



AIRMAIL

ALABAMA DISABILITIES ADVOCACY PROGRAM VOL. 5, ISSUE 1 MAY 2000

THE UNIVERSITY OF ALABAMA SCHOOL OF LAW CLINICAL PROGRAMS



WORK MUST GO ON FOR 'THE LEAST OF THESE'

by James Tucker and Ann Marshall

On January 20, ADAP advocates for patients in Alabama's mental health system settled the three-decade-long *Wyatt v. Stickney* case with Gov. Don Siegelman, Attorney General Bill Pryor and Commissioner Kathy Sawyer of Alabama's Department of Mental Health and Mental Retardation. The settlement leaves clients with a legacy of civil rights protections and increased services.

The legal case has grown from a high-risk infancy through a turbulent adolescence into adulthood that many observers might prefer to ignore. Nevertheless, *Wyatt* represents an important story of progress in the history of how we care for those persons who are judged to be, in the biblical sense, "the least of these" in Alabama.

Lest we forget, when U.S. District Judge Frank Johnson issued his first landmark decisions in *Wyatt* in 1972, persons who were involuntarily institutionalized in state-run mental health and mental retardation facilities possessed no minimal constitutional rights to adequate care and habilitation. They did not possess such rights in Alabama, nor in any other state in the country.

RIGHT TO TREATMENT

Wyatt was the first "right to treatment" case in the United States. Judge Johnson wrote the original *Wyatt* order that ended "warehousing" of people with mental illness and mental retardation in Alabama, and eventually the country. States could not take away a person's freedom by committing that person to a state

facility unless the state also provided treatment in that facility, the judge said.

Alabama's mental health system at the time of the original *Wyatt* order was horribly overcrowded, with more than 5,000 patients housed on the Bryce Hospital campus in Tuscaloosa alone. (Today, approximately 600 patients live at Bryce.) Apocryphal stories of hearses arriving at midnight to carry out the dead and garden-hose baths are legion. Patients literally could not go to sleep at night unless they walked across row upon row of beds in large dormitories. Many spent decades languishing in institutions without proper care, good food or humane conditions.

In Judge Johnson's order, he also set out minimum constitutional standards of care, many of which have become the backbone for professional standards of care throughout the nation.

Lest we forget, when Judge Johnson issued his first opinions in the early 1970s, he found that the then-existing "programs of treatment failed to conform to any known minimums established for providing treatment to the mentally ill" or the mentally retarded. Judge Johnson's eloquent words speak for themselves:

"There can be no legal (or moral) justification for the State of Alabama's failing to afford adequate (medical) treatment to the several thousand patients who have been civilly committed to Bryce for treatment purposes. The failure to provide suitable and adequate treatment to the mentally ill cannot be justified by a lack of staff or facilities. (I)ndefinite delay cannot be approved."

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ALABAMA EQUIPMENT RECYCLING PROGRAM: *Providing Assistive Technology to Alabamians with Disabilities*

by David Gamble, Case Advocate

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The Alabama Equipment Recycling Program (AERP), a project of the Alabama Department of Rehabilitation Services and STAR (Statewide Technology Access and Response), provides assistive devices to people with disabilities across Alabama to aid them in employment, independent living, and community involvement. The AERP repairs and rebuilds donated or reclaimed devices and equipment such as manual and power wheelchairs, walkers, environmental control units, bathroom devices, and computers. These devices are then loaned at no cost to individuals with disabilities for as long as the devices are needed. In addition, the AERP trains assistive technology users or family members on the operation and maintenance of devices to ensure that the equipment meets their needs.

AERP equipment and services are provided free of charge through the Alabama Department of Rehabilitation Services and STAR. Equipment donations from agencies and other concerned citizens are welcome. For more information, please call the AERP Toll-Free Service Line at 1-888-923-8764.

New Address

Alabama Governor's Office on Disability
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On Point

Ms. Wheelchair of Alabama

was established in 1974 to promote increased awareness of individuals with disabilities. The organization continues to stress the productivity, creativity, dignity, and values of persons with disabilities.

As Ms. Wheelchair 2000, I am striving to promote awareness and opportunities for people with disabilities as well as promoting the removal of architectural and attitudinal barriers. Children are my special interest. Going into the 21st Century, with all the medical technology, there is much for them to gain and much to be accomplished in the future. I need your love and support. Through my smile and laughter I hope to encourage children with disabilities to grow up and be leaders of the future. It is important that our children understand that we are all different, but we still have the same goals as anyone else. I try to allow them to ask questions, and make myself approachable.

We must always pursue our rights as human beings. We have the right to go anywhere and do anything with our lives. We must take our disabilities and turn them into the ability to achieve what we desire to become. I've come to realize this thanks to Graham Sisson, Deputy Attorney General for the Alabama Department of Rehabilitation Services. He is my "ROLL" model.

Five words describe me: sincere, compassionate, cheerful, well informed, and confident. I believe (1) in positive attitude, (2) we should treat others the way we want to be treated, and (3) in being able to laugh at ourselves. Laughter really is the "best medicine."

Ms. Wheelchair Alabama 2000
Ms. Janet Ratliff

P.S. For speaker information contact Jennifer Smith at 1-800-671-6837 or 205-290-4501.

Editor's Note: We have seen many of the same strengths and attributes in our own Angie Hendrix, case advocate at ADAP, who is the former Ms. Wheelchair of 1994 from Wyoming.



ADAP is a statewide, independent program established to protect, promote and expand the rights of adults and children with disabilities.

Airmail is published to provide information on issues and events of interest to people concerned about the rights of persons with disabilities. Organizations and individuals are encouraged to submit articles to be considered for publication, plus editorials. Inquiries may be sent to Segail I. Friedman, Information Specialist, at the address printed below.

Airmail is published by Alabama Disabilities Advocacy Program (ADAP) of The University of Alabama School of Law Clinical Programs.

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UPDATE

Access to Justice

by Patrick Hackney, Staff Attorney

Last April, ADAP received a grant from the Alabama Law Foundation to undertake the "Access to Justice" project. The primary goal of the "Access to Justice" project is to make several county courthouses in Alabama, and the programs and services located in them, accessible to persons with disabilities as required by Title II of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and their implementing regulations. When the "Access to Justice" project is completed in March 2001, the "front door" of citizenship, the county courthouse, will hopefully be open to all residents of Alabama. One way to facilitate the goal of full participatory citizenship for all persons is to make the county courthouses of Alabama and the state programs located in them accessible to persons with disabilities.

