



Hi. It's Larry and you're listening to *Disability Nation*, an audio magazine by and for people with disabilities. Welcome to the October issue of *Disability Nation*.

A little bit late in getting this out this month but we'll get back on schedule here over the next couple of weeks. And this is kind of a new format for us. Usually it's been every other week and that sort of thing, a half hour show, but we're going to go a once a month close to one hour show, usually; and then in between shows will obviously be news updates and maybe short interviews and things like that. So interested in your feedback on it, so always feel free to drop me a line and let me know what you think.

This time on the show we're going to visit with former major league pitcher Jim Abbott. He pitched for several teams, including the New York Yankees where he threw a no-hitter in 1993. Jim is a spokesperson for a program through the Office of Disability and Employment programs now and we'll visit with him about his involvement with the campaign to educate business owners and business people about hiring folks with disabilities.

Also on the show this week we'll learn about a video project up in Michigan where people with disabilities are sharing stories of overcoming their disability and difficult experiences they've had in life.

And finally, we'll unravel some of the mysteries of the ADA Amendment Act. We'll visit with someone from one of the Disability and Business Technical Assistance Centers to get the low-down on what that's all about, when it's taking effect, and what we can expect.

If you want to get in touch with me here at *Disability Nation* there's a few ways you can do that. You can visit the website at www.DisabilityNation.net, you can send e-mail to contact@DisabilityNation.net, or can call the *Disability Nation* phone portal. It's brought to you by PhonePortals.com; that number is (480) 302-9300. You can listen to past episodes of the show at that number and leave voice mail by pressing 9. Again, that's (480) 302-9300.

As always, thanks for listening. Enjoy the show and let me know what you think.

This podcast is a part of the Blubrry network. You can find this and other great podcasts at Blubrry.com. That's "blueberry," with no e's, dot com.

Elicia Herkert: I've never seen a cockroach before and at the age 12 my mother and father decided they were at the end of their ability to help me; I have a mild case of cerebral palsy. So they called the state for help. Here comes the police and took me from my home and put me in a state mental hospital where, as my parents told me, I would get the help that I needed. What I got from that experience had haunted me all the rest of my life.

I remember being given many doses of the drug called Thorazine that made me a zombie and have muscle spasms that they diagnosed as epileptic seizures and put me on Phenobarbital for it. For months I would sit in a chair and look through the barred windows in a haze. I had no idea what week it was or when I ate last. I just sat there day after day. At night it was worse because I could hear the ward below us where all the children under the age of 10 were and they would cry and scream all night long.

I learned very quickly to always say what they wanted to hear because if I did that I did not get shots and my head started to clear up, and all I could think about was escape, which one day I finally did, only to find myself sleeping on the streets on the cold concrete and my body shivering and sweating because it needed more drugs, which I did find on the streets. And I spent many years living this kind of life, just trying to survive. And I believe that all of my experiences have groomed me for what I am today, an advocate for people with disabilities.

Larry Wanger: The audio you're hearing comes from a video produced by Elicia Herkert. The video is entitled *From Prisoner to Piss on Pity* and it talks about her experience as a young child being placed in an institution, what happened to her there, and how she escaped. We'll talk with Elicia in a minute here about the video and why she produced it.

Well, as you probably know people across the world are using the Internet for a variety of things and to promote a variety of causes and issues, from writing articles to participating in forums and bulletin board discussions, to podcasts like this one, and also video programs. People are getting the word out about their issues and it's no different for people with disabilities.

Recently I became familiar with a video project that's being done up in Michigan where people with disabilities are recording stories about their experiences and life with a disability. The point is to use these stories for advocacy and activism and to educate the public about issues that they might not be aware of.

So I'm joined right now by Glen Ashley and Glen is with the United Cerebral Palsy of Michigan; and also by Kathryn Wyeth, and Kathryn is with the Michigan Disability Rights Coalition. First of all,

welcome to both of you. Kathryn, maybe we'll start with you a little bit. Could you take a minute to tell folks a little bit about this project? What it is, how you're doing it, why you're doing it, and just give us kind of an overview of what this is all about.

