

CLOSING THE GAP:
A TEN POINT STRATEGY FOR THE NEXT DECADE OF
DISABILITY CIVIL RIGHTS ENFORCEMENT

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NATIONAL COUNCIL ON DISABILITY

I. BACKGROUND

In 1996, 300 disability leaders at a national summit on disability policy in Dallas, Texas called for an end to discrimination and more vigorous enforcement of disability civil rights laws. These same leaders charged the National Council on Disability (NCD) to work with the responsible federal agencies toward achieving that goal. By 1996, NCD had already published several reports documenting indicators of weak enforcement and its impacts, particularly on communities of people with disabilities from diverse cultures. After the summit, NCD examined the practices and track records of federal agencies charged with enforcing major federal disability rights laws. In a series of reports entitled *Unequal Protection Under Law*, NCD documented findings and recommendations on the federal enforcement of the Air Carrier Access Act (ACAA), the Individuals with Disabilities Education Act (IDEA), and the Americans with Disabilities Act (ADA). Each report showed that despite great strides toward equality, people with disabilities still deal with major ongoing barriers of discrimination and the consequences of weak federal enforcement.

This year in May, NCD convened Think Tank 2000: Advancing the Civil and Human Rights of People with Disabilities from Diverse Cultures. This group of experts from diverse cultural, professional and disability backgrounds was charged with developing action steps for fully implementing disability rights laws at the community level for people from diverse cultures and other under-served groups. Within a month after this meeting, NCD convened a second group, the Civil Rights Retreat, to build upon the Think Tank 2000 plan of action and the *Unequal Protection Under Law* reports. These experts, also from diverse cultural, professional and disability backgrounds, were charged with mapping out the elements of a ten-year strategy for more effective civil rights enforcement.

The resulting ten point strategy represents a collective effort by people from many diverse backgrounds to reach past their own community perspectives to understand and lend a hand to one another on the road to full equality. They realized that to make a difference, the plan must speak to people across the boundaries of disability, race, culture, age, education and income. It must affirm the fundamental truth that power comes from unity, and from power comes a mighty force for change. To succeed, the plan must inspire leaders who not only can bring together people from many different civil and human rights perspectives, but who can inspire them to unified action. For it is people – from every community in the land and every

station in life – acting together from a common vision of equality, who will keep the promise of inclusion, independence and equal opportunity for all.

II. PROPOSED STRATEGIC ACTION PLAN

The reality of inclusion and equal opportunity for all can only be attained through collaboration and cooperation at all levels, inspired by bold and enlightened leadership. Leaders from all public and private sector interest groups – the Administration, the Congress, grassroots advocates, state and local public agencies, education, business, religious, professional and civic organizations - must come together and decide what each group can and should do to get us there. Organizations such as the National Council on Disability and the U.S. Commission on Civil Rights will continue to articulate with increasing clarity the policy goals before us. Others will be catalysts and organizers of change by mobilizing and activating constructive action.

ACTION STEP 1: Build Bridges: Equality is Everybody's Business.

Activate people from every disability, human and civil rights movement around their shared passion for equality and create a common agenda for full inclusion. Affirmative outreach to people who share a common commitment to civil and human rights will create new alliances from which new leadership and powerful strategies for change can emerge. Steps for building bridges that can lead to unified action among people from diverse cultural, political and disability backgrounds are:

- (a) **Understand Each Other** – Hold workshops, conferences and conventions where members at every level (national, state and grassroots) of the various civil rights constituencies can regularly exchange views and share experiences.
- (b) **Develop a Common Agenda** – Survey civil and human rights organizations of all kinds to identify national and grassroots organizations willing to collaborate on developing a common agenda and shared goals in the areas of civil rights issue-identification, policy-development, monitoring, litigation and advocacy.
- (c) **Mobilize for Action** – Support the emergence of leadership and cross-cultural action coalitions at the national, state and local levels around specific strategies to advance the implementation and enforcement of civil and human rights laws.
- (d) **Think Globally** - Broaden the membership and work of coalitions through international outreach to disability, civil and human rights advocates with

similar values and goals. Invite marginalized and emerging groups lacking civil and human rights protections to join the movement.

ACTION STEP 2: Know What to Do and How to Do It: Knowledge is Power.

Culturally competent, accessible and low-cost information and training impart the skills to effectively fight discrimination. Cross-cultural coalitions of knowledge and technical experts are needed to develop multi-format, multi-language information and training systems (on-line and traditional) for identifying, evaluating and applying the information needed to overcome the barriers to equality.

Collectively, these systems must:

- (a) **Accommodate the needs of all users** around accessing, understanding and applying information (i.e., multiple languages, multiple information presentation formats, and multiple levels of data complexity.)
- (b) **Be interactive** (responsive to user questions);
- (c) **Provide broad access to cross-referenced information on civil rights implementation and enforcement** so people can find the resources they need to access their rights and where to locate these resources.
- (d) **Elicit continuous feedback from consumers and users** so that systems are continually redesigned to meet consumers' changing needs.