ADAP is pleased to report that courthouses in all Alabama's 67 counties had been surveyed at the time this *Airmail* went to press. The degree of accessibility varies greatly among the county courthouses. Greene County is home to the most accessible courthouse, almost in full compliance with the accessibility provisions of the ADA and Rehabilitation Act. The entrance, restrooms, water fountains, and most public spaces are fully accessible. The courtroom is somewhat accessible with wheelchair seating available in the spectator area. However, the witness stand and jury box are not wheelchair accessible. In addition, the number of accessible parking spaces is inadequate. Because the barriers in the Greene County courthouse would be relatively easy

... it is apparent that many counties have taken steps to improve accessibility to their courthouses for persons with disabilities.

to remedy, the courthouse could be made fully accessible with relatively little expense.

After reviewing the completed surveys, it is apparent that many counties have taken steps to improve accessibility to their courthouses for persons with disabilities. Nevertheless, as of this date, most courthouses remain largely inaccessible. For example, inadequate numbers of accessible parking spaces are available to persons with disabilities, ramps are often too narrow for wheelchair users, elevator buttons are too high, and bathrooms are usually inaccessible. Generally, the jury boxes and witness stands are inaccessible to wheelchair users. With relatively little expense, this kind of barrier can be easily remedied with a portable ramp.

To assist in completion of the surveys, ADAP vigorously recruited and trained individuals with disabilities and their family members to survey county courthouses. In addition to publishing an article in a previous edition of *Airmail* to recruit surveyors, members of the disability community and service providers were contacted and asked to provide the names of individuals who might be interested in assisting with this project.

After recruiting individuals to assist with the survey process, ADAP provided five one-half day training sessions to teach surveyors how to complete the surveys. During the training, Patrick Hackney and Ann Marshall, Coordinator of Outreach and Training, explained Title II of the ADA, how to complete the survey, and what to do if a surveyor encountered any problems. The training sessions were held in Birmingham, Dothan, Huntsville, Mobile, and Montgomery. At least 20 individuals attended the training sessions.

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ADAP has now begun to contact individual counties regarding survey results. For counties that have features which are accessible to persons with disabilities, ADAP plans to applaud the counties for their efforts. For example, if a county courthouse's entrance is fully accessible, ADAP will explain that the county is making positive steps toward achieving full accessibility. Then, the letter will list in detail the features, if any, which are not lawfully accessible. ADAP will offer to provide technical assistance to counties, includ-

ing inexpensive solutions to any accessibility problems encountered.

By the end of the grant cycle, ADAP plans to be in active negotiations and/or assisting at least fifteen counties to bring their courthouses into full compliance with federal law. Although ADAP has taken several significant steps toward achieving its mission, a great deal of work remains to be done to realize the goal of fully accessible county courthouses throughout Alabama.

Casey Martin Debuts on the PGA Tour

by Patrick Hackney, Staff Attorney

On January 19, 2000, Casey Martin made his debut as a card-carrying member of the Professional Golfer's Association (PGA) Tour at the Bob Hope Chrysler Classic in California. Martin's debut on the PGA Tour is remarkable because he won a courtroom battle against the PGA Tour to use a golf cart while playing in tournaments. Casey Martin successfully sued the PGA Tour under the Americans with Disabilities Act (ADA) for the right to use a golf cart. The Tour argued that walking injected an element of fatigue in the game, but a Federal District Court in Oregon agreed with Martin's argument that being allowed to use a cart is a "reasonable accommodation" under the ADA. Although the PGA Tour appealed the Federal District Court's ruling, the Federal Court of Appeals for the Ninth Circuit upheld the ruling of the lower court. "The central competition in shot-making would be unaffected by Martin's accommodation," Judge William Canby said in the 3-0 ruling. "All that the cart does is permit Martin access to a type of competition in which he otherwise could not engage because of his disability. That is precisely the purpose of the ADA."

Casey Martin has a rare disability which affects the circulation in his right leg, and he requires a cart to get around a course. Martin wears a stocking on his right leg to control swelling. His leg is so brittle he risks a fracture with any misstep or twist on uneven ground. However, Martin accepts the risk because his lifelong dream is to play on the PGA Tour. Martin lives with the pain associated with his disability in order to pursue his dream. Roy L. Reardon, a lawyer for Martin, called the ruling "a great result for the millions of other disabled in the United States who are simply looking, through the Americans with Disabilities Act, for an opportunity to just participate."

Ironically, the PGA used carts in the first tournament of 2000 to shuttle players to a tee at the top of a hill, saying it was a tough walk, which led to concerns about the pace of play. Speaking about the use of carts by the PGA, Martin has been quoted as saying, "Isn't it interesting [the PGA Tour] make[s] exceptions for everyone except for people with disabilities."

DogEtiquette

or how to train people to behave around Assistance Animals

by Segail Friedman






Angie & Lewis







Service animals, like humans, come in many shapes, sizes and types. This article will be a review course for many, but it is always good to reconfirm what we think is right to do when we come face to face with a service animal.

The Americans With Disabilities Act (ADA) guarantees a person who is blind, deaf, has a physical disability, or otherwise disabled, the legal right to be accompanied by a service animal in all areas where people without assistance animals can enter. A person's disability does not have to be readily visible to use or need a service animal. "Assistance animal" means any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability. People who appear "normal" have every right to use a service animal for any condition recognized under the ADA, such as anxiety, panic attacks or seizures.

The following tips are offered when meeting or approaching a working assistance dog and his partner:

First, relax. These dogs are carefully tested and selected for appropriate temperament. They have been professionally trained to have excellent manners. They are clean and should not bite, vomit or relieve themselves on your floor or furniture.

-  Speak to the dog owner and not the assistance dog. Most owners do not mind talking about assistance dogs and their dog specifically if they have the time.
-  Do not touch the working assistance dog as this is a distraction and may prevent the dog from doing his job for his human partner.
-  Do not whistle or make sounds to the dog as this again may provide a dangerous distraction.

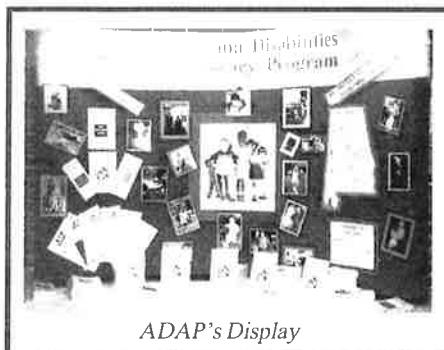
-  Never feed the dog; it may be on a special diet. These animals are generally on a feeding schedule as well. Food is the ultimate distraction to the working dog and can jeopardize the working assistance dog team. Slipping working animals "people food" can upset their digestive systems and this could be very difficult for the owner—just imagine if someone who is visually impaired had a dog with an upset tummy!!!
-  Offer assistance (if you feel obliged) and wait for a response. Let the animal do its job and perform for the owner. Assist the handler ONLY upon his/her request. Do not try to take control in situations unfamiliar to the animal or its handler.
-  Never make assumptions about the individual's intelligence, feelings or capabilities.
-  Never call the dog by its name. For safety reasons, some people who are blind or visually impaired will not reveal their guide dog's name to a stranger.
-  Working animals do get to play and be "normal animals," usually at home or sometimes at a park or other recreational areas.
-  Never, ever tease or abuse any animal.