Kathryn Wyeth: Sure. The name of the project is "Many Faces, One Voice." We used to have a conference here in Michigan that was disability rights focused and involved a march on the capitol and that was a tagline for the conference, so we just resurrected it.

And the project started back in -- well, the idea for the project started back in May when we got together and put in a grant proposal to the AT&T Excelsior Foundation. The foundation provided funding to non-profit organizations to use technology to further their mission.

What we wanted to do was we'd been involved in different ways with story telling over the years and using the stories of people with disabilities as a way to promote advocacy on issues. And we wanted to use -- YouTube and Google Video and the Web, making such an impact on people's perceptions, we wanted to be able to use this medium as a vehicle for telling and sharing stories. So we put together this proposal to learn how to do this and learn how to help other people to use this in their advocacy efforts, to make short videos to tell their story.

Larry Wanger: Glen, maybe you can take a minute or two here to talk about the videos. What's in the videos, some of the people who have told their stories, and share with us just a little bit about those.

Glen Ashley: Well, some of the stories are extremely powerful, very moving accounts of difficult things that people have encountered in their life and how they have emerged as victors in those situations.

Some of the stories deal with how a person came to see themselves as a proud and powerful person and to see the disability as an important part of who they are and important part of the advocacy that they have in their life. Others were sharing stories about people in their life that they cared about. It was not just experiences that they had had themselves, but experiences that they had had with other people that they loved and cared about.

And then we worked with a group in Owasso, which is a small town in rural Michigan, that people telling the reasons why public transportation is important to them and why the agency -- Shiawassee Area Transit Agency -- is important for funding and

also for them being able to have the kind of quality of life that they want to pursue.

Larry Wanger: Well, I've had the opportunity to watch a number of these videos online, and I've got to tell you they're very powerful. There's one where an individual talks about how their father was sick and dying. And they are a wheelchair user and they wanted to take the bus to go down to the city where he lived in so she could see him. But unfortunately the bus didn't have a lift, or at least didn't have a working lift, and so she wasn't able to go and her father died before she was able to get there.

There's another video from someone who spent some time in an institution and she talks about her experience and what life was like after she got out. It's really a powerful video as well.

I'm curious from two perspectives here. From the individuals who recorded these videos, what have they taken away from the experience? And also interested in what people are saying who have had a chance to watch these videos, what kinds of thoughts have they shared?

Glen Ashley: One of the things that we've seen is that the process of putting together the video is a transformational experience for the person in terms of how they feel about themselves and their lives and the story that they're sharing. Each person is doing the computer work themselves, choosing what pictures and how they narrate the story, what music goes with the story, how to tell the story. And as they go through the process of thinking through this story, for them the story has new layers of meaning that emerge for them.

Larry Wanger: So the individuals involved do all the computer work and all of the narrating and production work on this, it sounds like.

Glen Ashley: They are the director, producer, many other parts. There are a few people where they had somebody that did the technical parts, actually running the mouse, but the person telling the story was in charge of all the content and the way that it's put together.

Kathryn Wyeth: That's a really important component of the project is that it is the person's story. They own it and they direct every aspect of the production of the video. And then also how it's going to be used.

Larry Wanger: I assume that you've had an opportunity to show these videos in the community and perhaps in public forums, in addition to online. I'm curious what kind of response has been generated from those viewings?

Kathryn Wyeth: Well, I know one person who's using her story -- Laura Hall was the article you saw in the *Lansing State Journal*, Larry. I did hear from somebody that somebody who's with MDOT, the Michigan Department of Transportation, fairly high up has seen the video and was starting to make unofficial inquiries into how the particular transit bus company -- what their policies were for maintenance and things like that. So there was some pressure put on that way, which I thought was really interesting.

I think overall people have gotten a really positive response and I know Glen has got some feedback from people who have shown their stories in Owasso that has been tremendous.