Besides creating training and information systems everyone can use, interested action groups must devise strategies for ending the digital divide. This includes getting the federal government to enforce technology access laws. The goal is an end to all barriers based on disability, cultural difference or income, and equal access to present and future training and information technologies for all people.

ACTION STEP 3: Elect a Disability-Friendly President and Congress to Fix What Needs Fixing.

Action coalitions across disability and other civil and human rights groups should bring people together to initiate and support the following measures:

- (a) **Ask for Commitments** - Ask all candidates for political office to publicly declare their philosophies on civil rights and their commitments to enforcement. Use the power of the disability community vote to elicit public declarations from political candidates.
- (b) **Make Allies** - Develop ongoing relationships with members of Congress, state

legislators, and key legislative and executive branch staff at the federal, state and local levels. Develop strategies for engaging the disability and civil rights communities in key Congressional and state government committees and other political activities geared to effective civil rights enforcement.

- (c) **Tell Them the Bottom Line** - Conduct a broad and bipartisan education outreach strategy on the goals of inclusion and independence and the vital importance of:
- Support for the full implementation and enforcement of all existing civil rights laws, including adequate funding for enforcement;
 - Opposition to amendments to any civil rights law that would undermine the intended protections and benefits;
 - Support for amendments designed to correct statutory deficiencies or correct case law that has undercut the intended protections or benefits of civil rights laws, particularly the narrowing of the ADA definition of disability by the federal courts, and the lack of statutory provisions for compensatory damages.
- (d) **Get the Word Out** - Use the most advanced grassroots organizing and notification techniques to:
- Publicize detailed information on legislators' voting records and other public stands on civil-rights related issues; and
 - Enable the largest number of concerned stakeholders to express their opinions on proposed bills and upcoming votes to decisionmakers.
- (e) **Tell it Like it Is** - Create and implement a Civil and Human Rights Impact Statement (pursuant to a statutory requirement or stakeholder monitoring) like the well-known Environmental Impact Statement, which spells out implications of proposed legislation on the rights and opportunities available to Americans with disabilities and other protected classes.
- (f) **Make Democracy Work: Participate** – Action coalitions across the country should organize their members to:
- Register and vote;
 - Create disability-friendly political planks and platforms; and
 - Elect us! Promote, nominate and vote for disability-friendly candidates, including disability and other coalition leaders.

ACTION STEP 4: Raise the Money and the Bar on Federal Enforcement.

Pressure for effective enforcement must come not just from the bottom up, but also from the top down. Strong leadership must also come from the President in setting a standard of greater federal commitment to deliver on the promises of disability and other civil rights laws. The President should exercise leadership to:

- (a) **Give disability issues high visibility within the Administration.** Disability issues must have strong and visible priority at the highest level in the White House. One possibility would be for the President to appoint a strong advisor/spokesperson, similar to the AIDS czar, to speak for the President on all issues affecting disability policy. A function of this spokesperson could be to coordinate and integrate activities of all White House “policy and political” offices, as well as all federal agencies responsible for administering and enforcing disability rights laws and policy. Another function could be to use the bully pulpit of the White House to call attention to critical civil and human rights issues facing the disability community.
- (b) **Get the Federal Act Together** – The President should direct the U.S. Attorney General to:
 - Exercise bold leadership in developing a plan for systematically implementing the recommendations of the *Unequal Protection Under Law* reports.
 - Lead an interagency effort by all federal agencies having statutory enforcement responsibilities to coordinate their individual agency enforcement plans and develop a joint strategic action plan for vigorous overall enforcement of all disability rights laws.
 - Direct that both plans include specific outcome goals and performance indicators for measuring progress toward enforcement goals.
 - Direct continual and substantial input from the disability civil and human rights communities in developing the action plans and monitoring their implementation.
- (c) **Allocate money for enforcement** – Resources for enforcement are the joint responsibility of the President, who establishes the vision, the Congress, which appropriates funds for the agencies to carry out their enforcement mandates, the executive branch agencies, which request the necessary resources to enforce

civil rights as the law requires, and the public, which gives input on what the enforcement spending priorities should be. More funds must be targeted for specific federal enforcement activities, and especially for expanding, improving, and ensuring the quantity, quality and cultural competence of direct public interface services, (i.e., investigative, legal, technical and educational).

