was \$25,228. By contrast, the corresponding sum for all persons with a disability was \$17,150. The median

income for persons with a “nonsevere” disability was \$22,336 and dipped to \$12,781 for persons with a “severe” disability.⁷ The picture is no less dramatic for persons with conditions commonly associated with advancing age, such as heart trouble—median income \$17,595, cancer—\$17,580, diabetes—\$15,900, and Alzheimer’s, senility or dementia—\$13,900. For Medicare recipients with severe disabilities, median income is much lower still—\$3,375 in 2002.⁸

The data show elevated rates of disability for women and African Americans, but not for members of other minority groups. For persons 24–65, the rate of “disability” is 16 percent for all non-Hispanic whites, 17.4 for white females, 20.8 percent for blacks, 16 percent for Hispanics, and 10 percent for Asian Americans.⁹

The data show that elder rights advocates often can hope to achieve gains for their clients by addressing the inequities facing people with disabilities.¹⁰ Another key reason for advocates to master the links between age and disability is the graying of the boomer generation.¹¹ The over-50

³Under the Social Security Disability Insurance program a “disability” generally is defined as a condition that is expected to last at least one year and that precludes gainful employment. The Social Security Administration determines “disability” by a rather complex five-step process. See Social Security Administration, Disability Planner: What We Mean by Disability (2007), www.ssa.gov/dibplan/dqualify4.htm. As the U.S. Supreme Court observed, the Social Security Administration’s definition in some circumstances presumes eligibility, e.g., is based on a medical diagnosis, without a focused inquiry as to a claimant’s actual inability to work. See *Cleveland v. Policy Management Systems*, 526 U.S. 795, 803–4 (1999) (Clearinghouse No. 52,255) (“[The Social Security Administration’s] presumptions ... grow out of the need to administer a large benefits system efficiently. But they inevitably simplify, eliminating consideration of many differences potentially relevant to an individual’s ability to perform a particular job,” such as whether a claimant can work with “reasonable accommodation.”).

⁴SOCIAL SECURITY ADMINISTRATION, NO. 13-11700, ANNUAL STATISTICAL SUPPLEMENT TO THE SOCIAL SECURITY BULLETIN, 2006 tbl. 5.D4 § 5.55 (2006) (Number, Average Age, and Percentage Distribution, by Sex and Age, December 1957–2005, Selected Years), www.ssa.gov/policy/docs/statcomps/supplement/2006/5d.pdf.

⁵*Id.* § 5.56 (64.7 percent of female recipients 50–65 and 78.3 percent of female recipients 45–65).

⁶*Id.* §§ 5.55–.56.

⁷CENSUS BUREAU, *supra* note 2, tbl. 5 (Disability Status, Employment, and Annual Earnings: Individuals 21 to 64: 2002), www.census.gov/hhes/www/disability/sipp/disab02/ds02t5.html.

⁸*Id.*

⁹*Id.*

¹⁰Many of the charges of discrimination filed with the Equal Employment Opportunity Commission (EEOC) and state fair employment agencies are made on age and disability grounds. The EEOC has enlisted academia to analyze charge records to identify patterns, such as cases in which age and disability bias claims overlap, that might help the agency focus enforcement resources. Plainly, elder and disability rights advocates also might benefit from results of such research as well as from its overall approach: to probe records of activities affecting older people and persons with disabilities to identify links and possible new areas of collaboration on advocacy activities. See S. Bruyere, A. Ruiz-Quintanilla, A. Houtenville, Daniel B. Kohrman & C. Lanvers, *Trends in Disability and Age-Related Employment Discrimination Claims from 1993–2003* (Cornell University Employment and Disability Institute, Working Paper).