Glen Ashley: We actually premiered the seven stories from Owasso at a transportation banquet which was attended by 100-some people. And one of the people that was there was State Representative Richard Ball, who's picture is in one of the videos where they're talking about how important it is to get involved in transportation advocacy, and how transportation advocacy has made a difference in the life of the person who is now the chairperson of the Transportation Advocacy Coalition, and how the experience of getting involved with advocacy has helped him on his personal growth as well as in getting results in terms of increasing the availability of public transportation. They've actually more than doubled the service area that the transit agency operates in the last three months.

Larry Wanger: So what do you guys see as the future of this project? I expect that you'll continue to show the videos in the community, they'll be online. Do you expect to produce more videos? What's going to happen here as you move forward with this?

Kathryn Wyeth: We see this as an important tool, just like e-mail newsletters or web pages or actions. It's an important tool in our tool box to use for advocacy and for helping people to find their voice and to use their voice. I think that I'm really excited about the possibilities of how we can use this.

As far as funding goes, the AT&T grant was a one-time deal and we pretty much learned how to do this now and so we can't rely on that funding anymore. So we're just trying to integrate it into projects that we have going on and being creative about ways that we can continue to teach people to use this tool.

One group in Marquette that we worked with did find -- we're working with them to -- they found some funding through the

Developmental Disabilities Council to teach a class up there in the spring, so we'll be continuing to teach classes. And just every time we talk about it people tell us about new ideas and new ways we could be using the project and I got a lot of ideas from there but about new avenues people can use, new online sites people can use to post their videos as a way to promote the issue. But I think we're just at the beginning.

Glen Ashley: One of the things that I have seen is that when people watch a video we get people that relate to that story and they've had similar experience in their lives. And the videos -- they may start telling their own story that's connected to the video in certain ways or they may find that it helps them in processing some of the things that have happened in their lives.

Larry Wanger: At the start of this segment I played audio from a video produced by Elicia Herkert and she joins me now to talk with me about her video and why she produced it. So Elicia, welcome to the show and thanks -- really, thank you for joining me. I think you have a really powerful story to tell.

Before we get into that, why don't you take just a second to introduce yourself and tell people whatever you want them to know about you.

Elicia Herkert: My name is Elicia Herkert and I live in Michigan's Upper Peninsula. And I work for Superior Alliance for Independent Living, which is the only center for independent living throughout the UP.

Larry Wanger: We've heard about the video project itself but maybe you could tell us a little bit about how you got involved with it and why.

Elicia Herkert: I was asked by my director to help with this project, and Kathryn Wyeth and I thought that it would be a great opportunity to share my story with folks.

Larry Wanger: Take just a second if you would, Elicia, and tell listeners a little bit about you. We've heard the audio part of your video and your story there. It's a really tremendous story and I wonder if you could just offer some more perspective on it.

Elicia Herkert: You know, Larry, the story -- I came into work that morning and my director just asked me if I had wrote the story for the digital storytelling and I said, "What story?" And I came back 10 minutes later into her office with this story that I wrote in about five minutes and said, "There you go. How about this?"

Little did I know when I was doing this what I was opening myself up to. This really did happen to me. I really was put into a place like that it was -- you know, when you're young and you leave home for the first time and you're put into an institution like that, it leaves lasting scars on you. But I'm a survivor. I made it through it and through the grace of God here I am.

And I'm glad I did it. It was hard, but the comments that I've gotten on my Google site for it have made me realize that it was a story that needed to be told. Even today this stuff still happens to people.

Larry Wanger: How old were you when you went into the institution?

Elicia Herkert: Twelve.

Larry Wanger: And how long did you live there?

Elicia Herkert: A year.

Larry Wanger: So when you escaped from the institution you were probably 13 or 14 years old. Where did you live after that? Where did you go?

Elicia Herkert: When I got out of there I hit the streets. And lucky for me I'm old enough to remember the hippie times on the street, so I wasn't -- it was a bad place to be but everybody seemed to be out there. So I just found it easy to live out there. It was rough. It was rough. I remember the first night out there and a guy comes up to me and asked me if I wanted a place to crash and I thought we were going to go crash windows. I had no idea. I'm young. What do I know?

