

Mental Disability and the ADA: Public Policy in the Courtroom

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The Americans with Disabilities Act (ADA) is arguably the most important legislation regarding mental disabilities* that has been passed in recent years. This legislation extends previous federal law and promises anti-discrimination protection for all persons with physical and mental disabilities. Disability advocates across the nation cheered when President George Bush signed the ADA into law in July 1990. However, as with many pieces of legislation, the story did not end with Congress passing the ADA or President Bush signing it. The extent to which the ADA will fulfill the promise of protecting people with disabilities against discrimination in school and at work depends largely on the third branch of the American government: the court system.

This paper will examine the ADA as it applies to persons with mental disabilities, with emphasis on court cases that have dealt with the ADA and mental disabilities. However, before initiating a review of relevant court decisions, it is important to provide a brief background and overview of the ADA and its relevance to people with mental disabilities.

The ADA: An overview

As stated above, the purpose of the ADA is to protect people with disabilities from discrimination. Previous federal law, most notably the Rehabilitation Act of 1973, provided some protection against such discrimination, but only applied to agencies/ organizations that received federal funding. The ADA extended this coverage to include all public entities. In enacting this legislation, members of Congress recognized that people with disabilities constitute a discrete minority group that has historically faced isolation, segregation, limitations and unequal treatment. However, unlike other groups that faced discrimination, people with disabilities previously had no legal recourse.

People with mental disabilities face stigmatization and discrimination based on their disability status, which is often compounded by public misperception and fear. Many people view mental disabilities as different from physical disabilities, and certainly in many ways the categories are different. However, in terms of legal rights, the ADA has established that physical and mental disabilities are subject to the same legal protection. The ADA defines a person with a disability as including a person who has a "physical or mental impairment that

substantially limits one or more major life activities..." as well as persons who "have a record of such impairment" or are "regarded as having such impairment."

Although the ADA specifically extends coverage to persons with mental disabilities, it also specifically limits coverage to certain people within this category. Title I of the ADA excludes from coverage persons with current substance abuse problems. Specifically, the legislation indicates that employers can hold these people to the same standards as others and that a person who currently uses illegal drugs or abuses alcohol is excluded, from ADA protection. However, persons who have successfully completed rehabilitation and are recovered alcohol/ drug abusers are guaranteed ADA protection. In addition, the ADA excludes homosexuality, bisexuality, gender identity disorder, and other "sexual behavior disorders" (Title V). These exclusions provide examples of how the ADA specifically distinguishes mental disabilities from physical disabilities; Parry (1993) concluded that the areas of most ambiguity and most prominent exclusions in the ADA were in regard to mental disabilities. The application of the ADA to people with mental disabilities, then, requires careful analysis of several issues of specific relevance to this disability group. Three such issues will be defined and discussed in this paper: 1. disability status, 2. direct threat, and 3. auxiliary aids/reasonable accommodations.

Disability. As outlined above, the ADA defines disability as an impairment that results in substantial limitation in one or more major life activity. With regard to mental disabilities, these functional limitations may involve such activities as working, learning, or communicating. It is therefore essential to distinguish the concept of disability from medical or psychiatric diagnosis. A specific diagnosis--for instance, schizophrenia-- does not necessarily demonstrate impairment/ disability. For instance, a recent court decision (Mackie v Runyon, 1992) held that a person with medication- controlled bipolar disorder was not handicapped because her normal life functions were not limited by the condition. The issue of defining disability/functional impairment is of particular relevance to people disabled by mental conditions, because so often these disorders are not seen as "real." Further research and technology development should focus on the measurement of functional impairment in people with mental disabilities.

Direct threat. The ADA also excludes from coverage people who pose a "direct threat," but this term requires some interpretation. The act does not fully define direct threat, nor does it indicate whether the threat need be directed toward others or if threat toward oneself is included. The Equal Employment Opportunity Commission (cf Parry, 1994), however, provides guidelines that define direct threat under the ADA as "significant risk of substantial harm to the health or safety of others that cannot be eliminated or reduced by reasonable accommodations." Certainly, the concept of direct harm is relevant to mental disability. There is a great deal of public fear and concern about the dangerousness of people with mental disabilities. It has generally been concluded that no such relation exists-- that people with mental disabilities are no more or less dangerous than other members of society. However, more recent research (e.g., Monahan, 1992) raises the possibility that certain people with mental disabilities may be at increased risk for dangerousness, for instance people who do not follow their recommended medication regimen or people with co-occurring substance abuse problems. Therefore, it is difficult to conclude, based on the research literature, how the issue of direct threat might differentially affect people with mental disabilities. Based on the opinion of the U.S. Supreme Court, however, it is

reasonable to assume that such determination will depend in large part on the judgment of mental health experts. Although the Court has made no ruling with regard to direct threat and mental disability, it has recommended that assessment of risk to others in the case of contagious disease be done by qualified medical judgment (School Board of Nassau County v. Arline, 1987). The concept of direct threat as it applies to persons with mental disabilities must be more fully explored by the courts and by mental health experts before it will be clearly understood.

