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Cornell University

Rehabilitation Research and Training Center on

Employment Policy for

Persons with Disability

The ADA Amendments Act:

Implementation Issues and

What's Next?

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Realtime Reporter:

Sherry C. Knox, CBC, CCP

>> SUSANNE BRUYERE: Okay. We would like to get started. We may have a few other people joining us, but we want to get going here.

Welcome to our -- I believe it's our 14th or a 15th policy forum and this one is entitled the ADA Amendments Act: Implementation Issues and What's Next?

And I want to acknowledge that this is a jointly-organized event always that has been occurring. We're now starting our fifth year as a partnership under the Employment Policy for

People With Disabilities, Rehabilitation, Research and Training Center funded by the National Institute On Disability and Rehabilitation Research and I'll advance the slide.

NIDRR has been funding Cornell University and AAPD is its partner in supporting this series, which has always been in person and now we are also trying to reach more people by having people be able to access these events by webinar. So we have approximately 25 people. We have close to 40 signed up, but there are 25 people online right now who are joining us at a distance and you will see us periodically referencing, taking questions from them and checking and making sure they can hear us okay.

I also want to acknowledge and, Andy, I'll have you advance the slide, that this is very much a collaborative effort. This employment policy, RRTC, has been a collaboration not only with the American Association of People With Disabilities and Andy Imparato has been my ally in these policy forums and I'll be introducing Andy in a second, but also two entities within Cornell University, the Employment and Disability Institute, which is where I'm from. My name is Susanne Bruyère. I failed to introduce myself. I'm the Director of the Employment Disability Institute, which is in the ILR School or the School of Industrial and Workplace Relations or Workplace Relations at Cornell and another department within Cornell University, the Department of Policy Analysis and Management, where my colleague Richard Burkhauser is housed.

We also are aligned with Mathematica Policy Research, Inc. ,

David Stapleton and Bonnie O' Day -- there she is -- and David are here, are my partners as well as other -- several other researchers at Mathematica who have been instrumental in turning out some of the research that you have seen demonstrated or spoken about across these 15 policy forums and also Rutgers University, School of Management and Labor Relations, The Program for Disability Research, John Burton is another colleague who is a supporter and collaborator on this.

So with that, I think I would like to move along and let Andy Imparato who is the CEO of AAPD tell you a little bit more about our speakers today and maybe a bit more about your own background as you do that because you know this is an area that you and I met on initially many years ago, our common interest in employment, nondiscrimination and improving employment outcomes for people with disabilities was the spark that lit us and that sustained.

So I'll turn this over to you, Andy.

>> ANDY IMPARATO: Thank you, Susanne. Let me just ask, anybody in the audience need a sign language interpreter right now?

Okay. So -- yeah, I didn't want you to have to interpret -- and then if somebody comes in, obviously, we're ready to go.

We also have CART, so if anybody needs real time captioning, unfortunately, we don't have our projector, so come sit up in the front and you can follow along if you need the captioning.

So the topic for this forum is the ADA Amendments Act:

Implementation Issues and What's Next?

This was an exciting year for the disability coalition and the broader civil rights coalition that had worked on the ADA Amendments Act. Some of the folks in the room were very involved with that. President Bush signed the bill into law on September 25th of this year and the law takes effect on January 1st.

So, you know, as we were thinking about a topic, a timely topic, we thought it would make sense to look at what are some of the implementation issues around our new civil rights law?

And what are some other issues related to civil rights and employment that weren't necessarily addressed in the ADA Amendments Act, but that are on the agenda for the next Congress and the next administration and obviously with the transition activities going on, this is a topic that is also timely. We have had a number of meetings with the transition team and they're looking for things, priorities from the disability community that they can pursue in the next administration.

So I think we have four excellent speakers and the way we structure our time in these forums, we try to keep the presentations, you know, to 10, 10 to 15 minutes so that there's plenty of time for Q & A and we're happy in the Q and A to get into civil right issues beyond what anybody mentions. So if people came here with a particular passion or something you want to talk about and you don't hear it in the presentations, don't be shy about bringing it up and that goes for the people online as well. We're going to try to get some questions online, I guess, through your technology and you can type your question

into the box and we have got somebody in the room who's monitoring that and will let us know.

So I'm going to go ahead and introduce all four speakers now and then we'll just dig into the presentations.

The first speaker is Commissioner Christine Griffin, who was sworn in on January 3, 2006 as a Commissioner at the U. S. Equal Employment Opportunity Commission. She was nominated by President Bush to a democratic position on the Commission. And before coming to the Commission, she was the Executive Director of the Disability Law Center in Boston and had worked for the Vice Chair of the Commission, Paul Igasaki, before that. Chris has a long history of advocating on behalf of people with disabilities at the national level and in Massachusetts she was the acting president of the Massachusetts Maritime Academy as well. So she's got a diverse experience and background and one of the other things she's doing at the commission and it was a topic of another forum that we had, is trying to improve employment outcomes for people with disabilities in the federal government and I know that candidate Obama, now President-elect Obama, made some commitments to try and reinvigorate federal hiring and federal contracting and that's one of the things that Christine has been helping to lead in the new administration.

The next speaker is Jennifer Mathis. Jennifer was kind of the core team that worked on the ADA Amendments Act with Bloomfield from the Georgetown clinic, the Epilepsy Foundation, National Council On Independent Living, AAPD and then the broader

coalition that we worked with, including the Consortium Disability Task Force. Jennifer works on a variety of civil rights issues for the Judge David L. Bazelon Center for Mental Health Law as their Deputy Legal Director. I know one of the laws she works a lot on is enforcing the Supreme Court decision in Olmstead, giving people the opportunity to have choices outside of institutions for long-term services and supports. And Jennifer is kind of spearheading on behalf of the consortium for citizens with disability, our efforts around the ADA Amendments Act Regulations.

The next speaker is Jennifer Simpson who works at AAPD. She is our Senior Director for Telecommunications and Technology Policy. And she has found a relatively new coalition that she'll talk about, called the Coalition of Organizations for Accessible Technology or COAT, which is working on a major piece of federal legislation that was introduced in the last Congress and we were hoping we'll pass in the next Congress, called the 21st Century Communications and Video Accessibility Act. So she'll be talking about that and some other COAT priorities as they relate to improving employment outcomes for people with disabilities.

And then finally we have Day Al-Mohamed. Day is the Senior Legislative and Federal Affairs Officer at the American Psychological Association and she is on the board of directors of the Consortium for Citizens with Disabilities and is the co-chair of the CCD Rights Task Force, which looks at civil rights issues across the board as they affect people with

disabilities.

So without further adieu, please join me in welcoming Commissioner Christine Griffin.

>> CHRISTINE GRIFFIN: Thank you, Andy. Andy always throws in that maritime stuff. I feel like that was a lifetime ago but I did notice, for those of you on the phone didn't see this, but coming into this building, there is beautiful models of commercial vessels and I felt like I was right back there. And for those of you -- can they see that?

(Laughter)

>> SUSANNE BRUYERE: Yes, they can.

>> CHRISTINE GRIFFIN: Oh, that's a terrible picture.

>> SUSANNE BRUYERE: We'll get you a new updated one.

>> CHRISTINE GRIFFIN: I'll send you one.

Hi, folks. Thanks for being here, thanks for taking the time. Thanks to those of you who are joining us across the country. I think we're on the a brink of an exciting new time in this country for people with disabilities. We have a president-elect who has committed not only during his campaign, but throughout his transition, that he is going to change employment opportunities for people with disabilities in this country. And as Andy said, I've been spearheading an initiative at the EEOC called LEAD, Leadership for the Employment of Americans with Disabilities focusing entirely on the federal government and trying to make the federal government become the model employer they are required to be. And one of the things that we have seen and we have talked about at earlier

policy forums is the drastic decline in employment opportunities for people with disabilities in the federal government and we are now at a very low of .92% of people with severe disabilities working in our federal government. Out of 2.6 million, that is. And so that's really bad. So although I've been frustrated in the last two and a half years working on that initiative, thinking, you know, we're not making any changes, I now look at it differently and I now say, what we were doing for two and a half years was really building a foundation for a president like Obama to come in and actually change things and be able to hit the ground running with employment for people with disabilities in the federal government. So I'm very excited about that.

He actually has a full agenda at change.gov related to people with disabilities. People should check that out if they haven't. A more comprehensive plan was developed for his campaign, which you can still get access to and you should read that as well.

But as Andy said, some of the things that he talked about is increasing funding for enforcement for employment for people with disabilities, supporting the genetic information nondiscrimination act, ensuring affordable, accessible health care and improving mental health care, all of these things tied together with some of his other promises about issuing an executive order for employment of people with disabilities in the federal government as well as enforcing contractors requirement to employ people with disabilities when they get federal contracts.