¹¹See, e.g., JOSEPH P. SHAPIRO, NO PITY: PEOPLE WITH DISABILITIES FORGING A NEW CIVIL RIGHTS MOVEMENT 6 (1993) (“The graying of America, too, expands the ranks of the disabled.”).

share of the U.S. total population, workforce, and population with disabilities almost certainly will swell in coming years.¹² Thus issues of disability bias in the workplace, housing, transportation, health care, and the broader marketplace will move ever closer to the top of the advocacy agenda for older persons—older workers, tenants, commuters, patients, and consumers. While the media focus on the latest consumer “must-haves,” such as expensive new devices (iPhone), most working people and persons unable to support themselves with their own earnings are concerned with far more relevant quality-of-life issues, such as affordable access to adaptive technology. This technology will permit boomers with disabilities to ride the bus, live near where they work, and stay employed.

The Confluence of Age and Disability Advocacy

Each case noted below from AARP’s docket is representative of many claims brought every year on behalf of older persons premised at least in part on disability rights laws.

1. Thomas Flannery, a 63-year old “investigator” for the Recording Industry Association of America in Chicago, had sleep apnea and an irregular heartbeat. A supervisor told him he “would have to leave ... because his health was bad and ... he was getting older.” When Flannery protested, his supervisor agreed “to keep him on” and to “see how things went.” Over a year later, in June 2001, his employer terminated Flannery, who then complained to the federal Equal Employment Opportunity Commission. Flannery alleged violations of the Age Discrimination in Employment Act and the Americans with Disabilities Act (ADA).

Upholding Flannery’s employer’s contention that Flannery’s claims were time-barred, a federal trial judge dismissed Flannery’s case. The judge ruled that Flannery should have known in 2000 that he would be fired and that his termination in 2001 was simply a “delayed but inevitable consequence” of prior bad news. In effect, Flannery was told that he should have challenged his termination roughly fifteen months before it was carried out. On appeal, AARP filed an amicus brief supporting Flannery. Saying that prior to June 2001 Flannery’s employer did not afford Flannery “unequivocal notice” he would be fired, the Seventh Circuit reversed the lower court.¹³

2. Dmitri Belser, 48, has limited vision. In Berkeley, California, he uses a cane to navigate, often walking along and across state highways that cut through the city. Ben Rockwell, 61, uses a wheelchair. He does his best to travel safely along and across the Pacific Coast Highway in Long Beach, California. Both men, along with disability rights groups, sued the California transportation agency, CalTrans, in federal court under the ADA and Section 504 of the Rehabilitation Act for failing to make state highway rights-of-way accessible to people with vision impairments or mobility impairments or both. AARP has joined Disability Rights Advocates of Berkeley, California, as trial cocounsel.¹⁴
3. At age 60 Susan Cohen had an exemplary twenty-year record as a social worker with the Montgomery County, Maryland, Department of Health and Human Services. Cohen developed multiple sclerosis, a progressive neurological disorder that affected mobility, strength, and endurance in

¹²For instance, the share that workers 55 and older represent of the total workforce is projected to grow from just under 13 percent in 2000 to nearly 20 percent in 2012. Mitra Toossi, *Labor Force Projections to 2012: The Graying of the U.S. Workforce*, MONTHLY LABOR REVIEW, Feb. 2004, at 37.

¹³See *Flannery v. Recording Industry Association of America*, No. 02 C 2734, 2003 U.S. Dist. LEXIS 1178, 2003 WL 1533433 (N.D. Ill. Jan. 8, 2003), rev’d, 354 F.3d 632 (7th Cir. 2004).

¹⁴See *Californians for Disability Rights v. California Department of Transportation*, No. C-06-5125 (N.D. Cal. filed Aug. 2, 2006).

her limbs but left her cognition and judgment intact. In mid-1998 Cohen sought accommodation, such as elimination of the fieldwork aspects of her job and protection from assignments involving intense typing or writing. The county resisted making the changes she proposed. Coworkers asked when she would take a pension. Cohen's illness made her especially eager to keep working, but she felt pressure to retire.

In early 2000 the county granted Cohen the kind of job she had requested several months earlier. But the county would not put the agreement in writing and refused to compensate Cohen for pain she endured while fighting for a proper assignment. She sued under state and county disability bias law. A state appeals court upheld her key claim: that delaying an accommodation eighteen months could amount to discrimination.¹⁵ In 2004 AARP joined as cocounsel and helped bring Cohen's case to trial before a jury.

