PRE-PUBLICATION FINAL VERSION
WILLIAM & MARY BILL OF RIGHTS JOURNAL, Vol. 12:825 (2004)

DISABILITY CIVIL RIGHTS LAW AND POLICY: ACCESSIBLE COURTROOM TECHNOLOGY

Peter Blanck, Ann Wilichowski & James Schmeling*

INTRODUCTION

Fair access to the courts is a fundamental right in any system of justice. In the United States, this right has been established in constitutional history, reinforced by legislation, and affirmed by court decisions. Although access to the courts is a core right, both historically and today, segments of the U.S. population have struggled for meaningful participation in our legal system.

We do not recount here the individuals and groups in the United States who have been deprived of access to the courts, and their struggles to attain that right. Rather, this Article examines how one minority group in U.S. society, individuals with disabilities, is engaged in a movement for access to, and equal participation in, the legal system. Accessible courtroom technology is one cornerstone of participation in the courts for many persons with disabilities.

The quest for access to the courts by persons with disabilities has coincided with

---

* Peter Blanck is the Charles M. & Marion Kierscht Professor of Law, Professor of Public Health and of Psychology, and Director of the Law, Health Policy, and Disability Center (LHPDC) at the University of Iowa; Ph.D., Harvard University; J.D., Stanford University. Ann Wilichowski is Research Assistant, Law, Health Policy & Disability Center; J.D., University of Iowa College of Law (expected 2005). James Schmeling is Associate Director, Law, Health Policy & Disability Center; J.D., University of Iowa College of Law. This research was in part funded by grants to the first author from the U.S. Department of Education, National Institute on Disability and Rehabilitation Research, for (1) the Rehabilitation Research and Training Center (RRTC) on Workforce Investment and Employment Policy for Persons with Disabilities, Grant No. H133B980042-99, (2) "IT Works," Grant No. H133A011803, (3) "Technology for Independence: A Community-Based Resource Center," Grant No. H133A021801, and (4) "Asset Accumulation and Tax Policy for People with Disabilities," Grant No. H133A031732; and by the Great Plains ADA and IT Center, the Nellie Ball Trust Research Fund, and a generous gift by Stan and Gail Richards to the LHPDC. The views herein reflect those of the authors and not of any funding agency. For most helpful comments on this Article, we thank the participants of the symposium, Helen Schartz, William Myhill, and LeeAnn McCoy.

the rise of the disability civil rights movement, which was bolstered by passage of the Americans with Disabilities Act (ADA) of 1990.[1] It also has coincided with a wave of technological advances that have enhanced the inclusion and equal participation in society of persons with disabilities. Symbolic of the technological advances affecting persons with disabilities is the growth of the Internet. Internet access for persons with disabilities is a prominent topic in disability law and policy.[2]

Since passage of the ADA, computers and assistive technologies have come to play a central role in the lives of persons with disabilities. The importance of technology in the workplace has implications for the employment of workers with disabilities. In areas of public access, computer technologies compensate for the physical limitations inherent in some disabilities. For example, those without fine motor skills may use voice-recognition software to run a computer, and those with speech impairments use special software to "speak" through the computer.[3]

In this Article, we examine courtroom access for individuals with disabilities, particularly as enhanced by the use of technology. In Part I, we describe elements of disability civil rights law and policy as a framework for the discussion. Part II presents the legal bases for courtroom access for persons with disabilities, primarily as reflected in Title II of the ADA. Part III describes technologies available to enhance access to the courts for persons with disabilities. Lastly, in Part IV, we conclude with thoughts about the growing use of accessible courtroom technology for individuals with disabilities.

I. DISABILITY CIVIL RIGHTS LAW AND POLICY

In the past thirty years there has been a sea of change in disability policy anchored by the passage of the ADA. A review of changes in the lives of persons with disabilities reveals progress, but much remains to be done.[4] The ADA has helped transform our nation's physical environment. It is prompting employers to provide workplace accommodations and assistive technologies that enable people to join and remain in the workforce.[5] Increasingly, state, federal, and private

---

[1] 42 U.S.C. §§ 12101–12213 (2000).

[2] *See* PETER BLANCK ET AL., DISABILITY CIVIL RIGHTS LAW AND POLICY 30-2 (2003).

[3] *See* MICROSOFT, TYPES OF ASSISTIVE TECHNOLOGY PRODUCTS, *at* http://www.microsoft.com/enable/at/types.aspx (last modified Feb. 14, 2004) (providing links to assistive technology products for persons with hearing, language, learning, mobility, and visual impairments).

[4] Peter Blanck, *Justice for All? Stories About Americans with Disabilities and Their Civil Rights*, 8 J. GENDER RACE & JUST. 1 (2004).

[5] *See generally* CTR. FOR AN ACCESSIBLE SOC'Y, THE AMERICANS WITH DISABILITIES ACT, *at* http://www.accessiblesociety.org/topics/ada/index.html (last visited Feb. 7, 2004) ("The ADA has created a more inclusive climate where companies, institutions, and organizations are reaching out far more often to people with disabilities.").

programs and services are programmatically and technologically accessible to people with disabilities.

The ADA has advanced the goals of our nation for persons with disabilities, including "equality of opportunity, full participation, independent living, and economic self-sufficiency."[6] This disability policy framework first took hold in the 1970s and 1980s, when national policies directed at the civil rights of people with disabilities replaced a medical conception of disability that had structured policy for most of the twentieth century.[7]

The prior medical model saw disability as an infirmity that precluded equal participation in society. It posited that governments provide resources to "cure" the disabled of their impairments.[8] The medical model evolved after the First World War with passage of the national Vocational Rehabilitation Act.[9] It continued into the 1960s with Medicaid entitlement programs for the poor and disabled, and placed people with disabilities in a subordinate role in a society structured around the convenience and interests of the nondisabled.[10]

Because the medical model did not consider the physical and social environment as disabling, it countenanced segregation and economic marginalization. Also, because it focused on the physical needs of the disabled, it did not recognize their civil rights. This legacy contributed to policies that structured assistance for the disabled as welfare and charity, with public attitudes in accord.[11]

Until passage of the ADA, contemporary employment, health care, and

---

[6] Robert Silverstein, *Emerging Disability Policy Framework: A Guidepost for Analyzing Public Policy*, 85 IOWA L. REV. 1691, 1697–98 (2000) (quoting 42 U.S.C. § 12101(a)(8) (1994)).