Auxiliary Aids/Reasonable Accommodations. The ADA requires that people with disabilities be provided with auxiliary aids and/ or reasonable accommodations that allow them to participate in jobs or activities to the fullest extent possible. These concepts are most easily understood with regard to physical disabilities. For instance, an appropriate auxiliary aid for a person who has a visual impairment may be to provide braille menus at a restaurant. Again, the issue of mental disability poses an additional challenge. Auxiliary aids and reasonable accommodations for mental disabilities are generally more abstract and difficult to quantify (Parry, 1993). Examples of possible accommodations for mental disabilities may be flexible work scheduling that accommodates mental health appointments or arrangements that reduce stimulation/ distractions in the work environment.

It is clear that the ADA provides important protection for people with mental disabilities, but due to ambiguities in the Act and disagreements among disability professionals, there is room for a great deal of interpretation in the legislation. The court system has dealt with several ADA and related cases (e.g. Rehabilitation Act of 1973) and thus has shaped the implementation of the ADA.

Important Court Cases

Supreme Court. Although the U.S. Supreme Court has yet to hear a case dealing specifically with the application of the ADA to people with mental illness, several landmark Supreme Court cases have possible implications for the issue. For instance, in *Southeastern Community College v. Davis* (1979) the Supreme Court ruled that the Rehabilitation Act of 1973 does not forbid professional schools from imposing physical qualifications for admissions to their clinical training programs. Although the Court held that a program cannot assume that a person with a disability is automatically unqualified, the program can deny admission if the person is unable to perform functions that are deemed "reasonably related" to educational requirements. In the decision (written by Justice Powell), the Court concluded that federal law does not require institutions to disregard disability status and that the Rehabilitation Act never intended to protect every person with a disability. Because Davis' accommodations would have fundamentally altered the program, the Court concluded that they were not required by the statute. Because the issue of reasonable accommodation is particularly difficult with regard to mental disabilities, it is possible that some such accommodations would be viewed as "fundamentally altering" a program or organization. For instance, the disabilities resulting from mental illnesses may require that a person have an extended period in which to fulfill academic requirements—an accommodation that may be construed as "fundamental" and therefore not required under the Davis decision.

An additional Supreme Court decision is perhaps of more direct relevance to the issue of mental disability. In *Traynor v Turnage* (1988), the Supreme Court decided the issue of whether alcoholism is a covered disability under the Rehabilitation Act of 1973. Petitioners in this case were veterans who had failed to use their GI benefits within a ten-year time limit. They claimed that as individuals disabled by alcoholism, they qualified for an extension of the benefits. The Veteran's Administration had concluded that alcoholism is "willful misconduct" and therefore automatically excluded from extension. A divided Supreme Court upheld the V A's position that primary alcoholism (i.e., without mental illness) is not a protected category under the Rehabilitation Act. However, Justice Blackmun (joined by Justices Brennan and Marshall) dissented from the part that primary alcoholism is always the result of willful misconduct, as the V A had argued. His dissent noted the *Nassau v. Arline* decision and concluded that the Rehabilitation Act "bars the generic treatment of any group of individuals with handicaps based on archaic or simplistic stereotypes about attributes associated with their disabling conditions." Instead, Justice Blackmun wrote, the Act requires individualized assessment based on medical judgments. The court did consider professional judgment regarding the cause/course of alcoholism; however, the experts involved were sharply divided. It seems that the majority based its final decision, then, on their own beliefs or understandings of alcoholism and "willful misconduct."

Additional Cases: Definition of Mental Disability

Several lower court cases have dealt with the issue of mental disability and federal disability protection. The following review includes only a few relevant cases which dealt specifically with the issue of defining mental disability or eligibility as a "handicapped" individual. In *Forrisi v. Bowen* (1986) district and appeal decisions concluded that an individual with a fear of heights was not protected under federal law. The individual worked for the National Environmental Health Sciences and held a job description that required climbing ladders. Interestingly, the court's reason for rejecting the plaintiffs claim was that such a phobia was too common to be protected. The decision held that "...It would debase this high purpose (of the act) if the statutory protections available to those truly handicapped could be claimed by anyone whose disability was minor and whose severity of impairment was widely shared." Although this court apparently has high regard for the legislation to protect people with disabilities from discrimination, it did not recognize that the "mental" impairment experienced by this individual was the same (in severity or prevalence) as other, more "legitimate," disabilities. This serves as a fine example of a common frustration shared by many people with mental illness: that their disability is not seen as legitimate but instead is alternatively viewed as either minor or self-inflicted (Snyder, et. al, 1996).