All of that combined, you know, once done, can really create powerful change for people with disabilities in this country.

And I won't go into detail, but he goes on to talk about what he would do in the private sector as well, with tax. Tax incentives and other things regarding accommodations for private employers. So people should really take a look at that because it is really exciting and again, I'm now rationalizing everything I have done for the past two and a half years as the foundation for this president to come in and hit the ground running and us hit the ground running on the issue of employment.

So I am very excited about that. And the genetic information on discrimination act, just to give people an update of where it is, the EEOC has written regulations. They then go through a process, an interagency process that's spearheaded by the Office of Management and Budget. That has already been underway for some time. Other agencies will give us comments. We look at those and we're in the process of doing that now. If those comments make substantive changes, they have to actually come back to the commission for a vote. If they don't, the regs can be issued as a notice of proposed rulemaking with a 60-day comment period. So within the next I'd say month or two, you're going to see that go out as an NPRM and give everyone a chance to comment on those regulations and if changes are made, or even if it actually comes back to the commission for a final vote on a final rule. So that's the process and it's well underway so people can look forward to seeing that.

And then of course the most important thing that we're working

on is the Americans with Disabilities Act Amendments Act. And that particular, you know, the details about that particular -- I think Jennifer is going to go into in more detail. But let me just tell you a couple of key things that's happened at the EEOC.

We are charged with writing the regulations with regard to the employment piece of people with disabilities and Congress, I think, was very explicit in telling us, not only to rewrite our regs. They mentioned certain words that we had in our regs that they would like to see taken out. But the big message for me and should be for everyone to look at when we're writing regs, is the overarching message was that this should be brought, coverage and the definition of employment -- definition of disability should be broad enough that people with disabilities get in the courthouse door and actually get to discuss whether discrimination occurred or not.

And that is the big message, that we should be writing regulations that make it far less onerous than it's ever been for people with disabilities to be able to get coverage and I think the more interesting thing that Congress was saying is that -- and they said explicitly, we don't need statistical analysis. We don't need, you know, a big, heavy burden for a person with a disability to prove that they have a disability and I don't think we have to go into much detail about what's happened over the last 18 years with the whole catch-22 and that you could be having a disability but then you didn't have one when you were actually, you know, trying to get coverage

under the Americans with Disabilities Act. So we're very excited about what's happened.

We have been looking at regulations that have been drafted by our office of legal counsel and in my opinion and in the opinion of my fellow democratic commissioner, Stewart. We don't believe that they're ready to go out yet and we want to be extremely careful. We have 18 years of erosion of the definition of disability that we have to make sure doesn't happen again. So I think we have a very, very high sense of duty and obligation to make sure that the regs we put out reflect what the congressional intent actually is and was when they wrote the Amendments Act and the reports that come with it.

So we are looking very carefully at this.

Unfortunately, and some of you may know this, we had a commission meeting last week that -- I'm not quite sure why we were having the meeting because there weren't votes to actually get this out, given that we have four commissioners at the EEOC. So when there is a 2-2 vote, whatever you're voting for. If there are two votes and it fails, it doesn't go out. Our republican colleagues did not have our votes and yet held a meeting on this very topic. And read the draft regs as they would like to have seen them go out into the record.

We tried to prevent that from happening. We were not successful. They read it into the record anyway, and I think if anyone will eventually have a transcript of that meeting and if anyone wants to take a look at it and you are a person with a disability or an advocate for people with disabilities,

it will be clear to see why we thought it wasn't ready and we really are trying to prevent another 18, 20, however many years of bad luck around this issue.

And so for us, it's very important that we put out something that reflects what Congress asked us to do and that, again, gets us to talking about discrimination and whether it occurred or not and not whether someone with diabetes really has a disability or somebody with epilepsy really has, you know, epilepsy or enough of epilepsy to actually get in the door. We shouldn't even be having those discussions. So we're working diligently on that and, again, at that meeting, the vote failed. So it doesn't go out. But there will be this record of what colleagues wanted to get out the door.

Their argument is that we have to have something in place by January 1st because that's when the law becomes effective and my experience is -- if Congress wanted something by that date, they would have said so. Because this law was only signed in the end of September, I don't think anyone expected that we would really have regs ready to go and that this isn't the time to do something in haste. This is the time to actually be very careful and deliberative about what words we say in those regs and what the consequences might be for people with disabilities when those words are interpreted by lawyers and courts.

So we are in the process of keeping going. We worked with our office of legal counsel before that meeting and we did make, you know, some very good changes, I think. But a lot more needs

to be done and we'll be working on that. And I can assure you that when we are done, this will go out as a notice-of-proposed rulemaking and everyone will get to see what we have written and be able to comment and I assure you that I think there are lots of great minds out there in this country that will comment on our regulations and will probably help us make them even better once we see their comments and we will take the comments very seriously. This will not be an instance where we think we're smarter more than everybody else in the country.

We want peoples' comments and we want to make this the best it can be.

So the two big issues that I think we're still at a little bit of a stalemate over and the other two big issues is, you know, how do you define major life activity?

How do you define that and how do you make sure that not only regulations are clear but that the guidance is clear so that we again are not back in the same situation we were in before the law was passed?

So that's not easy, not an easy task. Congress in some respects sort of said this to us on this issue and that's reason to take it very seriously. You know, they wanted to get this law passed and so they said we trust EEOC to come up with really good regs on this and I want to make sure we deliver.

The other big issue that we're at some disagreement over and why this didn't go out as a whole issue of the major life activity of working... there have been serious problems with that and a variety of decisions -- I don't know if Jennifer

is going to talk a little bit about the decisions. All right then. But just know that it's a very problematic area and it's the one major life activity that EEOC extracted out of the list of major life activities and spent considerable time defining it and then developing factors around it. And some of that is based on earlier Rehab Act cases and some is, you know, I don't know, I think an attempt to be helpful when in fact it wasn't. It actually was very harmful.

So we're in the process of trying to look at that a little more expansively and not -- again, not get us into the same situation we have been in. But those are the really big issues. I can go into a lot more detail about changes. I think Jennifer is going to do some of that. But some really important great things and Andy and Jennifer next to me and a lot of other people have worked on getting this done, you know, mitigating -- that clear is a bell. We have been saying that from the beginning of time. Should not look at anyone with regard to mitigating measures and that alone for me I thought was a huge, huge win for the disability community and that will make serious changes in and of itself, but we need to get all of it right and I'm going to end there and we'll have lots of time for questions.

Thanks.

>> ANDY IMPARATO: Thank you, Commissioner Griffin. Just to clarify, you said the first issue was around the definition of major life activities. Is part of that also how you're defining substantially limits?

>> CHRISTINE GRIFFIN: Yes. Yeah. When we're talking about -- how does a major life activity really substantially limit?

I guess, you're right. I don't want anyone to think that we don't have the nonexhaustive list that are there and one of them in this law we actually expand that. It's really around how does a major life -- how is it substantially limited in order for someone to be covered as a person with a disability?

And that's really where the problems are, around those words, substantially limited. How do you define it?

How do you interpret it, your definition?

Thank you.

>> ANDY IMPARATO: Okay. And we'll hold questions until we have got through the speakers and now we'll have Jennifer Mathis from the Bazelon Center for Mental Health Law.

>> JENNIFER MATHIS: I'm going to talk a little bit about sort of an overview of the key things that the ADA Amendments Act does and how it will impact people in the courts, how it will impact people on the ground and I'm not going to get into a lot of detail, but just sort of go through some of the major -- the major points and you all can ask questions at the end.

And building on Chris' theme of sort of laying foundations, I think the idea behind this law was really to lay a foundation for the courts and for employers and other people covered by the ADA to sort of think at things differently, to think about disability in a different way than they have been and we can't control what the courts will do. Obviously, things won't be

perfect under the new law but I think the idea was this was sort of laying the foundation to send a message that we're looking at disability in a new way and not as, you know, something that creates complete dysfunction for somebody. That, you know, the idea of being that people with disabilities can work, can be productive citizens and the idea that the ADA was intended to sort of get people into the workforce. Not to protect only people who have so many difficulties that they can't work and that they can't do anything. And so the idea is sort of reversing the stereotype notions that have -- (Indicating) -- made it so difficult for people to get protection from the ADA. Does this in a number of ways -- one of the most significant things as Chris mentioned is the fixed here, the mitigating measures. The Supreme Court had really done a huge disservice I think to the protection of people under the ADA with the decisions that said that you had to take into account the mitigating measures that people used to control the effects of their disabilities, medication, prosthetic devices, you know, other interventions that people use to control the effects of their disability and as a result of those decisions you had, as Chris said, this catch-22 that people were disabled enough to be fired but not disabled enough to sue. And the ADA Amendments reg clearly says mitigating measures don't count. It said the ameliorating effects don't count and the extending things make things better to the extent they create their own side effects and measures that does get taken into account and the one exception to this is the ordinary eyeglasses, a very narrow

exception. But even for folks whose vision is corrected by ordinary eye glasses, they have a challenge to say that you need 20/20 vision and those still have to be job related and consistent with business necessity, so even if a person doesn't have a disability, a person could challenge something like that.