Yes, ignoring a smart, friendly, well-behaved animal is very difficult because everyone likes an animal that behaves. When you see an animal in a harness with an identifying vest or patch, it means the animal is working and performing functions for its owner.

Additional information about assistance animals can be found on the website of Great Plains Assistance Dogs Foundation <http://www.greatplainsdogs.com/> and International Association of Assistance Dog Partners (IAADP) <http://www.iaadp.org/>.



Lunch Break



ADAP's Display

Passage of the Americans with Disabilities Act (ADA) has altered the legal landscape for persons with disabilities in the United States over the last ten years. These photographs illustrate various activities at the ADA Symposium cosponsored by ADAP.

ADA SYMPOSIUM

March 3-4, 2000
Tuscaloosa, Alabama



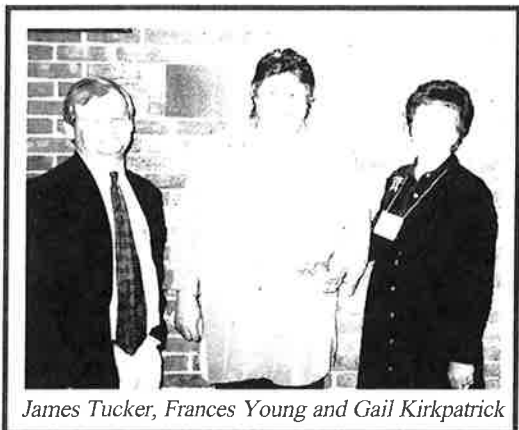
The Symposium initiated discussion regarding where the last 10 years have taken us, what we can expect in the next decade, and how we can help shape the future for Americans with disabilities, their families, and their advocates.



Peggy Mastroianni and Bonnie Tucker



Alabama Supreme Court Justice John England, Debora Hester, Reuben Cook and Eloise Woods



James Tucker, Frances Young and Gail Kirkpatrick



Kim Maryland, Debora Hester and Al Vance

HAVE NOT CHANGED

MANY CHANGES

Lest we forget, as Wyatt has matured to the ripe old age of 30, many changes have occurred in its life. Very quickly after the initial orders in the case, the case was expanded to cover persons in state-run mental retardation institutions like Partlow and others. The case was expanded to include virtually all state-run mental health and mental retardation facilities, including not only Bryce and Partlow, but also Searcy, Greil, Thomasville, North Alabama, Brewer, Tarwater, Wallace, Eufaula and others.

Lest we forget, many of the players have changed. Judge Johnson, the original trial judge, died last year. The identities of the facilities, the lawyers and the state officials have changed. Indeed, most of the plaintiff class members have changed.

However, some things have not changed. Almost incredibly, some of the patient/plaintiffs who were original members of this important class action remain institutionalized in state-run facilities. One other thing has not changed in 30 years and will not change, even long after the Wyatt suit has come to a close. In the words of Judge Johnson again: "To deprive any citizen of his or her liberty upon the altruistic theory that the confinement is for humane therapeutic reasons and then fail to provide adequate treatment violates the very fundamentals of due process."

Even as some people applaud the settlement of this case and the opportunity to move forward, we must remember that as the day has come to end Wyatt, our work is not done. We must rededicate ourselves to work for the well-being of people with mental illness and mental retardation in Alabama in whatever form that struggle may take.

Lest we forget.

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The State of Alabama Challenges the Constitutionality of Title II of the ADA

The State of Alabama challenges the constitutionality of Title II of the ADA. Does the Americans with Disabilities Act (ADA) protect people with disabilities from their own state governments? Unfortunately, in the near future, the answer to this question may be no.

by Brian Condon, third year law student and Patrick Hackney, staff attorney

Sometime, in the year 2001, the United States Supreme Court is expected to render a decision in a case involving questions about the constitutionality of the ADA. The case at issue, *Garrett v. The Board of Trustees of The University of Alabama*, presents the Court with the following controversial question: Are the states immune under the Eleventh Amendment from ADA suits brought by state employees? In deciding *Garrett*, the Court could very well rule, directly, that the states are immune from ADA suits raised

by state employees and, by implication, that the states are also immune from lawsuits brought by anyone against the states under the authority of the ADA.

against employment discrimination. State employers may be allowed to refuse to hire and/or fire people with disabilities at will, and may no longer be required to provide em-

Potentially, effect of such a decision would be that people with disabilities would no longer be able to sue state entities for viola-

Are the states immune under the Eleventh Amendment from ADA suits rought by state employees? . . . Under such a decision, states may no longer be required to comply with the ADA s mandate against employment discrimination. . . .

tions of the ADA. Under such a decision, the states may no longer be required to make their buildings and services accessible. State capitols, state courts, and state universities, among others, may no longer be required to provide wheelchair ramps, interpreter services, or written materials in an accessible format. In addition, under such a decision, states may no longer be required to comply with the ADA's mandate

employees with disabilities reasonable accommodations in the workplace.

The main issue involved in *Garrett* will force the Court to consider whether Congress had the constitutional authority to apply the ADA against the states by penetrating the state's Eleventh Amendment immunity through a reliance upon the Enforcement Clause of the Fourteenth Amendment. Some states

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Repair of Assistive Technology (RAT) Centers: A Wheelchair Repair Program for Small and Rural Communities Developed by The Statewide Technology Access and Response (STAR) Project

by David Gamble, case advocate

People who use wheelchairs and live in one of Alabama's small or rural communities understand how inconvenient it can be to get repairs or standard maintenance performed on their wheelchairs. Since most wheelchair vendors or repair centers are located in large cities, it is likely that these individuals have to go out of town for maintenance or find someone locally to do the work who is unfamiliar with the mechanics of a wheelchair. When wheelchair users do not have the time or the means of transportation to take their chairs to a repair center in the city, a flat wheelchair tire can mean missing work or school. Their only alternative may be to ship the damaged chair to the vendor or manufacturer. If they have only one functional chair, this can lead to great expense and inconvenience.

To make wheelchair repair and upkeep more convenient for residents of small and rural communities, the STAR Project (Statewide Technology Access and Response System for Alabamians with Disabilities) has developed the Repair of Assistive Technology (RAT) Program. RAT is a network of bicycle and other small repair shops across the state specially trained to perform repair and maintenance of wheelchairs. Because the mechanics of wheelchairs are similar to those of bicycles, bike shops are uniquely suited to serve as RAT Centers. Wheelchair repair and maintenance costs performed by RAT Centers are similar to bicycle repair costs. Call STAR at 1-800-782-7656 for the name of the RAT Center nearest you.