Larry Wanger: Do you know how long you were out there living on the streets before you kind of got things together and got situated?

Elicia Herkert: 13, 14 -- I'd say four or five years off and on.

Larry Wanger: Ultimately what was your goal in sharing your story and doing this video? If people watch it what would you like them to take away from it?

Elicia Herkert: Well, Kathryn just told me -- you know, at first I didn't want to do the story. I had written another story and thought that would have been much more entertaining than this. And she told me that there are people still being put in these kind of places. There are still institutions out there that do this to people and that just -- I couldn't believe it. In the 21st century I thought we'd gotten rid of all these institutions.

And one of the comments I got back on my video was from a woman with an 11-year-old son that the doctors were telling her to do this to her son only three years ago. It's a check on reality because people don't understand when you put someone into an institution they seem to forget about them.

And we're all human beings and we all are -- it's our right to be respected and live with dignity. And that's something that when you're in an institution like that you're raped; it's taken away from you. You don't have any -- you don't know who you are anymore. They just pump you full of drugs and tell you when to go to sleep and when to eat and it's hard life. It really was.

Phil Rizzuto: And a ground ball to short, Velarde -- he did it. He did it. No-hitter for Jim Abbott.

Jim Abbott: I played 10 seasons and won almost 100 games because major league baseball cared about my talent, not my disability. Hi, this is Jim Abbott. Major league baseball has a rich history of giving people with disabilities the opportunity to play the game, as long as they have the ability.

Unfortunately, many people aren't considered for jobs they can do simply because of a disability, and that's a waste of talent American can't afford. In baseball it's about talent. What about your business? You never know what you might be missing.

TV Announcer: To discover the value people with disabilities can bring to your business contact the Department of Labor's Office of Disability Employment Policy at ability.dol.gov. Ability.dol.gov.

Major league baseball trademarks used with permission.

Larry Wanger: That announcement was part of a campaign being run by the Office of Disability and Employment Programs under the Department of Labor called the PITCH Campaign. October has been recognized as a month to bring awareness and promotion to business owners and business people about hiring people with disabilities. The spokesperson for the campaign is former major league pitcher Jim Abbott.

During his baseball career Jim had a number of notable accomplishments, from pitching at the University of Michigan to being a member of the gold medal winning Olympic baseball team

in Seoul, South Korea, and pitching his no-hitter at Yankee Stadium in 1993. I had a chance to speak to Jim while he was out on the road in the past couple of weeks to talk to him about the campaign and why he's involved with it.

I do apologize. There's a couple of audio issues during the interview. I caught Jim out on the road, as I said, and it was tough to kind of edit out some of the noise in the background.

Jim, welcome to *Disability Nation* and thanks a lot for joining me today. I'm really excited to talk with you both about your baseball career and about your involvement with the PITCH Campaign. Before we talk about the PITCH campaign maybe you could take just a second to talk about your career in baseball and just introduce yourself a little bit to folks who may not be as big a baseball fan as you and I are.

Jim Abbott: Well, sure. I grew up in Flint, Michigan and ended up playing a lot of baseball; it was my love and my passion for a long time. I played with the University of Michigan and was fortunate enough to play on the Olympic team in 1988. I had a chance to play in the major leagues for about 10 years playing with four different teams, the California Angels, the New York Yankees, the Milwaukee Brewers and Chicago White Sox.

And I think the thing that probably distinguishes me from other people, and probably what brings me to the program, is I was born missing my right hand. So I had to learn to play and do things a little bit differently than other kids who enjoyed baseball as much as I did.

Larry Wanger: I guess a good place to start is maybe you could tell listeners a little bit about the campaign. Obviously October's been recognized as a month to promote awareness of disability and employment issues. And you're participating in the PITCH Campaign and maybe you could take some time to tell folks listening about what that campaign is.

Jim Abbott: Well, the PITCH Campaign is something that has been developed through the United States Department of Labor; the specific office within the Department of Labor called ODEP, the Office of Disability Employment Policy, which is headed up by Assistant Secretary Neil Romano.