The second thing is around major life activities. The ADA amendments did three things really for -- to correct the law and major life activities or sort of clarify it. One thing is it rejected the Supreme Court's formulation that major life activities have to be activities that are of central importance to most peoples' daily lives which led to courts really parsing apart in an extraordinary details of how people did their major life activities and whether, you know, this was the type of seeing or the type of eating that is of central importance to most peoples' daily lives instead of saying eating is a major life activity or seeing is a major life activity. So that's a very significant thing.

Secondly, it created a nonexhaustive list in the statute, which wasn't in the statute before of things that Congress was saying are major life activities and it's not limited to those things, but they are just this list is more expansive than the list that we had previously from the EEOC and actually specifically gets at some things which the courts were struggling with a little bit. Some of the issues around mental disabilities but weren't in the EEOC's original list, concentrating, thinking, communicating and also things like standing and lifting, sleeping, eating, bending, which I think, you know, some courts

recognized were major life activities, others didn't. And so, you know, it's an expanded list which is helpful. It also very significantly clarifies the major bodily functions can be major life activities and it lists some bodily functions. Again, it's a nonexhaustive list like your immune system function, endocrine function, normal cell growth, bowel, bladder function, brain function. You know, the impetus, I think the original impetus behind this clarification was really to get at some conditions that where people often had trouble pointing to major life activities that they were limited and like people with cancer often had trouble. They could be very sick and very impacted by the disability, but they couldn't always point to major life activities that they were substantially limited in and this was trying to get at the idea that, you know, if you can show that a major bodily function is substantially limited, that's sufficient. That is a major life activity and some of the courts had recognized that and some hadn't and so this was an effort to clarify that. I think what it also did, though, is it gave everybody a much more direct route to show that they have a disability. So a lot of folks can now sort of rely on -- they have alternate routes. They can show that they are substantially limited, say, an endocrine function, if they have diabetes as opposed to showing or in addition to showing that they are substantially limited in particular major life activities and that's I think helpful for people because it's more direct, it's clear in many cases. It's less personal. It requires the person to get less into the details of their

personal life. And, you know, it's easier, I think, sometimes for courts to understand. It's more direct. I'm not saying that it's the only avenue for people, but I think it's a good additional avenue for people to use.

And then thirdly, there is the fix for episodic conditions. People with epilepsy, people with PTSD, bipolar disorder, depression and a number of other impairments had a lot of trouble getting covered under the original ADA because their impairments sort of flared up episodically. And the courts would say, well, you're not seizing 24 hours a day and so, gosh, you know, you only have a seizure the last 15 minutes once a week, that couldn't possibly be substantially limiting you. And so, you know, this fixes that. Obviously that wasn't the intent to say that nobody with epilepsy would be covered because they're not having a constant seizure or that somebody with PTSD is not covered because they're not having a traumatic episode 24-7. So this basically says you look at the impairment when it's in its active state and if it's substantially limiting when it's in its active state, it's covered. Same thing for impairments in remission. This is true for cancer. There is a particularly sad case with a woman with breast cancer where the court found that she wasn't substantially limited. The breast cancer was currently in remission. Four months after the decision, she's dead but yet, the court said I don't think she's really substantially limited. So it just sort of showed that I think the ridiculous nature of this analysis. And so episodic conditions should now be covered much more easily. And then the fourth thing is the

fix that Chris alluded to with the definition of substantially limited. I used to call this the substantially limited fix because it really just -- it doesn't create a new term. It doesn't specifically say a new thing. It keeps the same language, substantially limited in a major life activity, but what it does is clarify that substantially limited has been interpreted too stringently by the courts and by the EEOC. It's a lower standard than the courts have been applying, and it's to be interpreted broadly, to cover, you know, a broad group of people and I think while, you know, I think it's confusing for people because they look at this law and they see, you know, well it doesn't exactly say what you do. It just says that substantially limited is a lower standard than the courts have been applying. But actually I think this is probably the most significant fix because it's really about tone. It's about attitude. It sets the tone for how courts look at disability and in most of these problematic cases where people are losing in the courts unfairly, one of the first things the court does is talk about Toyota and it's a very strict standard. It's a strict and demanding standard. It's a narrow standard. It covers a narrow group of people. And this really reverses that message. It sends the signal this is not such a strict standard. It's a broad standard. It's supposed to cover a broad group of people. It's not so stringently interpreted and I think that's perhaps the most important message of all of this and tone is important, and, you know, the early cases, I think, will determine sort of what the later courts do with the ADA. But the idea is that,

you know, it's important to send the message -- (Indicating) -- about, you know, how courts should be looking at disability in a very different way.

Finally, the regarded as prong was made significantly easier to use because it had become almost impossible for people to use. You had to demonstrate that an employer or another covered entity believed that you were substantially limited in a major life activity and of course employers would always say, well, I thought she had diabetes, but I didn't think that she was substantially limited in any major life activity and so now it sort of takes away some of that ability to use subjective views and it just says if you have got an impairment, an actual or a perceived impairment and you're discriminated against based on that impairment, then you're covered so the real issue is now causation, did you discriminate based on an actual or perceived impairment?

And it gets us away from this whole notion of where you are on a spectrum of severity and I think that's a very helpful thing. The regarded as prong is somewhat limited, it doesn't have accommodations under it. So if you're covered only under that prong, you couldn't get accommodation. So people who are challenging firings or non-selection or any number of other things where they don't need an accommodation, you would expect to be going under this prong because really then they just need to talk about causation. They just need to show causation and they don't have to worry about showing the severity of their disability and whether it's severe enough.

Now, on the ground, I think this really has as much impact as it has in the courts. I think it will create a major shift in attitude about disability. You know, it's sending a signal, again, to sort of look at disability differently. This is not -- this has not been just a litigation issue. I think on the ground and it's fascinating to me seeing employers respond to requests for accommodations. You see case law sort of dribbling into what people have to do just when they ask for a simple accommodation. They have to fill out lots of paperwork and they go back and forth and back and forth with employers about the nature of their disability and how are you substantially limited and what major life activities are you substantially limited in?

And are you really substantially limited?

And it's very clear, I think, that there is this perception in the employment world that, you know, very few people are covered and that it's a very strict standard and I think the trainings that have been going on already since the ADA Amendment passed have really been sending a message to the HR world, to the employment world, that -- and this is a lower standard that, you know, many more people will be covered and that you really need to stop focusing so much on peoples' disabilities themselves and how severe they are and to start focusing more on discrimination. Because that's going to be where the courts are going to be focusing and that's where you're going to need to worry about.

I think also it sends a message that Congress is watching

what the courts are doing. This has been sort of a battle between Congress and the courts on a number of fronts around how to interpret Congress's laws and also whether Congress had the power to pass laws. And I think for a long time we have seen courts basically beating up on Congress and sort of saying what they do doesn't matter we're going to construe it the way we want to and this is Congress basically talking back and saying, no, we do care. We're watching what you're doing and if you diverge too much from what we intended to do, we're going to go back and fix it. And so we're going to keep doing that until you get it right.

It's also not just an employment issue. I think the ADA has ratifications for other areas and one of the most notable is schools, people with learning disabilities seeking accommodations in education, lower education, higher education and there's some language in the committee reports actually about learning disabilities and sort of responding to the courts making it extremely difficult for them to qualify people with disabilities under the current law because, gee, they have gotten through college or they have gotten through medical school and, you know, if they need an accommodation, well, you know, they are not a person with a disability because they have gotten this far and they have had academic success and the ADA Amendments actually says in the legislative history in a number of places, no, just because somebody's had academic success doesn't mean they can't have a learning disability and in fact the education community I think saw some of these changes and got very nervous

about it and so ended up getting involved in the discussions around the bill. And there were some concessions to the education community and so what we have I think affects a broad range of -- a broad range of various not just employment. And the final thing I would say is just that I think people need to be very careful about the early cases that people are bringing to the courts. We should all be talking to each other. This is really important that, you know, people bring good cases with strong facts if they are going to go to court and, you know, we can all help each other sort of figure out how to do this and how to craft these things carefully because as I said, the early cases will set the tone for what happens with this law and so they are extremely important.