The difficulty in persuading the public (and courts) that mental illnesses are legitimate disability conditions has been hampered by certain cases that are commonly perceived as falling outside a legitimate application of ADA/Rehabilitation Act. For instance, in *Blanton v. AT&T Communications* (1990), the plaintiff was fired for sexually harassing co-workers and claimed that this was a protected disability. The court concluded that sexually harassing others is clearly not considered a handicap in federal/state statute. In *Klein v. Boeing* (1994), an employee was dismissed for exposing himself to a child. He claimed that this disability was protected under ADA, but the court upheld the ADA exception for sexual behavior disorders and concluded that Klein was not protected.

Conclusions about Judicial Decision Making

In general, one can conclude that the judicial system has shown high regard for legislation such as the ADA. For instance, the *Forrisi v. Bowen* decision made it clear that the court recognized a responsibility to apply the law carefully--so as to uphold its integrity. In interpreting the ADA/Rehabilitation Act, however, they have been somewhat conservative in extending government protection to people who claim that they are disabled--particularly in the cases that have focused on mental disability. Courts have determined that mental illnesses, if controlled by medication, do not constitute a handicap (*Mackie v. Runyon*); that certain mental conditions (phobia) are too common/mild to warrant coverage under federal law (*Forrisi v. Bowen*); and that disabilities that are deemed "willful misconduct" are not protected disabilities (*Traynor v. Turnage*). It seems that these three cases reflect some common stereotypes about mental disabilities that advocates and professionals have attempted to dispel: that mental illness is not a "true" disability, that people who say they have mental disabilities should be able to "pull themselves up by their bootstrap" and "get over it" like everyone else does, or that mental illness are voluntary conditions that people bring on themselves.

One cannot help but wonder whether these stereotypes played a part in such court decisions. Certainly, Justice Blackmun believed that they did. In his *Traynor v. Turnage* dissent, the Justice wrote that by automatically rejecting alcoholism as a protected handicap, the court was relying on "broad social generalization." He advocated for individualized assessment of a person's disability--not judgments about the nature of a whole class of diagnoses or disabilities. In some cases, it seems that courts are almost forced to rely on their own assumptions about mental illness because the professional experts cannot agree. For instance, there seems to be no, clear consensus in the psychiatric/psychological literature on the nature of alcoholism or whether people with mental illness have a higher risk of dangerousness. Perhaps if social science research were more definitive in regard to these legal issues, then judges would be less likely to make their own assumptions/judgments of the nature of mental disability? Of course this is speculative, but there are important contributions that social scientists can make as legal experts attempt to define the interface between mental illness and legal disability.

What Can Social Science Offer?

There are several areas of research interest through which social scientists could contribute to our understanding and application of laws such as the ADA. For instance, much more needs to be known about how the terms disability, direct threat or reasonable accommodations impact people with mental disabilities. When applying legal assessments of disability status, for instance, the courts should have a dearer understanding of what constitutes a functional impairment. Mental health professionals and other social science researchers are in a unique position to provide this expert knowledge.

Further, social scientists are in a position to assist the courts, legislatures and the general public in developing a more accurate view of mental illness. More researchers should explore the validity of certain myths/misperceptions of mental illness (e.g., the

dangerousness question) and disseminate to the general public, the media, lawmakers, etc. their findings. Only when mental illness is more well-understood and de-mystified, will stereotypes and biases be overcome. At that point, one can hope that courts and lawmakers will be able to base their decisions on accurate assessments of disabilities and an unbiased, fair interpretation of statutes. But, to a large extent the field of mental illness/psychiatry is subject to more scrutiny by laypersons as well as judges than are other fields, such as physical disability/medicine. This is partly due to the fact that the effects of mental illness cannot be "seen" in the same way as the disability resulting from a spinal cord injury, for instance. In addition, the study of human behavior is an area in which all people are "experts" to a certain extent. Unfortunately, many people often have an exaggerated sense of their expertise when it comes to mental illness. As a result, experts in the field of psychology or psychiatry are viewed as having less unique knowledge than experts in medical science or other "hard" disciplines. Again, these barriers are best overcome by social scientists taking an approach to research and dissemination that recognizes the existing biases and attempts to provide credible, accurate and meaningful research findings. Surely, persons with mental disabilities will benefit in the courts (and in society) by scientific data that lends credibility to their status as persons with legitimate disabilities.

Conclusion

With the passage of the Americans with Disabilities Act, social scientists were faced with a whole new area of inquiry. Lawmakers and the courts have shown a genuine interest in protecting persons with mental disabilities from discrimination. However, many biases and stereotypes regarding mental illness have interfered with the application of such protection to some individuals who claim to be disabled by mental conditions. Social scientists and researchers can and should assist the courts by providing more definitive data that helps to define this emerging area.

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*NOTE: The term “mental disability” is used in this paper because it reflects the language used in the legislation and relevant court cases. The author recognizes that this may not be a term preferred by all.