[7] *See id*. at 1695 (describing the rejection of the "old paradigm" and its replacement with a framework "that considers disability as a natural and normal part of the human experience").

[8] Jonathan C. Drimmer, Comment, *Cripples, Overcomers, and Civil Rights: Tracing the Evolution of Federal Legislation and Social Policy for People with Disabilities*, 40 UCLA L. REV. 1341, 1347–48 (1993) (noting that the older model acknowledged that people with disabilities were not to blame for their infirmities, but that society expected them to work with doctors to fix them).

[9] Vocational Rehabilitation Act, ch. 219, 41 Stat. 735 (1920) (current version at 29 U.S.C. §§ 701–780 (2000)).

[10] Drimmer, *supra* note 8, at 1365 ("Disability [was] . . . viewed as either a defect or an infirmity residing within the individual."); *see also* Peter D. Blanck & Michael Millender, *Before Disability Civil Rights: Civil War Pensions and the Politics of Disability in America*, 52 ALA. L. REV. 1–50 (2000) (discussing these issues and the evolution of disability civil rights).

[11] *See* Peter Blanck, *Civil War Pensions and Disability*, 62 OHIO ST. L.J. 109, 200–04 (2001) (describing that while Civil War veterans with disabilities were given pensions they were also negatively stereotyped).

rehabilitation programs for persons with disabilities were modeled on such medicalized stereotypes about disability. The rights model that began to influence policy in the 1970s conceptualized people with disabilities as a minority group entitled to civil rights protections.[12] During this time, individuals with disabilities, and then in organized groups, asserted their rights to challenge stereotypes about dependency in education, housing, health care, transportation, and employment.[13]

In the 1970s, national disability policy also began to integrate concepts of the independent living philosophy. Title VII of the Rehabilitation Act of 1973 initiated funding for Centers for Independent Living (CILs).[14] Not only did the CILs provide services *for* individuals with disabilities, but also they were required to be operated *by* individuals with disabilities.[15]

The disability policy framework — grounded in equal rights, inclusion, empowerment, and economic independence — fostered passage of federal and state laws from accessibility in voting and air travel, to independence in education and housing, and culminated with passage of the ADA.[16]

In the ADA, Congress recognized that:

> [H]istorically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem; . . . [and that] individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society . . . .[17]

Proposing disability as a social and cultural construct, as articulated by such leaders as Justin Dart, Ed Roberts, Judy Heumann, and Harlan Hahn,[18] the ADA

---

[12] BLANCK ET AL., *supra* note 2, at 1–2 to 1–4.

[13] *See generally* JOSEPH P. SHAPIRO, NO PITY: PEOPLE WITH DISABILITIES FORGING A NEW CIVIL RIGHTS MOVEMENT (1993) (reviewing the history of the modern disability rights movement).

[14] *See* 29 U.S.C. § 796 (2000) (establishing, among other things, federal funding for future CILs subject to certain conditions).

[15] *See* Heather Ritchie & Peter Blanck, *Promise of the Internet for Disability: Study of Online Services and Accessibility of Centers for Independent Living Web Sites*, 21 BEHAV. SCI. & L. 5, 6 (2003).

[16] *See generally* Silverstein, *supra* note 6 (describing the new disability policy framework based on equal opportunity, participation, independence, and self-sufficiency).

[17] 42 U.S.C. §§ 12101(a)(2), (7) (2000).

[18] *See, e.g.*, Harlan Hahn, *The Potential Impact of Disability Studies on Political Science (As Well As Vice-Versa)*, 21 POL'Y STUD. J. 740 (1993).

rights model focuses on the laws and practices that isolate persons with disabilities. The purpose of the ADA is to secure equality by eliminating the physical, economic, technological, and social barriers that preclude equal involvement in society.[19] Yet, barriers remain, especially those barriers to courtroom access. For example, many state and federal courthouses are historic structures, and as such, their courtrooms are not always physically accessible. Many courthouses were built before laws like the Architectural Barriers Act[20] and the ADA mandated access as a civil right.

Progress has occurred, however, and courts have advanced access, in part, through the use of technology. This symposium examines the ways in which technology improves aspects of the legal system for all groups of stakeholders in our nation and abroad.[21]

In prior work, the Federal Judicial Center and the National Institute for Trial Advocacy established guidelines on the use of technology in the courtroom.[22] It is important for such efforts to consider the disability rights perspective of how technology enhances (or deters) court access, and how accessibility enhances courtroom fairness. Persons with disabilities not only have a right to serve on juries, but their participation enhances the fair cross-representation of the community.[23]

II. ADA TITLE II AND COURTROOM ACCESSIBILITY FOR PERSONS WITH DISABILITIES

The right to a fair and open trial is grounded in the U.S. Constitution. The Confrontation Clause of the Sixth Amendment, for instance, provides that a criminal defendant has a right to be confronted by a witness against him.[24] The Supreme Court has interpreted this clause to afford criminal defendants the right to face adverse witnesses to conduct cross-examination.[25] With some exceptions,[26] the

---

[19] 42 U.S.C. § 12101(b).

[20] 42 U.S.C. §§ 4151–4156 (2000).

[21] *See* COURTROOM 21 PROJECT, WM. & MARY LAW SCH. & NAT'L CTR. FOR ST. COURTS, THE INTERNATIONAL CONFERENCE ON THE LEGAL & POLICY IMPLICATIONS OF COURTROOM TECHNOLOGY, *at* http://www.courtroom21.net/intlconf/index.html (Feb. 13–14, 2004) (expressing the hope to "improve the world's legal system" by new technology).

[22] *See generally* FED. JUD. CTR. & NAT'L INST. FOR TRIAL ADVOCACY, EFFECTIVE USE OF COURTROOM TECHNOLOGY: A JUDGE'S GUIDE TO PRETRIAL AND TRIAL (2001).