And that's it for me.

>> ANDY IMPARATO: All right. Thank you, Jennifer.

The next presenter is Jenifer Simpson from the American Association of People with Disabilities.

Welcome, Jennifer.

>> JENIFER SIMPSON: I think I'm the what's next in many ways from the program. And really isn't specifically to the Americans with Disabilities Act. This is about ensuring electronic communication is accessible and usable for people with disabilities. This is about all of that stuff that we use in the office, everywhere that people with disabilities use and it needs to work for them.

What I did think I should mention a little bit of the

relationship to the ADA with this subject matter.

The workplace, which we have talked about a lot already, include lots of devices like cell phones, BlackBerrys, all kinds of machinery for communication purposes and people with sensory disabilities, hearing and vision -- I guess that's a substantial -- I really don't know ADA that well. I just know this stuff better. They clearly have run into problems in the workplace when the employer expects them to be able to use cell phones and they have a hearing aid and it doesn't work, things like that.

Clearly in education entities should be very alert to the fact that any of the communication technologies they use may exclude or create barriers for students with disabilities.

Title 4 of ADA that is the telecommunications title. It's originally the access to the phone company's part of the statute. And since '91 when those regulations went into effect, the FCC, the implementing agency, the Federal Communications Commission has upgraded consistently its relay service -- what's allowed to be a relay service, including a relay service that passes through the internet.

And that's where I think we come in with the next generation of communications technology. It's all about what's going on with the internet and how phone systems are now passing through the internet. Television passes through the internet and all of the things that we have gained so far for accessibility such as in television and telephones, are basically not getting carried forward when the internet is there. So when we talk

about communications, electronic communication that is occurring anywhere, everywhere for people with disabilities and the proposal that we're looking at is something that would literally modernize the communications act for people with disabilities so that all this stuff we have already gained like hearing aid compatibility of phone, like closed captioning on television, accessible and usable telephones, once it involves the internet or internet protocols, that those things also are subject to the same requirements that were previously.

So the proposal has been put forward by an organization and Andy mentioned it earlier, the Coalition of Organizations for Accessible Technology. We call ourselves COAT and when new affiliates join, we say welcome, thank you for getting your coat on because they now understand the agenda and they have signed on to this agenda around accessible communications. We have grown rapidly, 221 affiliates in 43 states. We have formed in March of '07 and we just grew so fast. We could not believe it. It was a steering committee of three or four national organizations. American Council of the Blind, American Foundation of the Blind, AAPD, communication services of the Deaf, National Association of the Deaf. So that's the steering committee. But clearly we are much bigger than that steering committee. The steering committee the ones that ends up doing some of the negotiations with the legislators on this proposal that we now have called the 21st Century Communications and Video Accessibility Act. We worked very hard during the past year and a half to get real legislative language to reflect

the agenda that we were talking about and that became H. R. 6320, which was introduced last June after a fabulous hearing. We had a star-studded hearing in May with some folks who came in and testified about the need for blind people, people who are deaf, and their family members and others with other disabilities needing to have accessible communications.

So let me just summarize what is in H. R. 6320. It amends and updates existing sections of the communications act. It covers television, telephones and is sort of now moving into the internet just a little bit.

H. R. 6320 is divided -- divided into two sections, title 1 communication, that's basically phone stuff. Title 2 is video programming and television stuff. So I'm going to go into both of those now. Title 1 communications, this is exactly our shopping list that we went to and required in the bill requiring access to phone-type equipment and service used over the internet. So you have a phone over the internet, our question is it hearing aid compatible or usable by a person with a physical disability?

We're asking for improved accountability and enforcement measures for accessibility, does the existing requirements we already have under section 255, we say that needs better enforcement. We're asking for a clearinghouse of information about accessibility measures so the phone companies, the manufacturers and the devices know what's out there and can talk to each other in sort of a forum. We're also asking for better reporting obligations by providers of phone services and manufacturers of devices. This is so that they can report

to Congress or to the FCC exactly what they have done because right now it's a bit of a black box. You can't find out what they have actually done.

Like I said, we require phone products used with the internet to be hearing aid compatible. I mean, that's a real check on whether a manufacturer has actually done what the current law requires, is the phone device they are selling, the Apple iPhone, whatever, do they work with hearing aids?

We're asking for the use of the lifeline and link up universal service fund to be used with broadband services. Universal service fund is something that the FCC -- well, they manage it through another entity but in your phone bill, you're chipping in basically a small tax to the fund. That fund is used to make sure everybody in America gets phone service. But we're also saying why not also use that for people with disabilities who need broadband in order to make phone calls and that would be deaf people who use video relay service. Video relay service is a form of relay service that requires a broadband connection, an internet connection. That's bigger than dial-up basically and so in order to do that, say their phone service that they use, they can't use a regular phone service. They toed out their TTY because it's slow and clunky and they want to use video relay service. So why can't they have that lifeline link up allowance used for broadband service. We're also asking for the universal service fund to have an allocation of \$10 million for the one population of people in America who doesn't yet have phone universal service and that's people who are

deaf-blind. The definition there would be the definition of the Helen Keller Act which covers between 70,000 or 100,000 American who are deaf-blind and that allocation be put aside so they can do all of the stuff that's been basically taken for granted. Here is the link for the ADA, we're asking for the scope of relay services to be included among people with disabilities. The current statute, definition and the regulatory language now say that basically such a relay call has to be between a person who doesn't use relay service and a person who does use relay service. But since '91, there's been many forms of relay services. There's CapTel, which is a text-based relay service. There's video relay service I just mentioned. The speech-to-supreme phone service. Now, I use speech-to-speech and I want to talk to someone who uses CapTel, two different forms of relay, under the current rules, we can't do it that way. You can't make the connection and be reimbursed so we're asking for that clarification.

We're also asking internet-based service providers to contribute to the interstate relay fund that would provide more money into the interstate relay fund to fund better the relay services that we're expecting and already occurring. Because of the internet, there's a lot more happening.

Title 2 of H. R. 6320 is the video programming with TV. Provisions that we're asking for, we're asking for decoder sixty rein all -- circuitry in all video programming devices. Right now, the TV set with a screen bigger than 38 inches diameter or whatever it is, I don't know. It's required to have decoder

circuitry and right now you can receive television I think on little devices as small as this. Tiny little screens and we're saying, well, if it's got the captioning in it and you're receiving TV, why can't it be displayed?

The kinds of software out there, those can be displayed so why leave out a form of accessibility that's actually technologically possible?

We're asking for an extension for the closed captioning for any programming that would be distributed over the internet. I mean, I'm sure most of you are aware that you can go up to the internet and see your favorite show, CSI, Law and Order, I don't know, whatever, via the internet. Does it have the captioning?

Maybe, maybe not. But we're saying it should because it was already there to begin with. And we're saying if it already was expected to be captioned when it was distributed by a TV programmer or a TV distributor, and then goes on the internet, well, we want that captioning in there.

We're asking for easy access to TV closed captions via a remote control, on-screen menus, audio outputs or assistive technology. One of the biggest complaints we hear from our communities is that you can't find the closed captioning on a television and I challenge everybody in this room when they're in a hotel to see if they can turn on the captions.

And also how do you get to any bit of description that might be available used by blind people. Try and find out how to turn that on your television. There is very often a button

or a menu but we're saying raise those accessibility modalities to a higher level on the selection menu so you can get to it much faster.

>> FEMALE AUDIENCE: It's embedded. It's so embedded that you cannot find it, especially if you can't read -- sorry, it's just a personal pet peeve. If you can't read the screen on the TV, then you cannot find how to turn on the audio description.

>> JENIFER SIMPSON: Absolutely. And it may be there. You know, we have had stories where people call the hotel manager to come down and call the engineer in to turn on the captions on their televisions and things like that. So totally ridiculous. It needs to be fixed and this is how to do it.

We're asking for easy access by blind people to television controls and program selection menus. I mean, are most of you familiar with the TV guide that's on your television service. I have direct TV. There is this big, blue screen that comes up. If I was blind, I couldn't see it. We're saying why not figure out a way to do audio output. Well, television, is that really to be accessible?

Yes, it does. Television is important to our culture. It's how we learn about information and news.

>> FEMALE AUDIENCE: It may be a major life activity.

(Laughter)

>> CHRISTINE GRIFFIN: That's on our exhaustive list.