PUBLICATIONS: NEW ARRIVALS, NEW ARRIVALS

Protection & Advocacy: Individualized Service Plan for Children Affected by the R.C. Case. This publication provides a step-by-step guide to help assure that all class members receive individualized services based on their unique strengths and needs. Information contained in the pamphlet was derived from the R.C. Consent Decree and State Department of Human Resources ISP Policy.

ON THE SHELF

Protection & Advocacy: A Guide to Self-Advocacy leads one through the steps each advocate uses when assisting someone. These steps include believing in yourself, gathering information, tips for writing letters, using the telephone, and finding additional information.

Continued on page 3

believe that Congress did not have this authority. The basic premise of the states' argument is that they believe the ADA has provided much greater protection for people with disabilities than does the Equal Protection Clause. In other words, the states believe that the ADA was not enforcing rights guaranteed under the Equal Protection Clause but, rather, it was creating special rights for persons with disabilities that the Constitution does not guarantee. The states advocate that such a creation is unconstitutional because they argue Congress does not possess the constitutional authority to stretch the Enforcement Clause of the Fourteenth Amendment and the Equal Protection Clause to force states to provide allegedly equal treatment or accommodation for people with disabilities, as required by the argument, the ADA. In support of their states assert that the ADA was unaccomplished by any finding that a widespread violation of the constitutional rights of people with disabilities required the creation of prophylactic remedies.

The Fourteenth Amendment, after all, does guarantee equal protection to everybody, including people with disabilities.

The ADA, however, represented Congress' considered efforts to remedy and prevent what it perceived as serious widespread discrimination against people with disabilities. The plaintiffs argue that Congress did have the authority to invoke the use of Section 5 of the Fourteenth Amendment because they were attempting to remedy a historically persistent and intentional violation of Equal Protection rights. The Fourteenth Amendment, after all, does guarantee equal protection to everybody, including people with disabilities. However, how the United States Supreme Court will decide *Garrett* remains unclear.



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ON THE SHELF, IN THE WORKS

Protection & Advocacy: The ABCs of IEPs for Persons with Developmental Disabilities lists the services the child will receive, sets goals and explains how the child's progress will be evaluated.

Special Education in Alabama: A Right, Not A Favor is a manual that explains how the special education process is supposed to work in Alabama. It defines some of the terms and concepts involved in the education of children with disabilities, and it answers some of the questions that parents may have about legal rights.

IN THE WORKS

Pamphlets are being written and edited on **Filing Habeas Corpus Writs, Issues of Persons Acquitted—Not Guilty by Reason of Insanity (25.8 Petitions)** and **Guardianship** will soon be available. Look for announcements in future issues of *Airmail*.

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WORK INCENTIVES IMPROVEMENT ACT OF 1999

ALL AMERICANS SHOULD HAVE THE SAME OPPORTUNITIES TO BE PRODUCTIVE CITIZENS.

In November last year, the House of Representatives passed the Work Incentives Improvement Act of 1999. The President challenged Congress to pass this bill in his State of the Union address, and fully funded it in his 2000 budget. It gives people who want to work a chance to do so by removing the out-dated rules that end Medicaid and Medicare coverage when people with disabilities return to work. It modernizes the employment services system for people with disabilities. It also affirms the basic principle manifested in the Americans with Disabilities Act that **all Americans should have the same opportunities to be productive citizens.**

“Ticket to Work and Work Incentives Improvement Act of 1999”

- increases beneficiary choice in obtaining rehabilitation and vocational services;
- removes barriers that require people with disabilities to choose between health care coverage and work; and
- assures that more Americans with disabilities have the opportunity to participate in the workforce and lessen their dependence on public benefits.

IMPROVES HEALTH CARE OPTIONS FOR PEOPLE WITH DISABILITIES BY:

Removing limits on the Medicaid buy-in option for workers with disabilities. This act creates two new options for states that build on a Medicaid buy-in created by President Clinton in the Balanced Budget Act of 1997. First, it lets states remove the income limit of 250 percent of poverty (about \$21,000), allowing them to set higher income, unearned income, and resource limits. This important change allows people to buy into Medicaid when their jobs pay more than low wages but may not have access to private health insurance. Second, it creates the option to allow people with disabilities to retain Medicaid coverage even though their medical condition has improved as a result of medical coverage. This act also provides \$150 million over five years in health care infrastructure grants to states to support people with disabilities who return to work.

Creating a new Medicaid buy-in demonstration to help people who are not yet too disabled to work. This act provides \$250 million to states for a demonstration to assess the effectiveness of providing Medicaid coverage to people whose condition has not yet deteriorated enough to prevent work but who need health care to prevent that level of deterioration. For example, persons with muscular dystrophy, Parkinson’s Disease, or diabetes may be able to function and continue to work with appropriate health

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ADA Torch Relay

The Alabama **Official Torch Relay** will begin in Selma, Alabama on July 15, 2000 at 8:30 a.m. as part of Initiative 2000. The national relay caravan and crew will cross the historic Edmund Pettus Bridge commemorating the powerful Voting Rights Act of 1965 and the 1990 ADA. Both acts helped to move our nation closer to inclusion and an "America For All." The mission of the Relay is to connect, inform, educate and involve people across the United States in celebrating the contributions of the 54 million children and adults with disabilities to American society. After crossing the bridge, State Troopers will escort the caravan to Montgomery where the official ceremony will begin around 12:00 noon on the Washington Street side of the Capitol.

Numerous requests have been received from parents of children (under 10-years-old) with disabilities to include them in the relay along with their siblings. In response, there will be a **Mini-Spirit of ADA Torch Relay**. Parent and student volunteers will assist with this two-way relay around the Capitol Semi-circle of Flags so that every child who wants to be involved will have the opportunity.

Among the official torchbearers are ADAP's own James Tucker who was instrumental in the settlement of the Wyatt lawsuit, Governor Don Siegelman, Senator Wendell Mitchell, a faithful disability rights advocate and chair of the Initiative 2000 Steering Committee, Department of Mental Health and Mental Retardation Commissioner Kathy Sawyer, DD Executive Director Sheryl Matney and son Eric who has several disabilities and numerous other supporters.

Spirit of ADA Torch Relay Goals

Reinforce support for the goals of the ADA and IDEA by renewing America's commitment to equality of opportunity, full participation, independent living and economic self-sufficiency for all people with disabilities;

Bring attention to the achievements and contributions of children and adults with disabilities;

Increase relationships, partnerships, and coalitions between people with disabilities, their family members and friends and the broader communities where they live;

Highlight importance of continuing on the path to building accessible, inclusive and integrated communities where children and adults with disabilities have the same opportunities and choices that are often taken for granted by people in the broader society.