4. Los Angeles County voted to cut its budget for low-income health care services in 2003 by closing the one public hospital providing low-cost specialized care for persons with disabilities, Rancho Los Amigos National Rehabilitation Hospital. In earlier cuts the county had consolidated services at Rancho, forcing patients receiving care at many different facilities to go to Rancho for their care. The national Senior Citizens Law Center joined with several disability- and poverty-focused legal advocacy organizations (including Neighborhood Legal Services of Los Angeles County and the

Legal Assistance Foundation of Los Angeles) in suing the county, under the Medicaid law and the Americans with Disabilities Act, to prevent the hospital's closure on grounds its patients with severe disabilities could not get adequate care elsewhere in the county. AARP filed an appellate amicus brief supporting the plaintiffs. The Ninth Circuit upheld an injunction against the closure in part on ADA grounds.¹⁶ The case settled in 2005 with a county pledge to continue operations at Rancho.¹⁷

Some Lessons to Be Drawn from Litigation

As our transportation and health care examples show, disability bias laws are simply another weapon to be deployed in the fight against unfair treatment of older persons. Often, but not always, the ADA or Section 504 can provide a more effective indirect strategy against inequity than a more direct challenge to systemic failures, such as a state or local government's failure to take particular actions or its misallocation of resources. Federal courts increasingly have become reluctant to recognize private rights to bring actions against state or local governing bodies for acting inconsistently with federal statutes, particularly statutes creating public programs through federal-state funding, such as Medicaid and public transportation.¹⁸

By contrast, the ADA and Section 504—although posing their own challenges for public interest legal advocates—are broadly crafted to permit aggrieved private parties to challenge discriminatory public and private actions.¹⁹ Moreover,

¹⁵See *Cohen v. Montgomery County Department of Health and Human Services*, 817 A.2d 915 (Md. Ct. Spec. App. 2003).

¹⁶See *Rodde v. Bonta*, No. CV 03-1580 (C.D. Cal. May, 2003), *aff'd*, 357 F.3d 988 (9th Cir. 2004) (Clearinghouse No. 55,598).

¹⁷*Rodde v. Bonta*, No. CV 03-1580 (C.D. Cal. Jan. 30, 2006), www.pai-ca.org/advocacy/rodde/index.htm.

¹⁸See, e.g., *Watson v. Weeks*, 436 F.3d 1152 (9th Cir. 2006) (statutory requirement that state Medicaid plan include reasonable standards for determining eligibility does not create individual right to enforce Medicaid law under 42 U.S.C. § 1983); accord *Lankford v. Sherman*, 451 F.3d 496 (8th Cir. 2006) (Clearinghouse No. 56,076); *Sierra Club v. Peña*, 915 F. Supp. 1381, 1389–91 (N.D. Ohio 1996), *aff'd sub nom. Sierra Club v. Slater*, 120 F.3d 623 (6th Cir. 1997), and *Buckingham Township v. Wykle*, 157 F. Supp. 2d 457, 465 (E.D. Pa. 2001) (denying private right of action under Intermodal Surface Transportation Efficiency Act of 1991, Pub.L. No. 102-240, 105 Stat. 1914).

¹⁹See Rochelle Bobroff, *Scorched Earth and Fertile Ground: The Landscape of Suits Against the States to Enforce the ADA*, in this issue.

they specifically require public and private entities to adjust their operations, within “reasonable” limits, to make way for people with disabilities, many of whom are surely older persons. Public entities generally must make “reasonable modifications” in their programs and policies to accommodate people with disabilities, unless the public entities can prove that such changes would cause “undue hardship” or a “fundamental alteration” in their operations.²⁰ Private operators of enterprises open to the public at large (i.e., “public accommodations”) generally must do the same.²¹ And both public and private employers must afford workers with disabilities “reasonable accommodation” on the job.²² In some circumstances these mandates afford a way around vague programmatic mandates whose implementation has shortchanged seniors. In other cases, of course, an “access” mandate may be an insufficient lever to secure seniors needed additional services.