>> JENIFER SIMPSON: One of the things we're asking is the restoration for the video description rules. The FCC in 2002 implemented and issued rules for video description that was

about four hours a week on the major channels. The industry challenged that and we lost those rules in August of 2002. So it was an 8-month period where we had rules. There was video description available and you could actually get it but it was overturned in a court decision and the court decision basically said the FCC didn't have the authority to promulgate those rules. So we're going back and saying, you know, get the FCC authority to promulgate the rules and by the way, do it in the context of the new environment of digital television because back then we only had analog television. We're now at digital television pretty much. So we're saying restore them, update them, give it back to us.

We're also requiring access to televised emergency programming for people who are blind who have low vision. The current rules for emergency information basically just require television broadcasters when they have emergency information, you know, that little crawl across the screen. That crawl across the bottom that contains emergency information and text coming out. They're just required to do beep-beep first so that a blind person or a vision disability knows that something is occurring on the television that has to do with emergency. But then it doesn't really -- that's it. They're supposed to then what, go turn on the radio or go ask a friend what the emergency information is. We're saying that also can be audio output. So that's what we're asking for.

The status and outlook for this...like I said, we had the bill introduced in June with two cosponsors, a republican and

democrat and we have 15 cosponsors and we're expecting the same, at least representative Ed Markey to introduce this bill again in January. We're not sure who the cosponsors are going to be. We're working on that on the republican side. The committees will have to work with the two commerce committees. That's the house, the commerce committee now chaired by Mr. Waxman and on the senate side that would be the senate commerce transportation committee who I think Jay Rockefeller is now the chairman of that. So those are the two committees that we primarily focus on as advocates. The COAT coalition targets them.

Also the telecommunications subcommittee and we had our hearings and we look at those representatives to pretty much lead on the house side of what this bill will look like.

We're in intensive discussions all the time with industry representatives.

This week, for instance, we'll be meeting with the motion picture for America on Friday. This is the group that basically took to court the video description regulations that the FCC issued in 2002 and had them overturned so now since we're re-asking for those rules to come back in, we have gone back to the industry and saying, this is what we're up to, we need you to know about it. Tell us what your objections are because we're not going to stop, we're going to ask for it anyway. So we are giving them an opportunity to dialogue about that before the bill in the next Congress.

Ongoing we have been meeting with the phone companies, United

States telecom, AT&T, Verizon, the wireless community. All the trade association that has anything to do with the stuff we are talking about we have been sitting down and talking to. The National Association of Broadcasters, National Cable Television Association. You know, the alphabet soup of trade associations that have to do with communications industry in Washington, D. C.

And they're extremely well funded and, you know, we go in as disability advocate, you know, four, five, six of us with our little facts and figures and our dream and ask them for this stuff and they go, no usually and then we say, well, why not?

And then we start talking and explaining and they start to get it and so we have this incredible educational campaign going with people in the industry have the time on this stuff. So that's how we're going to get there and working with industry, working with Congress and hopefully working with all of you to help support us with this because we're looking to the ADA community generally to help advance this agenda and this bill if we can. Yes. So if you're interested in helping us, please contact the coalition. And we have info@codeaccess.org. We have our own website, www.coataccess.org. We try to be more interactive. We want more people to be involved and you can see who our affiliates are. We have deaf and hard of hearing of Orange County. You know, we have southwest, Virginia chapter of Deaf, hard of hearing and deaf-blind. These are the kinds of groups on this agenda because they know very well that if

we don't have these things passed, they're going to get left out and left behind and won't be able to have the access what they need. The information that most of us are probably taking pretty much advantage that we have access to.

The other point I want to make is when we do make it accessible to people who are deaf, blind, deaf-blind or a sensory disability, you end up ultimately making it accessible for everyone else too because that's what they have to take into account. For the first time a company is actually thinking about customers who are not 25 years old with 20/20 vision who like to do this -- (Indicating) -- the whole time. So, you know, this is a very important agenda from that perspective. It also impacts our elderly community which is expanding all the time and who needs to have more accessible electronics communications.

Thank you.

>> ANDY IMPARATO: Thank you, Jennifer. And our last speaker is Day Al-Mohamed and I also neglected to mention she's a relatively new board member for AAPD as well. So please join me welcoming Day Al-Mohamed.

>> DAY AL-MOHAMED: Thank you. I actually wanted to go at this from a slightly different route and since I was coming at the end, I thought I'd see what I can do to kind of pull things together a little bit. But I would also like to begin everything with a story, so I'm going to -- hopefully you'll bear with me through that and I think I have just one photo which is in the right order.

Yep, after my picture. And one of the things I thought would

be a great place to start just as a little story would be -- it's a picture of a very, very famous piece of art. It's William Hogart's, reg's progress from 1735 and as you will note, the very, very well-known piece of art from the 18th century and the reason I bring it up is because it's an image of a story by a man named Thomas Rakehel d and how he ends up in the hospital which is more commonly known as the asylum and it's the first and oldest institution to provide care for the mentally ill and what happened is historically conditions that were consistently dreadful, the care amed to little more than restraint. A quote from the time, it's so hideous and so great that they were able to drive a man that half his wits rather out of him because the noise was so awful. People were chained to the floor and innocent people with mental disabilities, like any disability, it just became warehousing. And part of what I want to do is just talk a little bit about what does that mean?

Why is that such a -- how does that play into this?

And just, you know, part of it is I want people to get an idea of this is what it was like. This is the way people were treated and in the back if you look there, there are these women there and they were laughing and giggling and it was very, very popular. For one penny you could go in and see the freaks at the show of Becklam and they had about 96,000 people go in in one year and it was very, very popular. I mean, we have got museums today that don't get that kind of attention. Now, why didn't anybody do anything about it?

We're working on legislation and policy to impact the lives of people with disabilities and this is asylum that was first set in the 1270s but it started being active in the institutions in let's say 1600s. In 1620, some of the inmates and they were called inmates at the time, had a petition to the government. It's called the petition of poor and distracted people. Nothing happened. 80 years later, in the 1700s, the government finally got around to a response, and that was a definitional change. They are going to now use the term "patients" and divided up between curable and incurable but when it came to conditions, nothing changed. In 1958, a doctor wrote a book, the treatise on this and it was a lengthy book on the treatment of mental illness and saying there are things that can be done. These are the changes that need to be made. Nothing happened. About that time, there were a couple of gentlemen in France. One was a physician, and actually a gentleman who had actually been a patient at an asylum and it was Jean Baptist and they started working with other ways to help these people and they got rid of the strait jackets, started talking about if you treat people as people and start working to actually treat the condition, guess what, they can have a relatively normal life. But as far as anything happening, nothing changed.

You know, and so they got a physician with another individual.

1796, the York retreat opens and it was spearheaded by William, II. William, II was a businessman who had lost a friend in one of the asylums who had died and so he tried to effect change. Nothing happened. It wasn't until I think the asylum moved

into interior London into one of the suburbs in 1830 that supposedly the conditions got better and when it came to policy changes that impacted people with mental disabilities, that didn't happen until the early 20th century. So when we're talking about actual conditions of change, it took more than 200 years for that to happen. So to go from that to at least something that amounted to something more humane and it wasn't until another 100 years beyond that, that we actually have policy.

>> JENNIFER MATHIS: We're still working on it now.

(Laughter)

>> DAY AL-MOHAMED: But one of the reasons I bring that up and I wanted to point out is that it didn't just languish. I mentioned the physician, the businessman, I mentioned the actual patients, nothing happened. And one of the things I wanted to bring that up and what makes the bills -- the ADA Amendments Act and what makes the 21st century act unique in some ways is that they are changing the way -- not the product, but the process. If you think about it, a lot of legislative things, these changes are the end of product. But one of the things also I think merit study is the process. How are we going about changing things?

And so 200 years of no change because it was thought of as individually and one of the things that we saw here is that these aren't just disability organizations or just the consumers who are seeking change. It's actually collaborating, partnering outside of that that's actually effecting change

and these two bills are actually a great example of that kind of paradigm shift that we're seeing. I think the ADA -- and I was asking Jennifer, I think it was what 200 to 217 organizations signed on, not all disabled. We had veterans organizations, you know, faith-based organizations and part of it is this isn't just because it's the right thing to do, but because each of these groups saw a legitimate vested interest. They wanted it to happen.

I know Jennifer talked about some of her meetings for this 21st Century Telecommunications, it's not just pushing the bill through. It was we're going to talk to industry about it. She talked about talking to the telecommunication, the other industry folks and the fact is that's what making these move. That's what making it happen. The subject matter in these bills -- it is not new. You know, these are changes we have been advocating for many, many years. What's changing is how we're going about it and that's what's enacting some of the change.