[23] *See generally* Andrew Weis, *Peremptory Challenges: The Last Barrier to Jury Service for People with Disabilities*, 33 WILLAMETTE L. REV. 1, 8–10 (1997) (examining, inter alia, court cases that described the right to an unbiased justice system).

[24] U.S. CONST. amend. VI. The right of confrontation was extended to the states through the Fourteenth Amendment. *See* Pointer v. Texas, 380 U.S. 400, 403 (1965).

[25] *See* Pennsylvania v. Ritchie, 480 U.S. 39, 51 (1987) (citing Delaware v. Fensterer, 474 U.S. 15, 18–19 (1985) (per curiam)).

[26] Sometimes the right of confrontation must accommodate public policy or case necessities. Maryland v. Craig, 497 U.S. 836, 849 (1990); *see also* Chambers v. Mississippi,

criminal defendant has a right to be present in the courtroom during the proceedings.[27] In the civil context, individuals generally are not provided with such a constitutional right.[28]

Although the Constitution provides that people engaged in the legal system have the right to be present in the courtroom, not all courthouses are physically, programmatically, and technologically accessible to individuals with disabilities. As a result, individuals with disabilities sometimes are denied meaningful participation in the proceedings.

The lack of accessibility to people with disabilities manifests itself in a variety of ways: architectural barriers limit entry, and communication barriers impact participation in the proceedings.[29] Individuals with mobility limitations may be unable to access second floor court proceedings where the courthouse is not equipped with an elevator, or they may not be able to enter raised or narrow juror boxes. Individuals with hearing impairments may be able to physically access the courtroom, but may not be able to engage in the proceedings because of the lack of a sign language interpreter, or because dim lighting or seating arrangements prohibit lip reading.[30]

Congress understood these barriers when it passed Title II of the ADA. Along with other goals of accessibility and integration into society, Title II ensures that individuals with disabilities may actively and meaningfully participate in the state judicial system.[31] Title II prohibits state and local governmental entities, including

---

410 U.S. 284, 295 (1973) (noting when the presence of the accused jeopardizes the accuracy of the testimony or safety of the witness, the accused may be removed from the court).

[27] Confrontation provides the accused the chance to effectively scrutinize the testimony given, as well as assure its reliability. *See Craig*, 497 U.S. at 845.

[28] One exception has been carved out where a fundamental human right would be denied without court access. *See* Boddie v. Connecticut, 401 U.S. 371, 382 (1971) (holding that the Fourteenth Amendment requires that the civil court must be made available to parties when the issue concerns a "fundamental human relationship" that can only be addressed in the court due to an entirely state-imposed requirement); *see also* Susan Nauss Exon, *The Internet Meets Obi-Wan Kenobi in the Court of Next Resort*, 8 B.U. J. SCI. & TECH. L. 1, 29 (2002) (stating that the right to a fair trial may dictate a right to court access).

[29] Weis, *supra* note 23, at 29–34 (examining the requirements of accessible courtrooms but considering whether the ADA will, in fact, ensure accessibility).

[30] Alex J. Hurder, *ABA Urges Equal Access to Courts for Individuals with Disabilities*, 26 MENTAL & PHYSICAL L. REP. 772, 772 (2002) (listing this proposition among other accessibility issues).

[31] Title II compliance requires courts provide accessible parking and public entrance to areas where court services are conducted; "[R]estrooms, drinking fountains, and telephones also must be accessible to people with disabilities if they are provided for the general public . . . [also, a]larm systems must be usable . . . ." Jeanne A. Dooley & Erica F. Wood, *'Program Accessibility': How Courts Can Accommodate People with Disabilities*, 76 JUDICATURE 250, 250 (1993).

the state courts, from discriminating against qualified individuals with disabilities, and the ADA requires them to make their facilities and programs accessible.[32]

State courtrooms throughout the nation have felt the impact of Title II.[33] Title II and its interpretive regulations set out by the U.S. Department of Justice (DOJ) mandate that architectural barriers, such as inaccessible witness stands, jury boxes, jury deliberation rooms, restrooms, and parking spaces be eliminated.[34] When such barriers cannot be eliminated, a state court must reasonably modify its policies, practices or procedures to allow participation by a person with a disability.[35] For instance, the state court may move the case to an accessible courtroom.[36]

In addition to requiring architectural accessibility, Title II requires that communications with individuals with disabilities must be as effective as communications with people who do not have disabilities.[37] As such, the DOJ requires public entities to provide auxiliary aids, preferably of the individual's choice,[38] to meet the communication needs of persons with disabilities.[39]

---

[32] Keri K. Gould, *And Equal Participation for All . . . The Americans with Disabilities Act in the Courtroom*, 8 J.L. & HEALTH 123, 132–33 (1993–1994) ("Congress, by enacting the ADA, sought to . . . includ[e] state and local courthouses within the statute's definition of public services.") In contrast, Title II of the ADA does not cover federal court programs and services. *Id*. at 133 n.79. *But see id.* (noting that the reason for this is that programs and services must comply with the Rehabilitation Act of 1973). The Judicial Conference of the United States has a policy of providing accommodations for people with hearing and communication disabilities. *See generally* Press Release, U.S. Bankruptcy Ct., W.D.N.Y. 1 (Dec. 1, 2000), *at* http://www.nywb.uscourts.gov/notices/nta0005.pdf (citing *Guidelines for Providing Services to the Hearing-Impaired and Other Persons with Communications Disabilities, in* A GUIDE TO JUDICIAL POLICIES AND PROCEDURES ch. III, pt. H, at 37). In addition, federal buildings must be accessible under the Architectural Barriers Act, 42 U.S.C. §§ 4151–4156 (2000), which has as standards the Uniform Federal Accessibility Standards, and the Americans with Disabilities Act Accessibility Guidelines (ADAAG). U.S. GEN. SERVS. ADMIN., DESIGN AND CONSTRUCTION: ACCESSIBILITY FOR THE DISABLED, *at* http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=8152&contentType=GSA_OVERVIEW (last modified Jan. 29, 2004).

