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March 30, 2007

Disability Civil Rights and the Promise of Technology

Disability civil rights are founded on principles established in the civil rights movements of racial minorities and women. This foundation and association has been important in the transition from the medical model to the civil rights model in development of public policy. However, it was recognized early on that the traditional interpretation of equality as meaning equal treatment in the race and sex contexts would not provide meaningful opportunity for people with disabilities. Equal treatment was not sufficient to assure equal opportunity, and the concepts of reasonable accommodation, barrier removal and auxiliary aids and services were developed to fill the gap. An invitation to ride a bus would not be meaningful to a person using a wheelchair if there was no lift to the bus, and so on. The obligation of public and private entities to provide whatever it takes to assure access has never been absolute, however. Some formulation of “reasonableness” is operative in legal terms that create exemptions such as “undue burden”, “fundamental alteration,” and “readily achievable barrier removal.” What makes disability civil rights different in this way in a legal context is also what makes disability civil rights directly tied to the development of technology. What is possible and what is reasonable will depend on the availability of barrier removal (used broadly) solutions. In reverse the need for solutions to access can stimulate technological growth. Finally, new technologies created for diverse applications will have the secondary benefit of creating new opportunities for people with disabilities. In time, these new technologies will be required by entities covered by disability rights laws to ensure equality of opportunity and civil rights for people with disabilities.

Examples range from lifts on buses to epi-pens for allergic reactions to voice over Internet provider (VOIP) that can aid communication. When the ADA was passed it was agreed that transportation should be accessible, including long distance bus transportation. But at the time, the technology of developing a lift that was feasible for an over-the-road vehicle such as those used by the Greyhound Company was in its infancy. The right depended on the technology

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being available and ultimately, the right created a viable market for the technology. The same can be said of height adjustable medical exam tables and mammogram machines, software which can convert PDF's to accessible, readable alternative formats and electronic voting machines.

An area that DREDF has been exploring for years involves the transformation of "medical" services into independent living services because of the change in technologies. In particular, we have worked with the American Diabetes Association to ensure that school children are assisted in needed diabetes care. The technology of blood glucose monitors and insulin pumps and pens have made care manageable by a fifth-grader. Yet, there is still a cultural gap between ease of treatment and the notion that the tasks are "medical." The disability civil rights laws have provided a tool to challenge archaic views of "medical" and hence convert undeliverable services in the school setting to mandated civil rights protections.

The clash between state medical practices acts and current medical technologies is extreme. Furthermore, these issues come up in many settings other than schools. Elder care, is largely determined by the type of care an individual requires such as moving a senior with diabetes to the most restrictive setting because of the "medical" need to be tested for blood glucose levels. As medical technologies become more user friendly, the more reasonable it becomes to insist on these services in normalized settings like schools, camps and assisted living apartments.

Given the interaction between technology and disability civil rights, questions arise as to how much entities covered by the ADA, IDEA and state laws must keep up with rapidly advancing technologies. For example, if movie theaters provide assistive listening devices for hard of hearing patrons, must they also make available a newly emerging technology which provides closed captioning at movies (the ADA does not require open captioning). If a public building has Braille signs, must it also make available evolving infrared technology, which greatly increases access for blind citizens? If a computer system was designed only to provide a photo image of a document that cannot be converted to accessible format, must the entity search for new software products to cure the deficiency?

The interaction between advances in technology and advances in civil rights is uncharted territory. A project that studies and compiles innovative access technology across a broad spectrum of fields is necessary. (A model might be the "The Whole Earth Catalogue of Technological Access.") Lawyers and policy makers should study and discuss these issues. Public policy should be reviewed and amended through this lens. For example, if all teachers were required to

learn to give an insulin injection when they are required to learn CPR, which is more difficult, would resistance to children receiving services in school be so great? Would a federal government agency stonewall attempts by blind individuals to attain correspondence in accessible formats if it were aware of software to convert documents into accessible formats?