For the ADA Amendments Act, you know, the language of it has been around for a little bit but the actual final language and changes took place and for passage between July and the end of September. That's what, three months. That's frightening how quickly that happened and the only reason that happened, I would put forward and it's my opinion there, would be because it had that kind of momentum behind it of this kind of shared way of thinking outside of disability.

It's a new way in moving legislation, shifting beyond that traditional paradigm. We have always talk about medical models

and social models of disability and have been addressing environmental disabilities and barriers and if you ever talk about thinking differently, think about disability in a different way. And so part of that isn't just saying, you know, well, this is how we're going to think about disability, but as far as policy, it's maybe how to impact that kind of a change. What does it take for disability to be better integrated into the whole?

That means when you're trying to effect -- what does it take to effect policy change?

And to be -- I hate to say effect, but to be effective, it's going to mean reaching beyond that.

And one of the examples that's been used since then was -- goodness, I think it was in 2000 and I'm going to use the example of Argentina. Buenos Aires passed a law, 4438. It's a great law and modeled off a lot of the U.S. systems. They brought in government experts, they brought in their mental health experts but what's happened since then?

Not a lot. There's not been buy-in. Why?

Because they didn't have the consumers be a part of it. In other parts of the world you'll see we had the consumers being pushed with the convention of the rights and they are going at it from a rights perspective but not getting buy-in from the professionals or government agencies and so what you end up needing is this kind of cross-group collaboration to actually be effective and what does it take to give buy-in?

There's some studies going on in Australia about how do you

look at it?

What we need is one person this organization who is your disability go-to guy. If anyone has an issue, concern, question and they're your expert, go to them. But what's found to be more effective not if you go, no, I don't do disability employment, you need to go talk to that guy in HR or that guy in IT about the information access. But the trick is if you get everyone to believe that it's a part of their job or, you know, whether it's industry, business, whether it's the HR person or the guy who's building his portion of his organizational website or it's the piece of industry that says, you know, hey, these are going to be our customers too, if they all believe that kind of buy-in, then you're going to be much more effective. That's a lot of talk and a lot of stuff that we have been talking about, but when it comes to actual outreach and doing that effectively, these pieces of legislation is what I would say our first very successful steps at doing that.

Now, of course nothing's perfect. I don't have roses through a colored glass. These are brown. If you think about it, it's still divisive and every organization and group is still going to have their own agenda. And a lot of people say, when you collaborate, you compromise. When you compromise, does that mean you get less?

If you get less, does that mean we're still losing?

The idea is if there's only so much pie, how do you get a bigger piece of it?

And so that would be the big problem to be addressed as a

part of that and so the question comes at what point do you want to say I want to work with you on this to get it to pass because I don't want to wait 200 years, like from this painting, to effect positive change or is it -- or do I not want to compromise because I am giving away too much of my rights.

And so what I wanted to just bring forward and this is -- I think mine is going to be the shortest here is because I think as a point of discussion especially since it's about the ADA Amendments Act and what's next, is talking about the process and how we can maybe harness the process and move it forward and take the successes from it or how can we take what we didn't think was so successful and make sure it works better in the future. So that actually is pretty much it for me.

>> ANDY IMPARATO: Thank you. Well, let's hear it for all the presenters.

(Applause)

>> ANDY IMPARATO: So now we are into the Q and A part of the agenda and I want to remind those folks online, that if you have questions, please submit them on your online forum and we have somebody in the room who will raise them on your behalf and get you answers.

Does anybody want to kick off a question?

In the red and then Carol.

>> FEMALE AUDIENCE: Good morning. My name is -- I'm the Director for the Resource Center at George Washington University. My question is directed primarily I think to Ms. Simpson and the rest of the panel please feel free to join in. Your proposal

-- I'll hold this away I guess. Your proposal speaks of something that's very similar in the IDEA -- Individual with Disabilities Education Act of 2004 and that's the piece known as NIMAS which is another wonderful acronym that this early or mid-morning in my life, I can't tell you what it is, but usually it's the requirement -- essentially it's the requirement within the educational institutions, primarily public schools. They must provide accessible materials, defined as books in braille, video accessibility, and I'm hearing your proposal linking very closely or emulating very closely this very specific piece with an IDEA and as we were talking, they mention in a sense of developing communities of process when it's already stipulated in law. Have you considered drawing from that particular portion of the law?

Also and I believe under -- I'm not quite sure where the funding source is. If it's through IDEA or if it's through No Child Left Behind or somewhere, there is funding for public schools for technology. Integrated technology services and part of that funding is to make sure schools are up to speed on the internet.

It would seem to me that as they are coming to capacity in internet functionality, that this piece should dovetail the work that they are doing. I throw that out as a possibility and ask if you have been aware of considered coordinating between the different laws and of course as they were mentioning, across the communities to bring our children into hopefully a career and community living.

>> JENIFER SIMPSON: Thanks. You make a really good point. You know, the schools when they need equipment that's accessible for their students, they basically go on the demand side of the equation. What we're working on is basically the supply side. We're making sure that the companies and the service providers have the stuff in the marketplace that is accessible so that those schools can in fact buy it. We're not covering everything that you mentioned. I know IDEA has some really good requirements that should be driving demand to a greater level and I do work in that area, too. But very often the solutions are much more around assistive technology than they are around what we call infrastructure issues. The television distribution network is an infrastructure in this country. The phone system is an infrastructure and all those providers are in the main stream and those are the guys we're going after because we know that they can do this. They can have a great deal of effect.

Obviously a school system should be purchasing systems that are accessible. Very often they get away with not doing it because they could say there's nothing in the marketplace. So all they didn't explore and all they didn't realize, there was a requirement. I know there is something particular around phone, interactive voice mail systems. Nobody is buying them. Even some of the federal agencies who are required under section 504 and 508 to in fact buy accessible phone systems that actually buy ones that are in the marketplace already and that is a complaint around -- from our perspective -- around how things

don't work the way we expect them to work, even when we pass the laws and implementation doesn't come. But let me take a look at what the NEMAS thing you pointed out. Maybe we can borrow something from that.

Thank you very much.

>> ANDY IMPARATO: Any other comments from the panel?

>> DAY AL-MOHAMED: This is Day. It's national instructional materials is what it's about and I think what Jenifer said got it and what the NEMAS tends to work at is this is what the student needs and let's get it but a lot of times it goes back to the producer and saying we need this in accessible format. And the schools are good at demanding that and you think about what the elementary schools are using and that's as far as it goes and it's actually limited and what the 21st century bill does is move beyond that. You know, all of this stuff out there, it should be accessible and in some ways NEMAS was set up as a catch-all to take care of it. It's not a true integrated system where you can say this stuff is available that's put out in general. That way these kids can access it. So basically what this is trying to -- the 21st century bill is trying to take a step back and make it bigger and broader because one of the problems is and it's been a push now to try and take that to higher education and there's been a lot of resistance to that because it's a lot more textbooks and a lot more materials. But if you can get the suppliers and get them

saying, you know, we're going to start doing this automatically as a part of it, then it actually makes the jobs for those bills within the education system much, much easier. So it really is building infrastructure so we don't have to do the catch-up game.

>> ANDY IMPARATO: All right. Carol Boyer had a question or comment. And then there's one on the internet I see.

>> FEMALE AUDIENCE: Carol Boyer, office of employment policy at the Department of Labor.

We all know this from the disability community that it's always segregated and when you mentioned everybody needs to be on the same plan. You can't just have, well, this is our disability go-to guy at our company or industry or at our agency and it has to be broad and this is what we're proposing at ODEP. It has to be universal strategies across the board and this is what we all need to work on, is showing that the disability examples have universal applications and it's not something that you segregate in this division or that division and even in the education field, I don't think we should even have something called special education. It should be, you know, the budget should be across the board. And one other thing, I know we don't have HI here and someone is on your panel, but HI is working on the work space flexible 2010 and national council on disability noted that in their July report on update. I can't remember which report it was, Mike. Sorry. But I read all of your reports and they are quite good, about the movement toward workplace flexibility in the arena is something that

the disability mandate. And so many more companies are doing that and we want to move that forward and you say look at the successes Day, move the process forward and utilize that. I wish we didn't have -- I agree with our assistant secretary, Neil Romano, I wished we didn't have the term "reasonable accommodation." He likes to call it productivity enhancers and everyone needs those in their jobs whether they have a disability or not and it's not just teleworking, it's not just flexible schedules, flexible workplaces. It's flexibility around what you need to do for your job and everybody can contribute. And I have one last comment with COAT, Jenifer, have you looked at this new device last week called Kendall. It's brand new. Through a waiting list of six months or more. It's basically a book that you can take on the plane or the subway and have it in newspapers, all kinds of languages, books, whatever. It's fabulous but I don't think there's any audio output on it for people who need that.