[33] *See* Lane v. Tennessee, 315 F.3d 680, 683 (6th Cir. 2003), *cert. granted*, 123 S. Ct. 2622 (June 23, 2003) (presenting the issue of state court accessibility).

[34] *See* Gould, *supra* note 32, at 152. Title II requires a public entity to make its programs accessible, except where it would result in a "fundamental alteration in the nature of [the] . . . program . . . or in undue financial and administrative burdens." 28 C.F.R. § 35.150(a)(3) (2003).

[35] *See* Gould, *supra* note 32, at 147–49.

[36] *See id.*

[37] *See* 28 C.F.R. § 35.160(a).

[38] The choice is to be given "primary consideration" by the public entity. *Id.* § 35.160(b)(2). "[U]nless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 35.164." *Id.* pt. 35, app. A, § 35.160.

[39] *Id.* pt. 35, app. A, § 35.102 ("For instance, public school systems must provide . . . appropriate auxiliary aids and services whenever necessary to ensure effective communication . . . .").

The Title II DOJ regulations identify the types of auxiliary aids that facilitate meaningful communication.[40] Auxiliary aids and services for persons with hearing impairments include qualified interpreters, notetakers, written materials, amplifiers, captioning, teletypewriters (TTYs) and others.[41] For persons with vision impairments, aids and services include qualified readers, taped text, and Braille formats.[42] For persons with speech disabilities, they include "[telecommunications devices for deaf persons] TDDs, TTYs, computer terminals, speech synthesizers, and communication boards."[43]

Public entities are encouraged to engage in a collaborative process with members of the public who have disabilities to determine appropriate and effective auxiliary aids.[44] The regulations provide, however, that a public entity need not take action that would result in a fundamental alteration or an undue financial and administrative burden.[45]

Title II's communication regulations and the relevant case law therefore stand for the proposition that a court must offer effective communication alternatives: "A public entity shall take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others."[46]

Although Title II has spurred courtroom accessibility, it has not eliminated all barriers. One study in California examined the perceived impact of courtroom accessibility.[47] The majority of individuals reported architectural barriers as a major

---

[40] For example, the regulations mention "computer-assisted transcripts," which almost simultaneously display transcript proceedings for individuals who may be deaf or hard of hearing. The regulations state, however, that in certain situations an interpreter may be warranted. *Id*. pt. 35, app. A, § 35.160.

[41] *Id.* § 35.104(1).

[42] *Id*. § 35.104(2).

[43] U.S. DEP'T OF JUST., AMERICANS WITH DISABILITIES ACT: TITLE II TECHNICAL ASSISTANCE MANUAL, at II-7.1000 (1993), *available at* http://www.usdoj.gov/crt/ada/taman2.html.

[44] *See* 28 C.F.R. § 35.160(b)(2) (2003); Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, 56 Fed. Reg. 35,544, 35,566–67 (July 26, 1991) (to be codified at 28 C.F.R. pt. 35).

[45] 28 C.F.R. § 35.164 (noting that the public entity has the burden of proving an undue burden and that the decision must be made by the head of the public agency).

[46] *Id*. § 35.160(a).

[47] The study surveyed approximately 1,200 people over the telephone, and almost half of the participants said they had either a disability or a chronic medical condition. Additionally, mail surveys went out to lawyers, judges, schools of law, and various advocacy groups. *See* Maryann Jones, *And Access for All: Accommodating Individuals with Disabilities in the California Courts*, 32 U.S.F. L. REV. 75, 91 (1997) (citing SUMMARY OF SURVEY AND PUBLIC HEARING REPORTS, ACCESS FOR PERSONS WITH DISABILITIES SUBCOMM., CAL. JUD. COUNCIL'S ACCESS & FAIRNESS ADVISORY COMM. 2–3 (1997), *available at* http://www.courtinfo.ca.gov/reference/documents/summarydisabilities.pdf).

impediment to court access not only for individuals with disabilities, but also for others seeking access.[48] Respondents reported that "California courts generally do not have court documents available in alternative formats such as Braille or large print and do not have adequate assistive devices such as real-time reporting and TDD devices."[49]

Title II of the ADA provides recourse for persons with disabilities who are denied access to the courts.[50] To state a claim, the complaining party must show that she is a "qualified individual with a disability,"[51] who was "excluded from participation in or . . . denied the benefits of the [public] services,"[52] or was otherwise discriminated against by reason of such disability.[53] For instance, a New York state trial court found that ADA Title II entitled a blind attorney to additional time to file a response as an accommodation to the court rules for filing a judgment or order.[54] The New York Supreme Court in *In re Spinella v. Town of Paris Zoning Board of Appeals* noted:

> [T]he Courtroom and the Court System constitute the trial lawyer's work place . . . . [T]he accommodation sought in this case helps Petitioners' counsel perform the essential functions of his profession and is not personal to him. The accommodation sought is not unreasonable and does not impose an undue hardship upon the judicial system pursuant to 42 U.S.C.A. § 12112(b)(5)(A).[55]

Although Title II's accessibility requirements have reached thousands of persons engaged in the state court system, the U.S. Supreme Court is set to decide in *Tennessee v. Lane* whether Title II should be narrowly considered under the

---

[48] *Id*. at 92.

[49] *Id*.

[50] Standing to bring an ADA claim does not depend on being a party; thus, a non-party individual excluded from a courtroom on the basis of HIV status, for instance, may bring an ADA Title II claim. *See Civil Incompetency/Guardians/Custody/Elderly/Public Health*, 26 MENTAL & PHYSICAL DISABILITY L. REP. 30, 30 (2002) [hereinafter *Civil Incompetency*].

[51] *See* Gould, *supra* note 32, at 132 (defining a qualified individual with a disability as one with a "mental disabilit[y], learning disabilit[y], [or a] developmental disabilit[y]").

[52] *Civil Incompetency*, *supra* note 50, at 33 (quoting 42 U.S.C. § 12131(1)(1990)).