Progress has been made since the ADA (1990) and IDEA (1975) were enacted but there is more work to be done before "liberty and justice for all" become reality for all children and adults with disabilities. Disability is a natural part of the human experience, and should never limit a person's ability to make choices, pursue meaningful careers or participate fully in all aspects of life.

To participate in all aspects of these events please contact:

Barbara F. Crozier
Governor's Office on Disability (GOOD)
5731 Oakwild Drive
Montgomery, AL 36117-2917
Toll-free number: 1-888-879-3585
Fax: 334/353-0333
E-mail: bcrozier@good.state.al.us

See you in Montgomery July 15, 2000!



care, but such health care may only be available once their conditions have become severe enough to qualify them for SSI or SSDI and thus Medicaid or Medicare. This demonstration would provide new information on the cost effectiveness of early health care intervention in keeping people with disabilities from becoming too disabled to work.

Extending Medicare coverage for people with disabilities who return to work. This act extends Medicare Part A premium coverage for people on Social Security disability insurance who return to work for another 4-1/2 years. This means the difference between a monthly premium of nearly \$350 (which is about the cost of purchasing Part A and B coverage) and \$45.50. Although Medicare does not currently provide prescription drugs, which are essential to people with disabilities, this assistance will be available nationwide, even in states that do not take the Medicaid options.

ENHANCES THE EMPLOYMENT SERVICES SYSTEM BY:

Creating a "Ticket to Work Program." This new system will enable SSI or SSDI beneficiaries to obtain vocational rehabilitation and employment services from their choice of participating public or private providers. If the beneficiary goes to work and achieves substantial earnings, providers would be paid a portion of the benefits saved.

MORE INFORMATION:

This landmark legislation modernizes the employment services system for people with disabilities and makes it possible for millions of Americans with disabilities to no longer have to choose between taking a job and having health care. Visit the Health Care Financing Administration's (HCFA) informational website for additional details.

Special Education Policy Project

ADAP Launches New Program to Improve Education for Kids with Disabilities

Nancy Anderson, staff attorney

Assisted by a grant from the Alabama Council for Developmental Disabilities, ADAP has launched a Special Education Policy Project, a campaign that will develop and support systemic advocacy efforts for children with disabilities in state school reform movements.

This new program will direct advocacy efforts towards state policymakers, with the goal of improving Alabama's special education services so that children with disabilities can receive the schooling to which they are entitled and that will enable them to be independent and productive members of their communities.

Each year, almost eight hundred parents call ADAP with questions about special education services for their children. ADAP social workers and attorneys provide technical assistance, investigate problems and advocate for appropriate solutions with families and school districts. These individual advocacy efforts, however, affect only a limited number of children and don't address the systemic problems that persist across the state.

Continued on page 7

One Day

by Mom

It is Monday morning and the house is quiet after another weekend. I should be cleaning up my son's room but it's a task I'll probably put off until tomorrow. It's just too much for right now. I only have to do it once every three weeks but the day after he leaves to go back to his residential treatment placement finds me exhausted.

My son is 12 years old and has not lived with us fulltime for over a year. Our family is healing. We actually have had friends over for dinner a time or two. My younger girls have settled into a peaceful routine and have become more outgoing. My husband and I have been able to spend some time together. For these things I am grateful. But, my heart is heavy and I long for the laughing, happy little boy that once was my son.

Josh came to us as a foster child when he was a year old, along with his two sisters. At a year he had had multiple placements due to health

and orthopedic problems. But he was a happy, good baby. He was always smiling. That has all changed.

We adopted all three of the children along with two older teenagers and with our birth child our family was complete. Josh is the youngest. We've been blessed with three grandchildren. Our home is warm and friendly with a lot of love.

This hasn't been enough for Josh. We haven't been able to provide whatever it is to help him grow into a happy, secure adult and this hurts deeply. We saw to it that he had all the therapy, outside activities counseling, special classes, camps, toys, pets, family, love, etc. that we've given all the children. We've done all we have known to do. So now he lives apart from us. This is what is best for him.

The treatment facility is wonderful. I love the staff. The facility is beautiful. The school there is excellent. He gets all his needs met.

But, as I sit here in the quiet of this house on this Monday morning my heart longs for my son. All I can do is pray that one day he'll be well enough to come home. That one day our family can enjoy each other again. That one day —

Continued from page 6

“Student discipline, implementation of IEPs (individualized education programs) and inclusion – these are some of the issues that come up time and time again for kids with special needs,” says Reuben Cook, Director of ADAP. “This Project will create a two-fronted attack: we'll address problem areas like these on a system-wide level while at the same time addressing them on the individual case level.”

The Project will develop collaborative efforts among consumers to establish priorities for special education policy research and advocacy efforts. State and federal legislative and regulatory actions that impact children with special education needs will be tracked. An education campaign to keep consumers up-to-date on policy issues will be developed. Finally, the Project will provide mechanisms through which advocates and parents can have their input heard regarding these policymaking efforts.

For more information about the Special Education Policy Project, contact Nancy Anderson at ADAP at 1-800-826-1675.

WYATT SETTLEMENT PROGRESSES TO NEXT STEP

Incorporated as part of the Wyatt Settlement, the Alabama Disabilities Advocacy Program (ADAP) and the Department of Mental Health and Mental Retardation (DMH/MR) are to work together “in a spirit of cooperation” on various workgroups. The workgroups are designed to address issues of concern in the treatment of persons with mental illness and mental retardation. There are 15 members on each workgroup, representing consumers, advocacy organizations, families and DMHMR. Each committee has been charged by the Commissioner to address issues contained in the Wyatt Settlement Agreement for creation of the three-year plan. The plan is due in September. Members representing ADAP are:

DMH/MR Advocacy Advisory Committee James Tucker
Continuous Quality Improvement MI Christy Raney
Continuous Quality Improvement MR Lauren Carr
Census Reduction MI David Prince
Census Reduction MR James Tucker
Person-Centered Planning MI Christy Raney
Person-Centered Planning MR Lauren Carr
Community Services Assessment MI Angie Hendrix
Community Services Assessment MR Reuben Cook
MI Rate Setting Ann Marshall
MR/DD Waiver Development David Gamble

Airmail is funded 100% with federal funds through: • Administration on Developmental Disabilities (PADD) • Center for Mental Health Services (PAIMI) • U.S. Department of Education/Rehabilitation Services (PAIR and PAAT)

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Update: *The Garrett Case* *The ADA Challenge*

Patrick Hackney, Staff Attorney

On August 11, 2000, 37 Alabama organizations representing people with disabilities and their families filed a legal brief, written specifically for the Alabama disability community, with the United States Supreme Court challenging Attorney General Bill Pryor's attack on the Americans with Disabilities Act (ADA). The Alabama organizations joined numerous other national disability organizations as well as other states' attorneys general as they filed "friend of the court"

briefs challenging Pryor in the *Garrett* case. In *Garrett*, Attorney General Bill Pryor has said states should not be required to pay money damages if a state's acts violate the ADA.