So it's the new device and it's making great waves across the buying power of the internet.

So you might want to check that out with the distributors and the new device called Kendall. Great name, but not accessible.

Thank you.

>> ANDY IMPARATO: Well, Carol, this is Andy. I want to thank you for raising the workplace flexibility issue. I think it's worth noting that we have had a -- we did do a policy forum focused on that, that had a thing that Georgetown participated

in and we actually did it at Georgetown. But in President-elect Obama, he talks about a coalition, there is something on taking the Federal Family Leave Act for example and extending it to employers who have fewer employees but right now that only applies to employer with 50 or more.

>> CHRISTINE GRIFFIN: And EEOC issued something called caregiver guidance and you can find it on our website acknowledging that discrimination against certain people that have to provide any type of caregiver issues, really discrimination against them really does fall under Title VII. You don't have to create a new screen to look at who is affected by those discriminatory policies or acts. That usually people have it already under Title VII, so...

>> JENNIFER MATHIS: And I would add in the education world too, a lot of the advocates are moving toward sort of school wide strategies instead of focusing on just special ed as a special system or entity and behavior supports and sort of moving out of things like OSERS and into a more sort of general Department of Ed-wide strategies.

>> ANDY IMPARATO: So I think we have a couple of questions from the internet.

>> MALE AUDIENCE: Yeah, we do. Thank you. Let's see. The first one is from Kelly York and she asks for Commissioner Griffin, when do you expect the NPRM to be published under the regs?

>> CHRISTINE GRIFFIN: I can't give you an exact date. We still have some work to do as I talked about and it's not clear.

We're still at four people, four commissioners, we may still at the end of the day when the regulations look like something, I would be proud to have go out of our agency. We may still be at a 2-2 vote. So it may require a third democratic appointee to get to the EEOC rather quickly and if anyone is listening and can urge the new administration to do exactly that, that would be great because it may take that third vote to get even a regulations under an NPRM out into the public, so I can't predict the time. But we are trying to do it as quickly as possible.

>> MALE AUDIENCE: Great. Thank you. And we also have a question from Linda Longbyell from Massachusetts and she first wanted to say thank you and hello to Chris and Andy and it was a great presentation.

And her question, she actually has two. Can you tell about the working major life activity issue?

And second, what did business gain from the ADA and what does it mean for working with businesses going forward?

>> JENNIFER MATHIS: Yeah. With respect to working --

>> ANDY IMPARATO: And this is Jennifer speaking. I don't know if it's clear for the folks on the internet. So just say your name.

>> JENNIFER MATHIS: Sure. Jennifer Mathis.

The working major life activity, working as a major life activity issue is that there have been, I think, some changes

that the ADA Amendments made that would impact how you're supposed to look at working as a major life activity.

Certainly under the regarded as prong, the most significant change and what the Supreme Court had done is to say that -- to set up essentially an extremely difficult task that few people could ever need to show that you were regarded as or treated as substantially limited in working because with respect to working, the EEOC has a standard that says you're substantially limited in working only if you can't do a broad class of jobs -- a broad range of jobs or a class of jobs, and so the Supreme Court said so if somebody is treating you as substantially limited and working, you have to show that the employer believed not only that you couldn't do the job that you're doing, but the employer believed that you also would not be able to do a whole range of other jobs, which really became sort of impossible for people to prove; that the employer believed that you were -- that other employers would not hire you either. So now with the ADA Amendment Act, new take on the third prong, the regarded as prong, you no longer get into this issue of what it takes to be substantially limited and working or any other activity. The only question is do you have an impairment?

Do you have an actual or perceived impairment and were you treated adversely or discriminated against based on that impairment?

And so it's no longer relevant whether you are limited in a broad class of jobs, a range of jobs. You just have to show that the employer took an action against you based on an

impairment or perceiving that you have an impairment. End of story.

The question remains with respect to people who aren't proceeding under the regarded as prong, but proceeding under the prong -- I mean, actual disability or a history of disability to show they are substantially limited in working, does that broad range of jobs or class of jobs analysis continue to apply. And there are some statements in the legislative history. For example, from Representative Nadler suggesting that actually given what Congress did to the definition of substantially limits in making it a lower standard, that actually that would impact that analysis and that, you know, you wouldn't have to show this broad class job, range of jobs, you know, that it would be sufficient to say that you couldn't do, you know, one particular job you're doing. So that is sort of -- I think that's an area of debate that is causing some consternation at the agency.

>> CHRISTINE GRIFFIN: That's actually accurate. This is Chris Griffin. How this now -- what the language should be around working as it applies to people under prong 1 or 2. And I think we have seen some very problematic decisions using the language that was in our regs and we are, you know, trying to deal with that and while we recognize that working should be a major life activity because there will be probably a very narrow, you know, group of people still that this will be the major life activity that will provide them the coverage they

need to get to court and talk about the discrimination that occurred or didn't occur. We still, I think, are under an obligation to view this at a lower standard and broader and, again, not make it difficult for people to have to prove those few that may be limited in the major life activity of working, to make them prove how they're substantially limited to get them into the court. So that's sort of the ongoing discussion that's happening at the commission, and, you know, some of us -- I think some people believe it should be -- should remain the same and that this language of the legislative history supports that and there's some of us that believe it should change and this language in the legislative history should support that as well. So...

>> ANDY IMPARATO: And then Linda's second question had to do with what did the employer community gain from the compromise as it worked its way through the legislative process and basically given that they were supporting it, what does all that mean towards working with employers moving forward? Does anybody want to tackle that first question?

>> JENNIFER MATHIS: I can say a couple of things. I mean, for me, for one, I think it was the reason that the employer community sat down at the table to negotiate a bill was because they wanted certainty. They wanted to do something this year. Nobody really knew what was going to happen with the election. You know, they had some concerns that after the election, given, you know, who was in the White House, given what Congress would

look like, that they would actually rather have a bill done before the election rather than after. And, you know, sort of that things would essentially come out in a way that they would be happier with and, you know, just wanted to get it done and everybody has other priorities now for the coming year and so I think, you know, that's one thing that I think they gained if everybody very much wanted to do a bill last year -- this past year and not wait and there are actually a number of things in the bill that were compromises, that very much reflects the desires of folks from the business community, including the elimination of reasonable accommodations under the third prong and that's something they pushed very hard for and I think this is a significant thing. There are a lot of HR manuals right now that all say "you may have to provide accommodations to people, even if they have regarded as disabilities" and that has changed. That's something they were very interested in doing, you know, as a trade-off. And so I think they got certainty. They got some other things. They got some limits on a bill that might have been significantly more expansive, you know, in a different Congress. And I think we have developed actually a pretty good relationship with the business community and the process between business community and disability community and some mutual understanding and hopefully can build on that in the future.

>> CHRISTINE GRIFFIN: And I think what was encouraging, we actually met with before the draft regs were even circulated within the commission, so before any of us saw anything in writing,

we actually brought in the team of employers and people with disabilities that negotiated the law to actually hear, you know, what they collaborated on and what they agreed on. And so that we had a full understanding of what was going on and the thing I found really encouraging that was that you had representatives from the Society of Human Resource Management, the U. S. Chamber of Commerce, a variety of other employer-based groups that were saying the thing that they really were telling all of their members and HR folks is that this didn't really change everything. That they should have been operating under these types of rules already; that it should be broad when you're looking at whether a person is covered under the law or whether they have a disability or not. And so this was for now a lot of them reinforcing what they hoped their employers were already doing. And I thought that was very encouraging.

>> ANDY IMPARATO: This is Andy. I guess I would just add on the question of what does this mean for our relationship with the employer community moving forward, and this goes back to the broader topic of these forums. We're trying to come up with policies and practices that ultimately improve employment outcomes for people with disabilities.

When the bill was originally introduced in July of '07, a lot of the group that are out there talking to employers about the ADA had the problem with the bill, it was the society of human management, U. S. commerce and others, it doesn't help us as we're trying to get a new law implemented to have the groups sort of viewed as the employers, as the experts so we're

in a different position now.

And we're on the same message that this is good for business but this was something that was broadly supported. It's basically a mid-courts correction, that the courts got it wrong and we're back to making ADA look more like title 7 and other civil rights laws and it's good for business. When I do my presentation, I also use it to make our business case. What does the disability market look like?