And basically what this is, it's a great group of people who are dedicated to use the resources provided to them by the government to try to help people with disabilities. See what's possible out there.

Take a look at employment opportunities, try to match people up with employers, businesses; and the PITCH Campaign is proving individuals with talent can help, is dedicated to reaching out to businesses, employers, entrepreneurs, trying to help them become aware of the great potential of people with disabilities, what they can bring to the workplace. And it's been my great pleasure to work with ODEP on this project.

Larry Wanger: And I understand that as part of that you've been making appearances -- let's see. It says you were at the Little League World Series and you've been some of the ballparks here in September and October, is that right?

Jim Abbott: Yeah. We've been all around -- well, I wouldn't say all around the United States but we've certainly covered a lot of ground and had a great day out at the Little League World Series. We've been around in the Washington and Baltimore areas. We've tried to touch base with a lot of the media outlets around the United States, both radio, TV and print, and just try to get the word out there.

I am really proud of what the Office of Disability Employment Policy does with their website, which is ability.dol.gov. We're just trying to get the word out there, mostly in business, saying to take a look at people for the ability that they bring to the table in the very same way that -- based on what you need, not on what my right hand looks like but for what I could do with my left hand. And I think that metaphor applies well across a lot of different sectors and we're just trying to bring people's attention to it.

Larry Wanger: How did you -- I think I kind of know the answer; you've kind of hinted at this, but how did you end up getting involved in this campaign and why?

Jim Abbott: Well, I was approached by the assistant secretary, Neil Romano. Neil has been a long time advocate for people with disabilities in the workplace. It's a cause that hits very close to him for him because, one, he's battled dyslexia his whole life and, two, it's just something he's very passionate about. So he approached me. He also has a long history of baseball; he's worked on some campaigns and he loves the game, avid New York Yankees fan. And he came to me and said, "Listen, I always loved your story. I've loved the way that baseball asked you to play, or accepted your playing, based entirely upon the talent that you had. And nothing else mattered because if you had the talent, you had the opportunity." And that's how I got involved.

Larry Wanger: And it sounds like you've worked with ODEP and maybe Department of Labor on some other projects as well. So this cause is obviously pretty important to you, it sounds like.

Jim Abbott: Well, I was very lucky. And if you grew up in Michigan I think maybe you could appreciate this. I came from a very tough town. Flint is a great town but it was a tough town. And what I remember about it was despite all the difficult circumstances that were going on there all the many, many people who encouraged me and who rooted for me, believed in me, and gave me the opportunity to prove myself. And so in my post-baseball life I've been dedicated to try to encourage people to look at opportunity, look at what's possible and encourage people to find what's best inside.

Larry Wanger: Well, if you don't mind, along the lines of your baseball career if I could just ask you a couple of quick questions because certainly I'm a little bit familiar with you and I think it lends itself well to the story here. I guess a good place to start is at the beginning in terms of I understand you played football in high school and baseball. How did baseball become the choice of sport?

Jim Abbott: Well, it was basically what I was best at.

Larry Wanger: Okay.

Jim Abbott: I loved playing. You know, you grow up in Michigan, you play every sport; in the fall you play football, in the winter you play basketball, and in the spring and summer you're playing some baseball. And I was pretty good at throwing things. I had a pretty good left arm and I just enjoyed that the most. And when I started taking up pitching it became something that I truly enjoyed and tried to work my way up the ladder and take advantage of the opportunities that were given to me.

Larry Wanger: You had a lot of great moments in your career, from pitching college ball at Michigan to being on the gold medal Olympic team to the no-hitter pitching for the Yankees. I mean, what stands out in your mind as probably being most memorable from your time playing baseball?

Jim Abbott: I don't think I can distinguish one from the other. There was so many -- they all sort of reach this certain plateau and then they just become kind of their own memories and we cherish them as much the same. I did have some great moments. To pitch at the University of Michigan for me was a great thrill and I remember the first time I put on that Michigan jersey my freshman year there and how proud I was of that.