(d) **Require Accountability** – The President should require federal enforcement agencies to disclose their enforcement plans and activities to the public for feedback. Agency enforcement plans should be published periodically in the languages appropriate to their constituent communities. Stakeholder groups must be involved in giving feedback to the agencies on their enforcement plans, which should address the following:

- The agency's enforcement mission, goals, and objectives, including performance measures for meeting objectives;
- Budgetary and other resource allocations for civil rights enforcement;
- Enforcement priorities, how they were established and the distribution of resources among enforcement activities such as compliance reviews, case finding, complaint processing and adjudication, post-adjudication monitoring, and others;
- Settlement policies and factors influencing settlement outcomes, (i.e., case backlog, quality of available cases, number of referrals to mediation, etc.);
- Sanctions imposed and other enforcement actions such as corrective action plans initiated in response to persistent noncompliance;
- Coordination of enforcement activities, policies, record keeping and resources with those of other agencies.
- Methods for obtaining and using community input and feedback on enforcement methods and priorities.
- Criteria for determining when a civil rights law requires an amendment to successfully achieve its objectives.

ACTION STEP 5: Publicly Monitor Agency Accountability.

All people have a stake in civil rights enforcement. When it comes to effective enforcement, the only thing that counts more than well-informed constituencies are their ongoing demands for accountability. Monitoring groups typically consist of stakeholders selected for their interest in and knowledge of the agency or statute in

question. Coalition members (particularly those from diverse cultures) must become strategically involved with monitoring and advisory groups whose purposes are to assist agencies in their enforcement efforts. If agencies resist stakeholder involvement, enough precedents for organized stakeholder monitoring and public information about agency activities exist for such efforts to proceed effectively and responsibly. Stakeholder-monitoring groups should:

- (a) **Review and provide feedback on** the target agency's enforcement record as compared to its enforcement plan;
- (b) **Participate in assessing the agency activities against the performance standards/outcome measures** used by the target agency for monitoring progress toward civil rights compliance;
- (c) **Insist that sanctions be applied** to entities shown to engage in persistent discriminatory practices and fail in fulfilling corrective action plan measures.
- (d) **Identify and publicize** the target agency's failures to meet either statutory or enforcement plan requirements as to timelines, procedures, reporting and other matters.
- (e) **Counter political resistance to vigorous enforcement** by publicizing the grounds for agency enforcement and upholding the target agency's enforcement mandate.
- (f) **Raise enforcement issues** of national and international importance to the attention of federal administration officials.

ACTION STEP 6: Win in Court and Win the Courts Over.

Action coalitions must mobilize across civil and human rights groups to carry out a comprehensive strategy for making legal resources available to:

- (a) **Give People Access To The Courts** –The cost of litigation is beyond the financial reach of many, acutely affecting those from low-income communities who most need the protections of the law. Identify and create funding mechanisms to put competent legal representation within the reach of those who need it.
- (b) **Support Litigators** - Create and maintain document repositories including brief banks, pleadings, supporting memoranda of law, unpublished opinions, administrative law decisions, settlement agreements and other documents useful to attorneys in evaluating and arguing civil rights cases.

- (c) **Make it Worth It** - Pursue all available sources of funding to pay civil rights litigators and other providers of legal services (i.e., paralegals, mediators, etc.) for people with disabilities. Sources include legal services and protection and advocacy funds provided by the Federal government, attorney fee awards, damage awards, pro bono law firm programs, law school clinics, and damages available under state human rights laws that can be joined with the ADA, IDEA and other laws in civil rights suits.
- (d) **Train Interested Lawyers** - Help prepare members of the private bar to take on disability, civil and human rights cases by:
- Establishing and cultivating a disability bar with broad representation from all cultures and segments of the disability community.
 - Enhancing civil rights curricula in law schools and paralegal programs to include disability rights law;
 - Identifying sources of funding and reimbursement for representation;
 - Shortening the learning curve to assure the most cost effective and competent representation;
 - Providing representation opportunities under supervision for young lawyers in administrative and judicial proceedings;
 - Creating continuing legal education (CLE) credit opportunities (particularly in states where CLE is mandatory) in the disability, civil and human rights areas for interested attorneys and judges;
 - Compiling disability and civil rights bar directories listing and describing attorneys with interest and expertise in related areas of law;
 - Structuring mentoring and partnering opportunities to bring experienced and new attorneys, legal assistants and paralegals together;
 - Evaluating and publicizing the full scope of opportunities available for paraprofessional participation in representation and advising activities; and
 - Evaluating and developing curricula for training lay legal advocates.
- (e) **Profile Cases to Win** – Identify and post as a litigation aid the elements of “good cases,” the kind that when tried and won can help to redirect the course of negative case law.
- (f) **Foster Collaboration across Legal Systems** – Work with legislators and

lawyers to ensure the full protection of people's human and civil rights from the local to the national level. Special attention must be given to working with the sovereign tribal governments to craft tribal laws protecting the civil and human rights of Native American people with disabilities.

- (g) **Put Disability-Friendly Judges on the Bench** - Develop and implement a strategy for nominating and/or electing Supreme Court and lower court judges who uphold the values of the ADA.