[53] Shotz v. Cates, 256 F.3d 1077, 1079 (11th Cir. 2001) (quoting 42 U.S.C. § 12132 (2000)).

[54] *In re* Spinella v. Town of Paris Zoning Bd. of Appeals, 752 N.Y.S.2d 795, 799 (N.Y. Sup. Ct. 2002).

[55] *Id*. at 798–99. The court cited New York cases on the participation of judges and jurors in court proceedings. The court also noted cases in which jurors and judges with disabilities may be disqualified. *Id.* at 797.

Court's "new federalism" Eleventh Amendment jurisprudence.[56] Title II's mandate, that states must ensure access to government services, goes to the heart of the federalism debate.

In *Lane*, two persons with disabilities — a defendant in a traffic case and a court reporter — sued under Title II to vindicate their fundamental right of access to the courts.[57] Their story is compelling. Plaintiffs George Lane and Beverly Jones were excluded from the services and proceedings of courthouses due to physically inaccessible facilities. In the absence of an elevator, Mr. Lane was relegated to "crawl[ing] up two flights of steps to attend his . . . hearing."[58] For a subsequent hearing, Mr. Lane informed the judge he would not repeat his trip up the stairs but would wait downstairs. The judge ordered his arrest and jailing for failure to make his court appearance.[59] Similarly, Beverly Jones, a court reporter in the state of Tennessee, found twenty-five county courthouses inaccessible to her.[60]

In *Lane*, the Court will decide whether Title II was appropriately crafted by Congress to prevent states from discriminating against persons with disabilities.[61] Should the Court rule that Title II's remedies exceeded Congress's constitutional authority to abrogate states' sovereign immunity, the Court will curtail the law's reach.[62] If the Court rules in favor of Tennessee's position, individuals may no longer be able to collect money damages under Title II against state and local entities who do not comply with accessibility standards.

III. ACCESSIBLE COURTROOM TECHNOLOGY AND PERSONS WITH DISABILITIES

The disability civil rights movement and passage of Title II of the ADA have coincided with technological advances that enhance the equal participation in

---

[56] Lane v. Tennessee, 315 F.3d 680 (6th Cir. 2003), *cert. granted*, 123 S.Ct. 2622 (2003).

[57] *Id.* at 681–82.

[58] BLANCK ET AL., *supra* note 2, at 10-10 (citing REP. DISABILITY PROGRAMS, June 26, 2003, at 91). Her requests for accommodations were met without success. *Id.*

[59] *Id.*

[60] *Id.*

[61] *Lane*, 123 S.Ct. 2622 (2003).

[62] In this scenario, Title II would likely be limited to prospective injunctive relief against states. *Cf.* Edelman v. Jordan, 415 U.S. 651, 676–77 (1974) (limiting the remedy under a § 1983 claim to prospective injunctive relief). In *Demello v. Mulligan*, two local solo-practitioners with disabilities, who could not physically access state courts, had their court hearings scheduled in the courthouse parking lot and cellar boiler room. Needless to say, *this* accommodation was not a benefit to their practice. Under the ADA and state law, the Commonwealth of Massachusetts entered into a $6 million settlement to renovate state courthouses in Bristol County. Demello v. Mulligan, No. 01-CV-11730 (D. Mass. Jan. 20, 2004) (approving settlement), *cited in* Dee McAree, *No Longer Banished to Boiler Room: Two Disabled Attorneys Fight for Access to the Courtroom — and Win*, NAT'L L.J., Jan. 26, 2004, at 6.

society of persons with disabilities. Technological advances are occurring at a staggering rate such that Fred Galves notes today's courtrooms should have:

- monitors for judges, jurors, and testifying witnesses;
- a whiteboard display system with concurrent computer monitor display and hard disk storage;
- an attorney's podium equipped with CD-ROM drive and VCR;
- a front projection LCD projector;
- real-time court reporting and transcription display;
- a rear projection, touch-sensitive, pen-writeable TV;
- a flatbed scanner;
- bench and counsel table access to statutory and case law via West and LEXIS CD-ROMs; and
- a video taping system synchronized to the real-time transcript.[63]

Although technology may enhance courtroom proceedings, without careful consideration, it has the potential to further isolate and remove individuals with disabilities from meaningful engagement. Title II requires courtroom operations, technology and communications involving persons with disabilities to be effective and nondiscriminatory.[64] Yet, individuals with certain sensory or cognitive disabilities, for instance, may not be able to access information conveyed by these devices.

Nevertheless, many courtroom technologies enhance access for people with disabilities. Video and computer technologies are available to project evidence on a display in two-dimensional or three-dimensional space.[65] The image may be magnified to enable counsel to focus attention on small detail. The same technology allows jurors with limited vision, for example, to view the evidence clearly. Similarly, real-time captioning allows simultaneous transcription of the proceedings to appear on a display monitor, which is an aid to all participants, with and without disabilities.

---

[63] Fred Galves, *Where the Not-So-Wild Things Are: Computers in the Courtroom, the Federal Rules of Evidence, and the Need for Institutional Reform and More Judicial Acceptance*, 13 HARV. J.L. & TECH. 161, 279–80 (2000) (footnotes omitted) (bullet points not in original).

[64] Nondiscrimination on the Basis of Disability in State and Local Government Services, 56 Fed. Reg. 35,694 (July 26, 1991) (to be codified at 28 C.F.R. pt. 35).

[65] For example, the WolfVision Visualizer and DOAR Communicator project two-dimensional and three-dimensional objects and allow evidence to be enlarged and focused. *See* COURTROOM 21 PROJECT, PROJECTION DEVICES, *at* http://www.courtroom21.net/C_T/projection.html (last visited Jan. 17, 2004).

Assistive technology[66] in the courtroom, therefore, has the potential to benefit not only individuals with disabilities, but also others in the courtroom.[67] This is particularly true when courtroom technology embodies concepts of "universal design,"[68] which enables all participants to engage meaningfully in the proceedings. Thus, while real-time captioning may be essential for an individual with limited hearing, it is also beneficial to the lawyer, juror, or judge who missed a witness's last statement.