And to play on the Olympic team, to win an Olympic gold medal and to pitch that game, sometimes those are the kinds of things you still pinch yourself and you realize how hard it is to make it, how many kids grow up wanting to do these kinds of things. And to be able to realize those dreams was something that you really never, ever fail to appreciate.

Larry Wanger: What was it like? Obviously in terms of the effort, how hard it was, and the feeling after you pitched that no-hitter, can you kind of describe what that was like?

Jim Abbott: Well, it was a phenomenal feeling, really almost surreal. And the game is coming out the blue, you go out to pitch a game, and it's not like a playoff game or a World Series game where you have an appreciation leading up to it for the enormous impact that it might have. You just go out there and start pitching and the circumstances start going your way. And as the game builds up, as that fifth inning, as that sixth inning, seventh inning, and those final six outs, the pressure builds and the excitement builds within the stadium and in the dugout and in your own mind, and managing that adrenaline, managing that excitement.

And then to see it all sort of stop with a ground ball across the infield and you get that final out, it's really something that you do almost separate yourself and look down on it and say, wow. How does this happen? How does a kid from Flint, Michigan pitch a no-hitter in the pinstripes in Yankee Stadium, in New York City?

Larry Wanger: Who do you like in the World Series? Who are you rooting for?

Jim Abbott: Well, I'm an Angel fan. I live in Southern California now and I've maintained some pretty close ties with the Angel ball club. So we're all real disappointed out here in the Orange County area not to see our Angels in there. But the next best thing I guess would be to see Joe Maddon, who has Angel roots -- he was a long-time coach and my coach with the Angels for a while. So we'll be rooting for him and the Rays and I'd love to see him come away with a World Series title.

Just a reminder to remember to stop by the *Disability Nation* website at www.DisabilityNation.net. You can get the latest news and information from the disability community, check out blog, download transcripts of this or previous episodes, and much more. Again the address is www.DisabilityNation.net.

Larry Wanger: Well, over the past year we've heard a great deal about a law that began being called the ADA Restoration Act, but eventually the name changed and it became the ADA Amendments Act. Over the summer it worked its way through Congress and the Senate and finally, at the end of September of this year, it was signed by President Bush. But figuring out exactly what this ADA Amendments Act will do when it takes effect on January 1st of 2009 is a little confusing so I thought it would be good to bring on someone who can share with us all of the information and details that we might need to know.

So my guest for this segment is Peter Berg and Peter is with the Great Lakes ADA Center; it's one of the Disability and Business Technical Assistance Centers and they're headquartered out of Chicago. Peter, if you want to take just a minute to maybe tell folks a little bit about your work with that organization and what the Disability and Business Technical Assistance Centers are all about.

Peter Berg: Absolutely. I'm the project coordinator of Technical Assistance and Employer Outreach with the Great Lakes ADA center, also known as a DBTAC, or Disability Business and Technical Assistance Center. And we are part of a network of 10 regional ADA centers funded through the U.S. Department of Education. And the focus of the ADA centers is to provide information and technical assistance, as well as materials on the ADA, to assist covered entities -- businesses, architects, employers -- in meeting their responsibilities under the ADA.

Larry Wanger: Well, I think it's safe to say that there's definitely been some confusion and a lot of discussion about this ADA Amendments Act and right down even to the name. Maybe that's a good place to start, Peter. When this effort began to make some changes to the ADA the bill that was proposed was called the ADA Restoration Act. And at some point in the process the name changed to the ADA Amendments Act and I know that even caught me a little bit and confused me. So maybe that's a good place to start, to just explain how that happened and what that was about.

Peter Berg: The ADA Restoration Act of 2007 was introduced into the House of Representatives by Representative Steny Hoyer and into the Senate by Senator Harkin. And that particular legislation defined a disability as a physical or mental impairment that impacted a major life activity.

And from the get-go there was opposition to that language and to that definition by the business community and employer groups, primarily the U.S. Chamber of Commerce as well as the Society for

Human Resource Managers -- or SHRM. And the reason they felt that basically anyone with any type of ailment would fall under this very broad definition of disability and therefore they were not supportive of that particular language.