The principal difficulty with the ADA and Section 504 is the very restrictive definition of “disability.”²³ A string of adverse U.S. Supreme Court decisions has made it much tougher to show a “disability” under the ADA.²⁴ While this seems to have had little impact in cases outside

the employment arena, it has made ADA employment cases much more difficult to win. In employment cases, plaintiffs have somewhat of a dilemma in that they must show that they are not so limited as to be unqualified to perform all “essential functions” of their job but that they also are “substantially limited” in one or more “major life activities.”²⁵ By contrast, in most disability discrimination cases involving access to public programs or private facilities (i.e., restaurants, movie theaters) there is no serious debate that the persons seeking access to the mainstream need some special accommodation or modification of policies or physical structures.

Notwithstanding the difficulties in bringing ADA employment cases, there are also some considerable advantages to such claims compared to age discrimination claims. For instance, in Age Discrimination in Employment Act cases, a plaintiff typically must come forward with evidence of intentional bias on grounds of age.²⁶ Direct, “smoking gun” evidence of this is rare, and courts are reluctant to credit even blatant statements reflecting age bias. Instead courts describe these statements as nonprobative “stray remarks”—unless they come from the mouth of a

²⁰See Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131 *et seq.*, 28 C.F.R. pt. 35 & app. A (2007) (U.S. Department of Justice regulations effectuating Title II, subtitle A, of the ADA, governing activities of state and local “public entit[ies]” other than public transportation agencies); Exec. Order No. 12,250, 28 C.F.R. pt. 41 (2007) (directing U.S. Department of Justice to coordinate federal agencies in their promulgation of regulations implementing Section 504 of the Rehabilitation Act).

²¹See Title III of the ADA, 42 U.S.C. §§ 12181 *et seq.*, 28 C.F.R. pt. 36 (2007) (U.S. Department of Justice regulations).

²²See Title I of the ADA, 42 U.S.C. §§ 12111 *et seq.*, 29 C.F.R. pt. 1630 & app. (Equal Employment Opportunity Commission implementing regulations applicable to most private as well as state and local government employers).

²³Other articles in this issue discuss definitions of “disability” in other contexts; see e.g., Arlene Mayerson, *Disability Rights Law: Roots, Present Challenges, and Future Collaboration*; Fred Fuchs, *Using the Reasonable-Accommodation Provision of the Fair Housing Act to Prevent the Eviction of a Tenant with Disabilities*; Susan Ann Silverstein, *Expanding and Preserving Affordable Housing Opportunities for Persons with Disabilities*; Kevin Liebkemann & Raymond Cebula, *Interplay Among Unemployment Insurance, Welfare, Social Security Disability, and SSI Benefits*; Alan M. Goldstein & Barbara Siegel, *Making the ADA Work for Social Security Disability Beneficiaries: Life After Cleveland v. Policy Management Systems*; Linda Landry & Gerald A. McIntyre, *Social Security: Changes on the Horizon*.

²⁴See especially *Sutton v. United Air Lines Inc.*, 527 U.S. 471 (1999) (Clearinghouse No. 52,331); *Toyota Motor Manufacturing, Kentucky v. Williams*, 534 U.S. 184 (2002) (Clearinghouse No. 54,341).

²⁵In response to this difficulty, on July 26, 2007, bipartisan cosponsors introduced similar bills in the U.S. House of Representatives (ADA Restoration Act of 2007) and the U.S. Senate (Americans with Disabilities Act Restoration Act of 2007) with the principal goal of restoring the state of the law to that prior to the *Sutton* and *Toyota* decisions. See H.R. 3195, 110th Cong. (2007) (principal cosponsors Rep. Steny Hoyer (D-Md.) and Rep. F. James Sensenbrenner (R-Wis.)), and S. 1881, 110th Cong. (2007) (principal cosponsors Sen. Tom Harkin (D-Iowa) and Sen. Arlen Specter (R-Pa.)).