Increasingly, state courts are adopting such accessible and universally-designed technology. Studies in California show that state court rules allowing for accommodation requests from participants foster access to the courts by people with disabilities.[69] The California Court Rules allow for accommodations and imply that courtroom technology is required to make proceedings accessible to people with disabilities.[70]

---

[66] Assistive technology "is used to increase, maintain, or improve functional capabilities of individuals with disabilities." Technology-Related Assistance to Individuals with Disabilities Act of 1988, 29 U.S.C. § 3002(3) (2000).

[67] For examples of assistive technology, see ABILITY HUB ASSISTIVE TECH. SOLUTIONS, *at* http://www.abilityhub.com (last modified Jan. 3, 2004) (informing visitors about assistive technology products from multiple vendors); ABLEDATA, *at* http://www.abledata.com/text2/search.htm (last modified Jan. 12, 2004) (providing a comprehensive overview of over 20,000 assistive technology products); USA TECH GUIDE, USA TECHGUIDE TO ASSISTIVE TECHNOLOGY CHOICES, *at* http://usatechguide.org (last visited Jan. 26, 2004) (listing assistive technology products from vendors).

[68] Universally designed products and environments are "usable by all people, to the greatest extent possible, without the need for adaptation or specialized design." RON MACE, CTR. FOR UNIVERSAL DESIGN, N.C. ST. UNIV., PRINCIPLES OF UNIVERSAL DESIGN: DEFINITION (1997), *at* http://www.design.ncsu.edu/cud/univ_design/ud.htm; *see* CTR. FOR UNIVERSAL DESIGN, N.C. ST. UNIV., PRINCIPLES OF UNIVERSAL DESIGN: THE PRINCIPLES (1997) ("The design is useful and marketable to people with diverse abilities. . . . [It] accommodates a wide range of individual preferences and abilities. . . . Appropriate size and space is provided for approach, reach, manipulation, and use regardless of user's body size, posture, or mobility."), *at* http://www.design.ncsu.edu/cud/univ_design/princ_overview.htm . Universal Design "first emerged in architecture, but has expanded to the entire designed environment, including computers, telephones, and information systems . . . ." Jim Tobias, *Information Technology and Universal Design: An Agenda for Accessible Technology*, 97 J. VISUAL IMPAIRMENT & BLINDNESS 592, 592 (2003).

[69] CAL. CT. R. 989.3(c). For a review of California's activities, see Jones, *supra* note 47. *See also* W. LAW CTR. FOR DISABILITY RIGHTS, DISABILITY RIGHTS EDUC. & DEFENSE FUND, & PROTECTION & ADVOCACY, INC., ACCESS TO THE COURTS: A GUIDE TO REASONABLE ACCOMMODATIONS FOR PEOPLE WITH DISABILITIES, *at* http://www.pai-ca.org/Pubs/502601.htm#Rule (last modified Apr. 2003) (giving answers to frequently asked questions about court accessibility).

[70] Accommodations include:

> [M]aking reasonable modifications in policies, practices, and procedures; furnishing, at no charge . . . auxiliary aids and services, . . . materials in

In many states, accessibility policies are described on court Web sites. Alaska's state court Web site, for instance, notes that jurors may not be disqualified from service solely by reason of loss of hearing or vision, and that its facilities are to be accessible to jurors with mobility impairments.[71] These efforts prevent the blanket exclusion of persons with disabilities from serving as jurors.[72] Other states with laws requiring non-discrimination in juror selection on the basis of disability include Minnesota, Oregon, and Rhode Island.[73] Some states, such as New Hampshire and Texas, require determination of fitness to serve as a juror.[74] Other states, such as Wisconsin, have laws requiring that jurors have their "natural faculties."[75] However, there is no state that categorically excludes persons with disabilities from jury service.[76]

Colorado requires its courts to ask whether individuals need accommodations to serve as jurors and, when reasonable, to provide the accommodation.[77] In other states, accommodation requests may be made to the court clerk or presiding judicial officer.[78] Some courts designate coordinators to provide information about the accessibility of electronic and information technology.[79]

Outside of the state court context, federal executive branch and administrative agency court proceedings are required to be accessible to people with disabilities under the Rehabilitation Act of 1973.[80] For instance, video teleconferencing (VTC) is used in Social Security Administration (SSA) administrative hearings and has

---

> alternative formats, and qualified interpreters or readers; and making each . . . program . . . when viewed in its entirety, readily accessible to and usable by qualified individuals with disabilities requesting accommodations. While not requiring that each facility be accessible, this standard [of] "program accessibility," must be provided by methods including alteration of existing facilities, acquisition or construction of additional facilities, relocation of a service or program to an accessible facility, or provision of services at alternate sites.

CAL. CT. R. 989.3(b)(3).

[71] ALASKA COURT SYS., ALASKA TRIAL JUROR INFORMATION, *at* http://www.state.ak.us/courts/j-180.htm (last modified Dec. 10, 2003).

[72] For a history of exclusion of jurors with disabilities see Weis, *supra* note 23, at 29–34.

[73] *Id*. at 21–22.

[74] *Id*. at 21.

[75] *Id*. at 22.

[76] *Id*. at 21.

[77] *See* COLO REV. STAT. § 13-71-104(3)(b) (2003).

[78] *See, e.g.*, CAL. CT. R. 989.3(c)(1); ALASKA CT. SYS., *supra* note 71.

[79] SECTION 508.GOV, AGENCY SECTION 508 COORDINATOR LIST (listing section 508 coordinators for federal courts including the Northern District of Iowa and the Western District of Wisconsin), *at* http://www.section508.gov/index.cfm?FuseAction=Content&ID=84 (last visited Apr. 6, 2004).