And certainly for the technology bill that Jenifer talked about, there is a big market argument there particularly with an aging population. So from my perspective, this is an opportunity to do this in partnership with the business community if we really want to move employment outcomes and I don't see how we do that without doing it in partnership with the business community. So I see it as a positive.

>> We do have a another online question.

>> ANDY IMPARATO: Sure. Let me see if there's anybody in the room.

>> MALE AUDIENCE: Thank you. This is a question from Carl Marshall and it's for Chris and he asks, how do we guide individuals with disabilities, employers and others about the dilemma that the ADA Amendments Act is effective January 1st '09, but there are not written regulations to follow?

>> CHRISTINE GRIFFIN: I think what we're saying to people and I think Andy and Jennifer and other people would support this, this statute is very clear. There's lots of clarity in

the actual statute about what Congress intended and while a gray area may be really left with this whole issue of how to substantially limited defined, Congress is very clear in the statute of saying how they don't want it defined, how they want it to be a lower standard and so I think people can actually operate quite well knowing that they should air on the side of, you know, agreeing that a person with some documentation is a person with a disability and I think that's what Congress intended, so, you know, we wrestle and I personally wrestle with this, will people be harmed in their period of time between January 1st and the time that we actually get something out?

And we all know the court systems and our own system doesn't work all that quickly and sometimes unfortunately if the law becomes effective that date and there are regulations, I'm not sure that all that many people will be harmed. But I rationalize and think to myself, if somebody does get harmed by us not having regs out by January 1st and at the end of the day we're going to have better regs and protect millions of people with disabilities, somehow, I can live with that. I can sleep better as a result of that. But I really, again, knowing how quickly a complaint goes through our process, our administrative process and then, you know, actually gets to court, I can almost, depending on whether we get a third republican into the commission, I can almost guarantee we'll have regs out before somebody gets through that process.

>> ANDY IMPARATO: This is Andy. I just want to say, I think

given the very broad bipartisan support for the statute and what Chris talked about in terms of to a large degree the employer representatives and disability representatives that worked on and have a similar perspective on the regulations, I'm hoping that when this thing does ultimately get issued, that it has unanimous support from the commission. I mean, to me that's our best-case scenario and that's what we should be shooting for. But I think when you rush a process, it's hard to get that support.

>> CHRISTINE GRIFFIN: That's right.

>> ANDY IMPARATO: I wanted to raise a question for anybody on the panel. There's going to be a lot of attention, obviously, at the beginning of the next administration on an economic stimulus package and we know that President-elect Obama has talked about broadband deployment as part of what he wants to do around infrastructure in the economic stimulus. I'm wondering if people see opportunities to advance our civil rights agenda as part of a stimulus package and if that's, you know, something that people were thinking about?

>> CHRISTINE GRIFFIN: Well, you know, I personally -- you know, I have this whole view that, you know, employment of people with disabilities is, you know, the thing that's going to change society's views about people with disabilities. So I have always seen employment as really one of the most important issues for people with disabilities because it is where we really do

change peoples' views about who we are and what we want out of life. And frankly, it's the same thing everyone else wants. But a lot of times we don't get that view put forth until working side by side with people. So employment, I think, is key to changing all of society's views about people with disabilities.

And, so to that end, I'm always talking about employment and when I think about the stimulus plan, it certainly is a piece that we cannot be left out of. And when we think about the economy and unemployment and all that, I don't think -- I don't think it's the right time to sit back and actually say, oh, well, now, you know, it's never going to happen for us because we have these great years of employment and yet we weren't getting the jobs and we saw our unemployment and all the nonparticipation rate of people with disabilities in the workforce at major highs which they are still there.

So I think it's very, very important that we are in there saying that we need to be a piece of the economic stimulus plan and we need to be enforcing the whole issue around employment in the federal government and the private sector; that because people are losing their jobs, it isn't a time to say oh, well, we need to sit back and I think that's what we have traditionally done. To say, oh, this isn't the time to include people with disabilities.

I think we just say, you know, there's never been a right time to date and now is the time and we now have a president that's saying it, supporting it and we just need to make sure it happens.

>> JENIFER SIMPSON: I just wanted to say something about the broadband. I think there's going to be two areas for people with disabilities to be looking at around the broadband issues. One is exactly what you said, Chris, the employment issues but particularly around how people with disabilities use the internet. I mean, I think we need to be looking at maybe discounts in terms of either affordable issues as well as accessibility issues for people with disabilities and that's something we look at in terms of the policy direction. The universal service fund is clearly an area where we can see some discounts for certain populations so they can access broadband, you know, cheaper than others. But the other area and I think we haven't talked about it here and I believe it's employment related is the health information technology agenda. This is a huge agenda where basically our health care system is going to be tied to the health care policy agenda, I believe. Is where more and more we're going to see information technology as a means to, you know, cut the costs and deal with the problems that we see in health care service delivery.

This has issues of people with disabilities in terms of control over their record, their privacy issues and fundamentally in terms of accessibility and usability of those records because, you know, privacy is one of the concerns I've been looking at but it's also about if you're an employee of a health care service delivery and you need to access some of that information technology and you have a vision disability,

how are you going to get to it?

You know, if it requires a phone system in order to sort of tap into the system, how are employers with hearing disabilities going to be able to be able to use those new health information systems. Plus we have a huge population of people with disabilities using public health care systems, Medicaid, Medicare. So as the states look to cut costs through information technology, you know, we have this issue is care going to be contingent on using information technology systems. So there is a lot to dialogue about in our community around broadband and how it's going to be used generally in our society as we move forward. So I'm pointing to health care as an area that we need to examine deeply as well as the employment specifics, like how you access it. How you get to the broadband, how you use it as a consumer with a disability. So I just wanted to point to the two areas where I think that we have got something in broadband where we really need to grab it and run away with it.

>> JENNIFER MATHIS: And the Medicaid issue is certainly a big one. I think a lot of folks in the disability community are hoping that Medicaid will be part of -- Medicaid changes will be part of the stimulus package. You have a number of governors now calling on the federal government to do that because they're forced to cut Medicaid in ways that I think will make it more difficult for people with disabilities to remain productive and remain in the workforce and certainly, you know, may even result in greater Medicaid expenditures on

the other end, you know, and people sort of lose their ability to function in the community and end up in institutional settings, so, you know, certainly I think this is an environment where there is a lot of support for doing something with respect to Medicaid and the stimulus package.

>> DAY AL-MOHAMED: This actually goes back to what I was talking about very much so because if we think about it, the two bills where we talked about previously are where we invited people from the disability community to come into because they had a benefit. The stimulus package is the reverse of that, where the community went to general legislation and said you need to pay attention to the disability perspective as a part of this whole. It gets shoveled further down. The same thing, ethnic minorities used to get abused and so some extent still are. So playing an active role in that is absolutely critical or else we're going to end up left behind. I'm listed as working for the American psychological association. It's a professional association. They cover -- yeah, they do address some mental health conditions, but I'm working for them because it's a disability. There are psychologists with disabilities, they work with people with disabilities, not necessarily about their disability. But it's something that's an issue of importance and so it became something that they wanted to do. And so by the same argument, economic stimulus, health care reform, you know, broadband, all of these -- these general things instead of disability specific bills, we need to push that a disability perspective is included because otherwise that

integrated change that we're talking about or integration is not going to happen. Lawsuits are where legislation fails, so if we're not as a part of legislation to begin with, then we're going to end up in the lawsuits area.

>> ANDY IMPARATO: Ken?

>> MALE AUDIENCE: This is Ken Morris.

I just want to add, I mean, I think another partner would be AARP. I mean, you may probably are partnering with them but a lot of things we have been talking about just on the broadband technology, AARP is a perfect partner for this and a powerful partner.

>> ANDY IMPARATO: And they have a key partner on the coalition that worked on the ADA Amendments Act getting it passed and they're now working on the regulatory side of it. Dan Coreman who is one of their litigators, is also very engaged with the American Diabetes Association, the National Employment Association and was a bridge between a lot of different constituents but I think AARP in general is getting more and more interested in disability policy and being a leader on these issues and it's something that, you know, as I see happening across a lot of policy areas. Any other questions or comments from anybody in the room?

>> SUSANNE BRUYERE: I want to thank our panel on behalf of Cornell University and NIDRR's Employment Policy, RRTC. This has been a terrific addition to the end of the calendar year series this year. So I really appreciate your time, your energy and your enthusiasm around this topic. I also want to

ask everyone, if you would give us the benefit of your feedback about today's event, an evaluation and to those of you who are at a distance, there's 33 folks who are online, if you would also do your evaluation, which will show up immediately at the end of the session, we'd appreciate that. We do take it seriously and we use it to improve our next event. So thank you.

(Applause)