²⁶In some instances workers, usually groups of workers, may challenge neutral employer rules on grounds that they have an unjustifiable “disparate impact” on older workers. See *Smith v. City of Jackson*, 544 U.S. 228 (2005) (Clearinghouse No. 55,841) (upholding “disparate impact” claim under Age Discrimination in Employment Act).

supervisor responsible for the challenged “adverse employment action.”²⁷

In regard to remedies, disability bias laws in some cases provide the chance to recover monetary relief, a remedy not available in other types of cases. For instance, Section 504 allows damages claims against public entities (even state entities), and the ADA provides for damages in claims against local public authorities and private employers.²⁸ By contrast, violations of programmatic statutes are likely to result only in injunctive relief. And compensatory and punitive damages (capped at \$300,000 for large employers under the ADA) are not available at all under the Age Discrimination in Employment Act.

A number of states, such as California, New York, Texas, and Massachusetts, have very robust disability antibias laws that in some respects afford stronger protections than their federal counterparts. In general, but in these jurisdictions especially, senior advocates would be wise to consider state disability laws in seeking redress for older clients.

Lessons from Clients Themselves

From the time a low-income or working-class senior client first walks through an advocate’s door or otherwise makes contact, advocates should keep lit in one corner of the brain a low flame representing the possibility that concerns related to age also reflect issues related to disability. Age and disability are often intertwined in the minds of clients and potential defendants. Thus benefits or opportunities denied, and viewed by the client as related to age *alone*, may be viewed by a potential defendant employer

or program operator as a disability issue or an age *and* disability issue.

The likelihood of overlapping issues of age and disability is enhanced by similarities in the stereotyping of older persons and people with disabilities. Rigid assumptions about groups of people that result in the denial of individualized treatment and consideration are harmful even when those indulging in them have positive views of the objects of their warm regard. Thus both older persons and persons with disabilities often are viewed with a patronizing and belittling affection. Such sympathy can be stifling. “We’re treated like eternal children” is a common lament of disability rights advocates, according to the journalist Joseph Shapiro.²⁹ And the title of Shapiro’s riveting account of the disability rights movement is a superb summary of the dilemma: “No Pity.” With friends like these.... A worker might remind a supervisor of his grandma or grandpa but be fired because he “deserves to take it easier.”

The nature of age and disability stereotypes present several ironies. By contrast with race, gender, religion, national origin, and sexual orientation, age and disability less often appear to be the object of vicious slurs or hate crimes. Perhaps this is because casting older persons and people with disabilities as the “other” is difficult, though far from impossible, for most people. After all, age is the one protected category all of us are likely to assume, while disability “is the one minority that anyone can join at any time, as a result of a sudden automobile accident, a fall down a flight of stairs, cancer or disease.”³⁰ Yet, by all accounts, outright, outspoken, and harmful bias on grounds

²⁷See *Price Waterhouse v. Hopkins*, 490 U.S. 228, 277 (1989) (O’Connor, J., concurring) (“Thus, stray remarks in the workplace, while perhaps probative of sexual harassment, cannot justify requiring the employer to prove that its hiring or promotion decisions were based on legitimate criteria.”) (citation omitted). See also *Equal Employment Opportunity Commission v. BCI Coca-Cola Bottling Company of Los Angeles*, 450 F.3d 476, 478 (10th Cir. 2006), dismissed before argument on employer’s motion, No. 06-341 (U.S. April 11, 2007) (discriminatory conduct of employer’s agent, who did not have “final” decision-making authority, but who passed along information on which decision maker assertedly relied, created issue for trial whether such reliance was basis for Age Discrimination in Employment Act claim, where supervisor who took challenged action against employee was without bias).

²⁸Compare *Board of Trustees v. Garrett*, 531 U.S. 356 (2001) (denying damages under the Americans with Disabilities Act against a state university based on Eleventh Amendment sovereign immunity), with disposition on remand, 344 F.3d 1288 (11th Cir. 2003) (approving damages against state university under Section 504 of the Rehabilitation Act).