[80] 29 U.S.C. § 794 (2000).

streamlined the review process for the more than 500,000 annual hearing requests.[81] The SSA hearing process often involves individuals with disabilities who cannot attend due to their impairments.[82] The use of accessible technology in SSA hearings results in more satisfied claimants, time savings for the judges, and efficient hearings and claim processing.[83]

In 2001, the SSA published a notice of proposed rulemaking to include the use of VTC for certain hearings to produce claimant testimony.[84] In 2003, the SSA adopted final rules allowing claimants to veto the use of VTC for their testimony and to object to the VTC testimony of experts.[85] The SSA provides other safeguards for equal access to persons with disabilities, including: (1) equal technological access to the VTC hearing record; (2) technological support at the VTC site; (3) technological security and privacy protection; and (4) information about VTC to claimants so as to receive a fair hearing.[86]

Although the VTC safeguards are not directed solely toward persons with disabilities, they ensure meaningful access to a range of persons. SSA monitors the impact of VTC on the accuracy and outcome of the disability determination process.[87] One reviewable factor is the extent to which the VTC proceedings capture other verbal and nonverbal communications related to the claimant's disability.[88]

Despite these innovations, the cost of assistive technologies sometimes precludes their purchase by courts. Partially in response to cost considerations and a desire to increase product usability, the purchase of universally designed technology is becoming prevalent.[89] The use of widely applicable technologies help eliminate barriers that limit equal participation and support individuals' with disabilities right of access to the courts.

---

[81] Federal Old-Age, Survivors and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Administrative Review Process; Video Teleconferencing Appearances Before Administrative Law Judges of the Social Security Administration, 68 Fed. Reg. 69,003, 69,004 (Dec. 11, 2003) (to be codified at 20 C.F.R. pts. 404, 416).

[82] *Id*.

[83] *Id*.

[84] *Id*. at 69,003 (noting an exception where use of VTC is disputed by claimants).

[85] *Id.*

[86] *Id.* at 69,005–06 (to be codified at 20 C.F.R. pts. 404, 416).

[87] *Id*. at 69,003, 69,006.

[88] *See generally* Michael Searcy et al., *Nonverbal Behavior in the Courtroom*, *in* APPLICATIONS OF NONVERBAL BEHAVIOR (Robert Feldman & Ron Riggio eds., forthcoming 2004).

[89] *See* Tobias, *supra* note 68, at 592.

IV. CONCLUSION

Professor Fred Lederer introduced this symposium with the idea that in 1876 the modern information age was born when Alexander Graham Bell uttered the famous words: "Mr. Watson, come here, I need you."[90] It is less well-known that Bell's telephone was motivated by the inventor's desire to amplify his voice to communicate with his wife who experienced hearing loss.[91]

Ironically, as my colleague Newton Minow has said, "Bell's invention did not help people with hearing disabilities for nearly a century," that is, until the invention of the Text Telephone (TTY) and the Telecommunications Devices for the Deaf (TDD).[92] Minow concludes that "[h]istory demonstrates that the advantages of technology are often dispersed more widely than people [initially] anticipate."[93]

This Article contends and the present symposium illustrates that universal benefit generally, and in the courtroom particularly, is derived from technology developed initially for persons with disabilities. Technology, therefore, can increase access to the courts for many persons with disabilities. Furthermore, it is changing how lawyers present, judges receive, and jurors weigh information.[94]

In some states, technology allows access for participants who are not physically in the courthouse. For instance, Michigan has instituted a Cyber Court,[95] in which all communications occur through Web conferencing, email, and electronic filings.[96] The Cyber Court has jurisdiction over commercial and business disputes exceeding $25,000.[97]

But with each technological development, consideration must be made of their impact on individuals with disabilities. Technology is no guarantee of accessibility. Moreover, courtrooms remain largely inaccessible for many with disabilities. One study by the American Bar Association on the impact of disability on juror and other stakeholder participation found that:

> [Persons with] mobility impairments can [have] difficulty . . . sitting for long periods. Persons with hearing and communication impairments are limited in their ability to participate in court proceedings, [and]

---

[90] Fredric I. Lederer, *Introduction: What Have We Wrought?*, 12 WM. & MARY BILL RTS. J. 637 (2004).

[91] PETER BLANCK, ANNENBERG WASH. PROGRAM IN COMM. POL'Y STUD. OF NW. UNIV., COMMUNICATIONS TECHNOLOGY FOR EVERYONE: IMPLICATIONS FOR THE CLASSROOM AND BEYOND 4 (1994), *available at* http://www.annenberg.nwu.edu/pubs/comtech/.

[92] *Id.*

[93] *Id.*

[94] *See, e.g.*, COURTROOM 21 PROJECT, *supra* note 65 (illustrating technology designed with courtrooms in mind).

[95] *See generally* Lucille M. Ponte, *The Michigan Cyber Court: A Bold Experiment in the Development of the First Public Virtual Courthouse*, 4 N.C. J.L. & TECH. 51 (2002).

[96] *Id.* at 56.

[97] *Id*. at 60.

> understand witnesses. . . . Vision impairments make it difficult to . . . view evidence, and review court documents. Persons with cognitive and developmental disabilities may have difficulty expressing their needs . . . to court personnel and lawyers, [and] understanding rapid speech . . . .[98]

The American Judicature Society examined how to increase court accessibility for persons who are deaf or who have hearing impairments.[99] They found that many courtrooms were too dark to permit lip or sign reading.[100] In addition, some courtrooms used non-captioned videotapes to explain jury selection procedures.[101] The study noted: "At times, court personnel made decisions for persons who are deaf or hard of hearing, rather than employ an interpreter or provide an assistive device."[102]

For these unfortunate reasons, some states have limited the selection of individuals with disabilities from the jury pool.[103] For instance, in *Galloway v. Superior Court*,[104] Galloway appeared for jury duty and the court staff informed him that, because of his blindness, he was barred by statute from serving as a juror.[105] The District of Columbia trial court held that the statute violated the Rehabilitation Act and the ADA.[106] Today, a number of like states specifically include persons

---

[98] Hurder, *supra* note 30, at 772 (citing ABA COMM'N ON MENTAL & PHYSICAL DISABILITY LAW & ABA COMM'N ON LEGAL PROBLEMS OF THE ELDERLY, MAKING JURIES ACCESSIBLE: A GUIDE FOR STATE COURTS (1993)).