So representatives in Congress went back to the disability community and went to the business community and said we really can't support legislation moving forward without some type of compromise; so urged the disability community to work with the business community to see if they couldn't come up with some type of compromise language on this issue of the definition of disability.

Larry Wanger: Well, I think most of us are aware of what's gone on in terms of why this ADA Amendments Act was needed, but for those who might not be maybe you could take just a second to explain how we got here. What has happened since 1990 in the 18-plus years that the ADA has been around that necessitated this ADA Amendments Act?

Peter Berg: Sure. If you go back and look at the congressional records prior to the passage of the ADA, it was clear that Congress's intent was to have the ADA provide broad protection for a large number of individuals. And the definition of disability [inaudible] in the ADA is the definition of disability that comes directly from the Rehabilitation Act of 1973, and we're primarily talking about the first prong which says a disability is a physical or mental impairment that substantially limits a major life activity. So things such as walking, talking, seeing, breathing, performing manual tasks; or a record of an impairment or being regarded as an impairment.

Well, what happened almost from the get-go is that this definition was being challenged in court. And eventually a trio of cases made their way up through the federal court system and to the Supreme Court in 1990 with what is known as the Sutton case. And what the Supreme Court ruled in this particular case is that when you are looking at whether or not someone meets the definition of disability you must take into consideration mitigating measures, so things that an individual would use to manage or compensate for their impairment or for the functional limitation of their disability. And that would include things such as medications, prescriptions, adaptive equipment, assistive technology, mobility devices. And when looking at that individual when using the mitigating measure -- so let's say, for example, a diabetic when using their insulin -- if they're not substantially limited while using that mitigating measure, they don't meet this definition of disability.

And the lower courts, upon the Supreme Court ruling this way in the Sutton case in 1999, began to interpret this vary narrowly and this had the effect of eliminating many individuals that Congress had intended to have protection. So individuals with diabetes, epilepsy, other seizure disorders, multiple sclerosis, cancer no longer had protection under the ADA.

And what was happening is you would have an employer making an employment decision on the basis of someone having a disability, so denying a diabetic additional break time to monitor their glucose and have their insulin injections and to take regular breaks for snacks. And when that individual, that diabetic, then went to court to file a suit, the employer on one hand way saying, "You're too disabled, you can't work, and we're not providing you with this reasonable accommodation." And then the courts were coming back and saying, "Well, you're not disabled enough. You don't meet the definition of disability under the ADA so therefore your case cannot move forward."

And then real quickly there was one other Supreme Court case from 2002 and that was the Toyota v. Williams case where the Supreme Court, again in a narrow decision, ruled that this definition of -- the issue of "substantially limited," it really raised the bar as to who would meet that definition of being substantially limited. It said you not only look at the limitations that an individual has in the workplace but you also must look at the individual when they're performing activities of daily living to determine whether or not they are truly substantially limited in a major life activity. And again, this had the effect of limiting protection for numbers of individuals.

Larry Wanger: And so if the Supreme Court rules a certain way, obviously the lower courts are going to follow their ruling and their guidance. And so in these cases where the high court, the Supreme Court, has not ruled in favor of the person with the disability, what's happened is then the lower courts have gone and followed those rulings. And we have a number of additional cases beyond these that went to the Supreme Court where people with disabilities who obviously have a disability are being ruled against and are not getting coverage under the ADA.

Peter Berg: Right. And we know that the Supreme Court takes a case when there are divisions within the lower circuits and they take a case so that there's case law that there's one interpretation of legislation and enforced equally across the various circuits. And as you said, the lower circuit courts took the Supreme Court cases and really interpreted the definition of disability rather narrowly.

Larry Wanger: So before we get to what will this ADA Amendments Act do, I want to touch on one more thing. You mentioned a few moments ago that the disability community was told to go back to the business community, work with them and come up with a compromise that both sides could agree on. And I know there was some static about that several months ago. Maybe you could talk a little bit about what that was all about and what we have now in this ADA Amendments Act.