According to disability advocates, Pryor claims states' laws provide enough protection for persons with disabilities, and Congress did not have the authority to impose the ADA on the states because states have not had a bad enough pattern of discrimination against persons with disabilities to warrant such intervention. However, Dr. Alys Hayden, director of the ARC of Alabama, strongly disagrees with Pryor's position. She states, "We cannot get into our county courthouses. We cannot take our children into state-funded day-care centers. We cannot even simply walk into some state offices to ask questions about how our own government is treating us."

An adverse decision in this case could potentially doom the

ADA as it applies to State and local governments. It is within the realm of possibility that all of Title II of the ADA, which bans discrimination in access to public services such as education, health and mental care, and other programs operated by states and localities, could be declared unconstitutional. The following situations would be the result of such a decision: people unnecessarily institutionalized in state hospitals, nursing homes, and other state institutions would no longer have recourse under the ADA; States would no longer have to make their buildings and services accessible; and State employers could terminate or refuse to hire at will persons with disabilities. These are the very reasons Alabama organizations that advocate for persons with disabilities felt compelled to file the brief.

Oral argument in *Garrett* is scheduled for the fall and a decision should come early in 2001.

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The Ability Loan Program: Helping People with Disabilities Purchase Assistive Technology

David Gamble, Case Advocate

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Information Specialist

As a result of efforts by the STAR Project (Statewide Technology Access and Response System for Alabamians with Disabilities), SouthTrust Bank, N.A. in Alabama and the Southern Disability Foundation, Inc., offer the Ability Loan program, designed specifically to help people with disabilities or their families purchase adaptive equipment and services. Ability Loans provide people with disabilities the opportunity to obtain *affordable* loans to purchase adaptive equipment that can improve their productivity, independence, and quality of life. Any person who has a disability or has a family member with a disability is eligible.

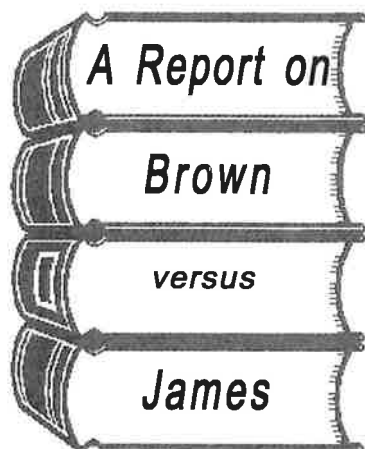
Items covered by the Ability Loan program include telecommunications devices; orthotics and prosthetics; closed circuit televisions; computer adaptive access or output; Braille machines; environmental control units; augmentative or alternative communication devices; wheelchairs; adaptive driving controls; power lifts; ramps; roll-in showers; and any other device or related service. SouthTrust Bank and the Southern Disability Foundation, Inc., make low-interest, extended-term loans available up to \$10,000, depending on the cost of the adaptive equipment needed and your demonstrated ability to repay the loan. You may borrow up to 100% of the cost of the equipment and related services.

To apply, obtain a written quotation and description of the adaptive equipment you wish to purchase. Pick up a loan application from any SouthTrust Bank, the Southern Disability Foundation, or a Foundation advocate. SouthTrust or the Foundation can supply you with the names and telephone numbers of advocates in your area. Call SouthTrust Bank at 1-800-CALL STB (1-800-225-5782) or the Southern Disability Foundation at 1-800-782-7656. For those with hearing impairments, call 1-800-239-8553 (TT/TTY).

Take a description and price quote for the desired adaptive equipment and/or service to a Foundation advocate. If you need help, an advocate will help you prepare the loan application and supporting information needed to process your application. The advocate will then send the application and supporting documentation to the Southern Disability Foundation, which reviews it for suitability and cost of the adaptive equipment. The Foundation will forward your application to SouthTrust for a credit and financial evaluation in order to determine your ability to repay the loan. If you are approved, you will receive instructions on how to obtain your loan from SouthTrust Bank.

After the Southern Disability Foundation reviews your application and need for the adaptive equipment, it will take no longer than 30 days for SouthTrust to process the loan application and notify you about whether the loan has been approved.

In June of 1998, ADAP and the Southern Poverty Law Center filed a class action lawsuit challenging Alabama Medicaid's policy of not funding augmentative and/or alternative communication devices and services for Medicaid eligible individuals with severe speech and/or language impairments. ADAP also entered as a plaintiff in this lawsuit. The lead plaintiff in this class action lawsuit was a six year old little girl who has a speech disorder and cannot communicate without the aid of an augmentative communication device. The initial complaint alleged that Alabama Medicaid, through its refusal to provide payment for an augmentative communication device for the lead plaintiff and other similarly situated persons, violated the Federal Medicaid Act, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act.



David Gamble, Case Advocate



ADAP is a statewide, independent program established to protect, promote and expand the rights of adults and children with disabilities.

Airmail is published to provide information on issues and events of interest to people concerned about the rights of persons with disabilities. Organizations and individuals are encouraged to submit articles to be considered for publication, plus editorials. Inquiries may be sent to Segail I. Friedman, Information Specialist, at the address printed below.

Airmail is published by Alabama Disabilities Advocacy Program (ADAP) of The University of Alabama School of Law Clinical Programs.

As a result of this lawsuit, Alabama Medicaid provided payment for an augmentative communication device for the lead plaintiff. In addition, **Alabama Medicaid now covers augmentative communication devices and services for eligible children and adults with severe speech and/or language impairments.** Alabama Medicaid's policy for covering augmentative communication devices has been made part of the Alabama Medicaid Agency Administrative Code, Chapter 13. Alabama Medicaid also published a notice announcing that augmentative communication devices are covered as durable medical equipment.

The settlement agreement entered into by ADAP and Alabama Medicaid provided for a one-year monitoring period to insure proper implementation. During this one-year period ending January 1, 2000, ADAP monitored Alabama Medicaid's compliance through the provision of individual and systemic advocacy to ensure that Medicaid complied with both their own policy covering augmentative communication devices and the terms of the settlement agreement. Pursuant to the settlement agreement, Alabama Medicaid provided Plaintiffs' counsel quarterly reports on March 1, June 1, September 1, and December 1, 1999. These reports listed all applications for augmentative communication devices that have been denied, including the details of each such application and the basis for the denial.

Brown v. James is now officially settled; however, ADAP continues to advocate on behalf of Medicaid eligible children and adults with severe speech and language impairments who need augmentative communication devices. If you have questions about how to secure funding through Alabama Medicaid for an augmentative communication device, please contact David Gamble at ADAP. David will explain your rights to augmentative communication devices/services under this policy and how to pursue those rights.