[99] *Id.* (citing GEORGE I. BALCH, AM. JUDICATURE SOC'Y, IMPROVING ACCESS TO THE COURTS FOR PEOPLE WHO ARE DEAF OR HARD OF HEARING: A FOCUS GROUP STUDY (1996)).

[100] *Id.*

[101] *Id.*

[102] *Id.*

[103] *See, e.g.*, ARK. CODE ANN. § 16-31-102(a)(6) (Michie 1999) (providing disqualification of an individual whose physical or mental disability renders him unable to provide satisfactory jury service); Johanna Pirko, Note, *The Erosion of Separation of Powers Under the "Congruence and Proportionality" Test: From Religious Freedom to the ADA*, 53 HASTINGS L.J. 519, 533 n.115 (2002).

[104] 816 F. Supp. 12 (D.D.C. 1993).

[105] This policy arose from D.C. CODE ANN. § 11-1906 (1989), which disqualified a person deemed "incapable by reason of physical or mental infirmity of rendering satisfactory jury service." *Galloway*, 816 F. Supp. at 15 n.2 (quoting D.C. CODE ANN. § 11-1906(b)(2)(A)).

[106] *See Galloway*, 816 F. Supp. at 16.

with visual impairments among eligible jurors,[107] whereas other states refrain from categorically excluding these individuals from jury service.[108]

By enacting the ADA, Congress recognized the civil rights of individuals with disabilities and refuted a prior focus on programs that isolated those individuals. Title II of the ADA prohibits discrimination against individuals with disabilities in education, transportation, communication, recreation, health services, voting, and in access to public services such as state court systems.[109]

This symposium highlights that, in addition to our own country, many other nations promote the effective use of technology in the courtroom. In his article for this symposium, for instance, Lord Justice Brooke describes how English judges, witnesses, counsel and solicitors often view the proceedings on a monitor in the courtroom or via video link, as well as review documents on a large screen while they are shown to a witness.[110] English courtroom participants also may view "LiveNote" transcripts of witness or other testimony during the trial.[111]

Senior District Judge of the Republic of Singapore, Richard Magnus, describes the use of technology in all phases of Singapore courts, including in VTC presentations and electronic filings.[112] Magnus' review raises issues like those discussed here, which are relevant to court access for people with disabilities. For example, electronic filing systems and court Web sites benefit from electronic translation capability to voice or Braille text when counsel, judges, or jurors are blind.

Likewise, universally-designed court technology enhances access. There are two well-accepted standards for the universal accessibility of technology: the Web Content Accessibility Guidelines (WCAG) of the World Wide Web Consortium

---

[107] *See, e.g.*, ARK. CODE ANN. § 16-31-102(6) (excluding, however, those unable to render fit service by virtue of "physical or mental disability"); MASS. GEN. LAWS ANN. ch. 234, § 4 (West 2002) ("No person shall be disqualified from appearing on [the jury] list solely because [a] person is blind."); S.C. CODE ANN. § 14-7-810(3) (Law. Co-op. Supp. 2003) (excluding those as in Arkansas); TEX. GOV'T CODE ANN. § 62.104(a)–(b) (Vernon 1998) (disqualifying no person who is legally blind unless in a civil case, by virtue of the disability, he is rendered unfit for service in the particular case); VA. CODE ANN. § 8.01-337 (Michie 2002) (stating categorically that blindness is not a per se disqualification). Exclusion of an individual with a visual impairment results in some jurisdictions where "the case involves a significant amount of physical evidence." *Galloway*, 816 F. Supp. at 17 (citations omitted).

[108] *See, e.g.*, ALA. CODE § 12-16-60 (1995); N.Y. JUD. LAW § 510 (Consol. 2002); OKLA. STAT. ANN. tit. 38, § 28 (West 1999); WASH. REV. CODE ANN. § 2.36.070 (West 2000).

[109] *See generally* Blanck, *supra* note 4 (discussing issues from the point of view of individuals with disabilities).

[110] Henry Brooke, *The Legal and Policy Implications of Courtroom Technology: The Emerging English Experience*, 12 WM. & MARY BILL RTS. J. 699 (2004).

[111] *Id.*

[112] Richard Magnus, *The Confluence of Law and Policy in Leveraging Technology: Singapore Judiciary's Experience*, 12 WM. & MARY BILL RTS. J. 661 (2004).

(W3C),[113] and in the United States, section 508 standards that mandate the accessibility of Web sites and electronic and information technology used by the federal government.[114] Adoption of these guidelines in the United States and abroad enhances uniformity and accessible technology design across judicial systems. These guidelines also may be applied to the symposium's discussion by Moeves and Moeves of alternative dispute resolution techniques.[115]

Despite progress, however, barriers persist in court access for persons with disabilities, particularly with regard to technology. This symposium highlights the need for a coordinated investigation of these issues as applied to persons with disabilities. The review may include:

- Dialogue about emerging courtroom technologies and accessibility;
- Awareness about persons with different disabilities and equal participation in the court system;
- Evaluation and implementation of accessible courtroom technologies and universal design concepts as applied to persons with and without disabilities; and
- Application of the disability policy framework to state and federal court access in the United States.

This investigation is needed not only for people with disabilities, but also for all underrepresented individuals in society. A far-reaching question remains: will courtroom technology help people with disabilities and other underrepresented persons to participate equally in the legal process, or will technology further distance them from the courtroom?

---

[113] *See* WATCHFIRE, WELCOME TO THE BOBBY ONLINE FREE PORTAL (providing Web site accessibility checks based on the WCAG and section 508 standards), *at* http://www.watchfire.com/products/desktop/bobby/default.aspx (last visited Jan. 26, 2004).

[114] Peter David Blanck & Leonard A. Sandler, *ADA Title III and the Internet: Technology and Civil Rights*, 24 MENTAL & PHYSICAL DISABILITY L. REP. 855, 857 (2000).

[115] *See* Amy S. Moeves & Scott C. Moeves, *Two Roads Diverged: A Tale of Technology and Alternative Dispute Resolution*, 12 WM. & MARY BILL RTS. J. 843 (2004).