²⁹SHAPIRO, *supra* note 11, at 27.

³⁰*Id.* at 7; Shapiro continues: “Fewer than 15 percent of disabled Americans were born with their disabilities.”

of age and disability is common and acceptable. Biased assertions are often defended as “facts of life.” For example, one common bias is that older and disabled persons are slow, inflexible, unwilling to adapt to change and less able to use computers and embrace new technology. Other biases include the belief that older and disabled persons are more costly to hire or include because they have much higher health care costs, demand special treatment, and are litigious. Like comparable stereotypes regarding women, persons of color, and so on, these nostrums are hard to combat even with contrary empirical data. And they persist despite older Americans’ improving health and medical and technological advances allowing ever greater entry of persons with disabilities into the American mainstream.

In many instances, prejudices against older persons may be more entrenched than those concerning people with disabilities. Age is only a number, but it never gets smaller. By contrast, “accommodation,” the order of the day in regard to disability, has the potential allure of engineering around a barrier. Indeed, employers and program operators may be surprised at the low cost of providing “reasonable accommodation.” And there are considerable resources available, some over the Internet, to assist in creating accommodation.³¹

Another perspective is that disability rights advocacy can be very effective when portrayed as a form of elder advo-

cacy. For instance, disability rights laws such as the ADA may be more enthusiastically embraced by older workers if their use is viewed not as an admission of the potentially stigmatizing status of “disability” but rather as another means to combat age discrimination, such as the mistreatment at work to which older persons are subjected. Similarly challenging discrimination in housing on disability grounds may be more palatable if viewed through the lens of demanding an opportunity to “age in place.” To a degree, perhaps, such perspectives simply rely on creative “spin,” and arguably build on stereotypes of aging as noble and the aged as deserving, and, by contrast, of disability as reflecting weakness and dependence. Yet in the end there is substantial benefit in wedding disability and elder advocacy. Both perspectives can reinforce each other, whether by emboldening clients, expanding the legal arsenal of advocates, or rendering advocacy on behalf of low-income elders compelling to those in power.



Disability rights laws, whether federal or state or even local, can be powerful legal tools for advocacy on behalf of seniors. Overlaps in the needs and concerns of seniors and persons with disabilities, as well as parallels in the common forms of prejudice against and unequal treatment of persons of age and people with disabilities, all further recommend disability legal advocacy strategies as an addition to senior advocates’ toolkits.

³¹For instance, the Job Accommodation Network offers advice to employees and employers about possible strategies for reaching agreement on a “reasonable accommodation.” See www.jan.wvu.edu.

Subscribe to CLEARINGHOUSE REVIEW and www.povertylaw.org

Annual subscription price covers

- six issues (hard copy) of CLEARINGHOUSE REVIEW and
- www.povertylaw.org access to the Poverty Law Library containing CLEARINGHOUSE REVIEW issues back to 1990, case reports and case documents, and other materials

Annual prices (effective January 1, 2006):

- \$250—Nonprofit entities (including small foundations and law school clinics)
- \$400—Individual private subscriber
- \$500—Law school libraries, law firm libraries, other law libraries, and foundations (price covers a site license)

Subscription Order Form

Name _____

Fill in applicable institution below

Nonprofit entity _____

Library or foundation* _____

Street address _____ Floor, suite, or unit _____

City _____ State _____ Zip _____

E-mail _____

Telephone _____ Fax _____

*For Internet Provider-based access, give your IP address range _____

Order

Number of subscriptions ordered _____

Total cost (see prices above) \$ _____

Payment

- My payment is enclosed.
*Make your check payable to **Sargent Shriver National Center on Poverty Law.***

- Charge my credit card: Visa or Mastercard.

Card No. _____ Expiration Date _____

Signature _____

We will mail you a receipt.

- Bill me.

Please mail or fax this form to:
Sargent Shriver National Center on Poverty Law
50 E. Washington St. Suite 500
Chicago, IL 60602
Fax 312.263.3846

CUT HERE