Box 870395
Tuscaloosa, Alabama
35487-0395

205-348-4928 - V/TTY
205-348-3909 - FAX
800-826-1675 - in-state
e-mail
ADAP@law.ua.edu
website
<http://www.adap.net>

Rolling Freedom Express

Get on the Bus!

ADA All the Way

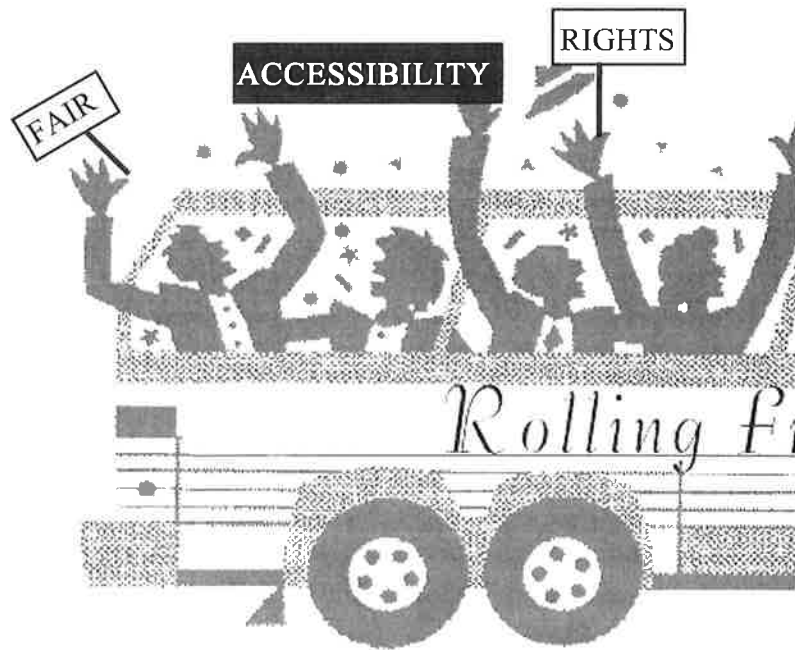
Don't tread on the ADA

The Americans with Disabilities Act (ADA) is under attack. In early October, the U.S. Supreme Court will hear the *Garrett* case and the constitutionality of the ADA will be decided.

WHAT IS THE "Rolling Freedom Express"?

The "Rolling Freedom Express" is a bus tour, which will start in Alabama (the state which challenged the constitutionality of the ADA), pass through seven states and end up in Washington, DC, September 30th. At each stop along the "Rolling Freedom Express" an event is being organized. Supporters are encouraged to join the Express along the way or organize a local caravan to get people to the "Rally and March for Justice," on October 3 in DC.

Bus stops are listed at the end of this article. Arrangements for transportation, lodging and food along the route are the responsibility of each individual, group or local caravan joining the Express. For general information call 512/442-0252. For information on the Alabama activities call **Judy Roy, Independent Living Center, 205/251-2223, Ext. 102, e-mail at: bhamilc@bellsouth.net** or **Ann Marshall, ADAP, 800/826-1675, e-mail at: ADAP@law.ua.edu.**



Congratulations

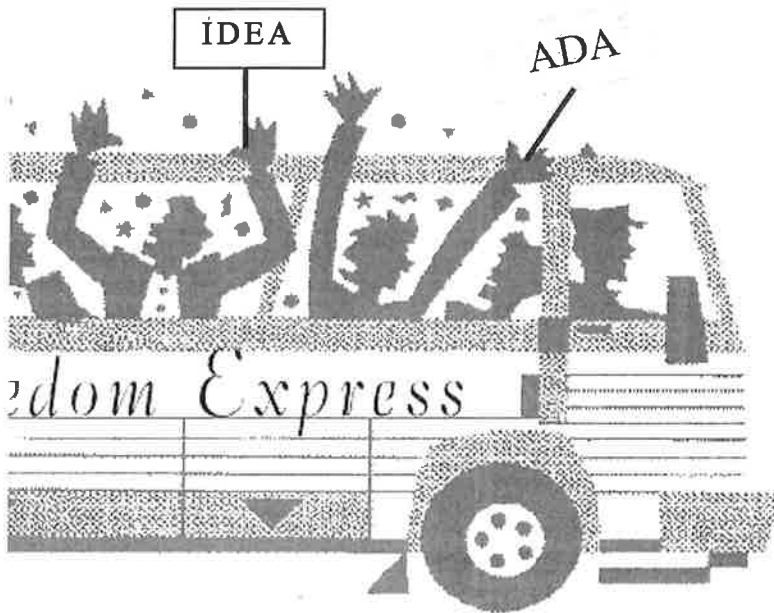
Angie Hendrix and Lewis, Michael Carr and Patrick Hackney receive diplomas at Partners in Policymaking of Alabama (PIPA) graduation. PIPA is a leadership training program dedicated to creating a productive partnership between self-advocates and parents of children with disabilities and those in a position to make policy and law.

The program provides a great opportunity to network with others who encounter some of the same concerns and barriers everyone who lives with disability shares, while learning how to become better advocates for self and loved ones. The monthly training sessions gave these people the chance to learn, have fun and enhance their lives in an environment that is relaxed, comfortable and stimulating all at the same time.

WHAT CAN I DO IF I CAN'T JOIN THE NATIONAL
"Rolling Freedom Express"?

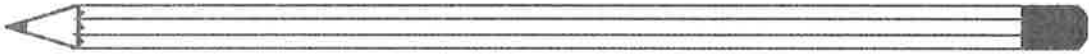
- ⊙ Get involved in Alabama's own Freedom Express Rally.
- ⊙ Volunteer by calling Judy Roy or Ann Marshall.
- ⊙ Participate in the "Rally and March for Justice" noon, Tuesday, October 3, 2000 in Washington,

- DC, Upper Senate Park, near the Supreme Court, where thousands of ADA supporters will gather to send the message "Don't Tread on the ADA."
- ⊙ Organize a local caravan to get people to the local rallies or the national march.
- ⊙ Organize a local event on October 3, 2000 to coincide with the national "Rally and March for Justice," and to call attention to the threat of people with disabilities losing their civil rights.
- ⊙ Participate in the event nearest you.
- ⊙ Get your local public officials to sign the Spirit of ADA Pledge, which can be found at <http://www.spiritofada.org>, Pledges/Petitions.
- ⊙ Share this information with people with disabilities, their advocates and family, and other individuals or organizations.