Peter Berg: The definition is what it is currently, the first prong being that disability is defined as a physical or mental impairment that substantially limits a major life activity. What also is included in the legislation, however, is specific language directing courts not to take into consideration the issue of what impact mitigating measures have on a particular individual, that they can't take it into consideration. And that conditions that are episodic, such as multiple sclerosis or perhaps even cancer or diabetes or epilepsy, that those types of conditions are going to be protected.

So in a way this is going back to what was Congress's original intent going back to when the law was passed and when it went into effect and who Congress intended to be covered by the ADA. So it brings into protection those individuals who had been excluded by the Supreme Court rulings.

It also, the legislation includes two non-exhaustive lists as to what are major life activities, including things such as bodily systems, and that dealt with individuals who may be receiving kidney dialysis, the reproduction of cells and that covering individuals that have cancer.

Another thing that it did as well was the "regarded as" prong of the definition of disability where many individuals faced this "regarded as" prong who were discriminated against by an employer because an employer regarded them as having a disability. But yet when they got to court, they had to show that they met the definition of disability without being able to move forward with their case.

The new legislation says that, no, the onus is not on whether or not an individual can provide proof that they meet the definition of disability; the issue is whether or not an employer took an adverse employment action on the basis of someone having a disability or the employer regarded someone having a disability. And the employers still have protection. They can still make the case that the individual is not qualified for the job and that the individual is not able to perform the essential functions of the job.

One other thing that the legislation clears up as well is there had been -- I believe there were two circuits out there who had ruled that individuals who were regarded as having a disability were entitled to receive a reasonable accommodation. So this legislation clarifies that an individual who is regarded as having a disability is not entitled to receive a reasonable accommodation.

Larry Wanger: And so President Bush signed this into law at the end of September and I understand it takes effect January 1st. What should we expect as that happens?

Peter Berg: It was signed into law September 25th; effective date is January 1st, 2009. So we're likely to see this take effect prior to the Equal Employment Opportunity Commission having an opportunity to get some new regulations and guidance material out on the issue. The legislation directs the EEOC to create new regulations and guidance on this. It also directs the other federal agencies with enforcement responsibilities under the ADA to adapt this new definition into their particular regulations.

I was out at the U.S. Business Leadership Network Conference in Portland a few weeks ago and heard an attorney from the EEOC talking about how they may go about the process of developing new regulations. Typically a federal agency will put regulations out for a public comment period, receive those public comments, review them and then publish a final rule. That's one way that the EEOC could go.

They could also issue interim guidance on this new definition of disability under the Amendments Act. And what that would allow them to do, at the time that it's issued it is the enforceable guidance in regulations, but putting an interim label on it allows the EEOC to also receive public comment and they could, if they chose, at a point down the road make some modifications to the regulations if they chose to do so.

I've read a lot of different articles from both the disability community and also from employers groups and businesses. And a lot of what I've read from some of the business communities, employer groups, is that employers who have been on top of complying with the ADA and properly responding to an employee's request for accommodations and providing reasonable accommodations to qualified individuals with disabilities shouldn't see a dramatic impact by the change of the definition of disability. Sure, there will be increased numbers of individuals that would have protection under the ADA, but that doesn't mean that all of

them are individuals that are necessarily going to need an accommodation in order to perform their job.

Larry Wanger: Well, if people are listening, whether they be business owners or individuals, and want to get some more information about the ADA Amendments Act, what do you recommend as some good resources for them to check out?

Peter Berg: The first place I would recommend that folks visit is the American Association of People with Disabilities, AAPD, website. They led the disability community through the passage of this legislation and the negotiations with the business communities. Their website is www.aapd-dc.org. And you can also visit the Disability Business Technical Assistance Centers website at www.adata.org. And from that website you can find the contact information for the regional ADA center that serves your state.

You've been listening to Disability Nation.

To contact Disability Nation you can phone (480) 302-9300, or send e-mail to contact@DisabilityNation.net.

Disability Nation is copyright 2008 by Larry Wanger. All rights reserved.

Thanks for listening and be sure to check out the next episode of Disability Nation!