ACTION STEP 7: Uphold the Spirit and Intent of the Law in Every Settlement.

Voluntary settlement mechanisms, including all forms of alternative dispute resolution (ADR) used in disability and other civil and human rights cases, should:

- (a) Ensure that voluntary settlement mechanisms (mediation, arbitration, conciliation and other forms of negotiated settlement) operate on a level playing field and uphold the protections of the law.
- (b) Use people from various disability, cultural and civil rights communities trained as mediators, facilitators and settlement agents.
- (c) Ensure that all mediators, facilitators and settlement agents are familiar with the issues raised by the cases in which they participate.
- (d) Ensure that complainants/parties, who on their own lack the experience or skills to present their positions effectively, are assisted by qualified individuals and entities.

ACTION STEP 8: Stand Up to Negative Press and Win the Media Battle.

Reeducate the public about the nature of discrimination and the meaning of equality. Discrimination against people with disabilities is perpetuated when the media reinforce false notions (i.e., reasonable accommodation means 'special privileges,') and stereotypes (i.e., people labeled with mental illness are highly disposed to violence) in the public mind. Only when the public understands that equal opportunity depends upon a level playing field will the final barriers to inclusion come down. Action groups within the civil and human rights communities need creative strategies for winning the media battle:

- (a) **Target people within the disability and civil rights communities who work in the media**, have media connections or experience, or are simply interested in civil and human rights issues as allies in getting out the truth on disability issues.

- (b) **Become known to media personalities** as visible and friendly sources of information and comment on developing disability and civil rights issues.
- (c) **Seek opportunities for regular coverage of issues from a disability rights perspective** in various media; identify individuals with the ability to do such media work on local levels.
- (d) **Bring positive stories to the media's attention** about the ADA and other civil rights statutes.
- (e) **Respond forcefully and immediately to erroneous or unfair stories** and statements appearing in the press.
- (f) **Identify those within the media industry** who use reasonable accommodations, but may not publicly identify as having a disability, to suggest the role civil rights protections play in creating meaningful opportunities for capable people.
- (g) **Push for a new category of recognition for excellence in disability rights coverage within an existing national award** in journalism, television or filmmaking.

ACTION STEP 9: Acknowledge Those Who Deliver on the Promise.

As important as holding accountable those who disregard or devalue civil rights is honoring those who uphold the values of equality of opportunity and inclusion. Action coalitions across disability and other civil and human rights groups should bring people together to pursue this strategy on at least two levels:

- (a) **Support public recognition and acclaim** – Encourage major awards for excellence administered by prestigious public or private groups, (i.e., Malcolm Baldrige awards) to include disability as an award criterion to publicly promote the value of inclusion.
- (b) **Support leaders of change** – Publicize the practices of school systems, businesses, and other public and private organizations that support the civil and human rights of the groups they serve. These practices can include providing reasonable accommodations for employees and consumers, providing accessible web sites and other universally-designed products and services, and any other activities demonstrating commitment to inclusion and full participation. Persuade coalition members to support and acknowledge all organizations having positive civil rights track records.

ACTION STEP 10: Engage New Leaders with Disabilities.

Movements cannot thrive without replenishing their leadership and resources. Identifying, inviting, training and supporting young and other emerging leaders with disabilities from all cultures are core coalition activities. Action coalitions across disability and other civil and human rights groups should ensure ongoing progress into the future by:

- (a) **Involving** youth and other emerging leaders in coalition civil rights activities;
- (b) **Sponsoring** leadership activities and curricula in elementary and secondary schools, as well as colleges and universities;
- (c) **Promoting** essay and other civic contests, service awards and other activities for youth and other emerging leaders in the community;
- (d) **Conducting** leadership and training institutes promoting civil rights and mainstream leadership development; and
- (e) **Establishing** youth chapters and affiliates within all coalition member organizations.

III. CONCLUSION

The great civil and human rights laws of this country have spurred a new era of progress for the nation. Despite many enforcement problems, great strides have been made. How much greater the progress will be then as systemic and other artificial barriers are overcome. The strategic actions having the greatest long-term impact will be those geared to strengthening enforcement capacity from the federal to the local level, clarifying, protecting and enhancing the provisions of civil rights laws, and supporting political candidates who publicly commit to delivering on the promises of those laws.

However important they have been and will continue to be, the laws are only tools. The driving force for change comes from the people and their unified action to make the vision of the law a reality in our daily lives. The purpose of this plan is to promote the empowerment necessary to achieve full equality of opportunity for all people living in this country. A sense of mission among those who have a stake in fully implementing civil rights laws will forge bonds and generate momentum among people across disability, cultural and advocacy groups to advance the status

of any marginalized group in society. Ultimately, it will unleash the action needed at all levels to deliver on the promise of equality.