Bus Stops

Friday, September 22 – Birmingham or Montgomery
 Saturday, September 23 – Atlanta, GA
 Sunday, September 24 – Nashville, TN
 Monday, September 25 – Louisville, KY
 Tuesday, September 26 – Columbus, OH
 Wednesday, September 27 – Pittsburgh, PA
 Thursday, September 28 – Harrisburg, PA
 Friday, September 29 – Philadelphia, PA
 Saturday, September 30 – Baltimore, MD
 Saturday, September 30 – Washington, DC



WYATT REPORT

Eleven appointed Wyatt workgroups developed recommendations for each area of concern and issued a final report for review. Each report was sent to the DMH/MR Management Steering Committee, the DMH/MR Board of Trustees, and finally to the Commissioner in August, for final approval by September 1, 2000.

A number of ADAP staff members have been appointed as "primary" monitors for individual facilities as outlined in the agreement. If you have questions or concerns regarding a specific facility, the following people have been assigned accordingly:

- Partlow Lauren Carr
- Wallace David Prince
- Tarwater James Tucker
- Brewer Patrick Hackney
- Bryce Christy Raney
- Thomasville Angie Hendrix
- Searcy Reuben Cook



Initiative 2000
July 15

ADA



The *Spirit of ADA* was everywhere--around us, in us and through us the goals of the Torch Relay were met. We reinforced support for the goals of the ADA and IDEA by renewing America's commitment to equality. Our enthusiasm brought attention to the achievements and contributions of individuals with disabilities. We demonstrated the relationships necessary to achieve goals. Plus, our participation highlighted the importance of continuing to build accessible, inclusive and integrated communities where people with disabilities have the same opportunities others often take for granted.

Thank you everyone!! ■

ADAP PROPOSED PRIORITIES

FISCAL YEAR 2001

With input from consumers, advocates, ADAP's councils, and the public at large, the following priorities are proposed for FY 2001

Comments may be submitted to ADAP by September 30

CHILDREN'S ISSUES

PADD, PAIMI, PAIR*

1. Protection of the rights of children with disabilities who are placed in or at risk of being placed in foster care.
2. Protection of children from abuse and neglect in residential facilities.
3. Advocating for provision of appropriate services for children with multiple needs.

EDUCATION

PADD, PAIR*

1. Ensuring that children with disabilities are educated with their non-disabled peers to the maximum extent appropriate by advocating for placement in the least restrictive environment with appropriate supports and services.
2. Advocating for development and implementation of appropriate education programs, pursuant to IDEA and Section 504, for children age 3 to 21.

3. Advocating for appropriate practices, procedures and policies with respect to the discipline of children with disabilities.

RESIDENTIAL PLACEMENT

PADD, PAIMI*

1. Ensuring that residential facilities are safe and that residents are free from abuse and neglect.
2. Advocating for appropriate community placements and supports for persons in state-operated institutions and for appropriate transitional services for those persons.
3. Advocating for appropriate treatment for persons in state-owned institutions and in community placements.

ADA/DISCRIMINATION ISSUES

PAIR, PADD*

1. Advocating for access to state and local government programs and services.

2. Advocating for access to public accommodations.
3. Assisting persons who have been discriminated against with regard to housing by coordinating with other agencies who specialize in this area.

ASSISTIVE TECHNOLOGY

PAAT*

1. Advocating for Medicaid payment for power wheelchairs for adults with disabilities.
2. Advocating for special education provision of assistive technology to children with disabilities.

***NOTE**

ADAP's four programs are designated as follows:

PADD=Protection and Advocacy for Persons with Developmental Disabilities

PAIMI = Protection and Advocacy for Individuals with Mental Illness

PAIR = Protection and Advocacy for Individual Rights

PAAT = Protection and Advocacy for Assistive Technology

ADAP DEVELOPS CLIENT SATISFACTION SURVEY

A message from ADAP Director Reuben Cook

We at ADAP want to hear from our clients and the disability community about all aspects of our programs. This Client Satisfaction Survey will give our public an opportunity to provide input into our services. Please provide me and my staff an honest appraisal our efforts to serve you.

Alabama Disability Advocacy Program (ADAP) Confidential Client Survey

We are always striving to improve our services. Please answer the following questions and drop this card in the mail. Postage not required.

My telephone calls were promptly returned.	Agree _____	Disagree _____
An advocate listened to my concerns.	Agree _____	Disagree _____
An advocate was prompt and responsive to my request for help.	Agree _____	Disagree _____
The information I received was useful.	Agree _____	Disagree _____
An advocate was knowledgeable on the issues.	Agree _____	Disagree _____
Written materials were clear and helpful.	Agree _____	Disagree _____
ADAP helped me resolve my issue.	Agree _____	Disagree _____

How satisfied overall were you with the help you received from ADAP?

Not satisfied _____ Satisfied/OK _____ Very satisfied _____

Please tell us why you were satisfied or why you were not satisfied _____

I am willing to discuss my comments.

I want to remain anonymous.

Name (Optional) _____

Telephone # _____

Best time & day to call _____

Airmail is funded 100% with federal funds through: • Administration on Developmental Disabilities (PADD) • Center for Mental Health Services (PAIMI) • U.S. Department of Education/Rehabilitation Services (PAIR and PAAT)

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REUBEN COOK
DIRECTOR
ADAP
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EDUCATION TASK FORCE ISSUES STATUS REPORT ON SOCIAL PROMOTION AND RETENTION

Nancy E. Anderson, Staff Attorney

Chaired by Homewood Superintendent Jodi Newton, the task force issued its first report at the Board's recent August work session. The report recommended that the state develop a comprehensive reform program that would enhance all students' learning and virtually eliminate the need for social promotion or retention.

SOCIAL PROMOTION VS RETENTION

Extensive national research examined by the task force showed that neither social promotion nor retention benefits students.

Social promotion — the prac-

Last December, the State Board of Education commissioned a 32-member task force to examine the effects of social promotion and retention on student achievement and on Alabama's education system as a whole.

tice of passing students on to the next grade level even though they haven't mastered the necessary knowledge or skills in the previous grade — has been pointed to as one of the main reasons why many colleges and businesses must spend time and money giving high school graduates remedial training in such basics as reading. The National Association of School Boards of Education, in the February 1999 issue of *Policy Update*, reports that critics of social promotion suggest that the practice "gives students a false sense of achievement, conceals school failure, and makes standards meaningless."

At the same time, studies examining the practice of retention suggest that children get little long-term academic benefit when they are retained and that they are very likely to suffer both socially and emotionally because of the experience. In fact, children who are retained one year are five times more likely than similar at risk students to drop out of school. When a child has to repeat two grades, there is almost a 100% likelihood that he or she will drop out.

Since social promotion and retention both shortchange students, the task force rejected both practices and instead recommended far-reaching programs and support systems that it believes will ensure success at high levels for all students.

"ALABAMA'S SUCCESS INITIATIVE"

The hallmarks of the task force's proposed "Success Initiative" are:

- ✓ *School Readiness* – providing opportunities so that all children are ready for school, including equal access to voluntary, high quality pre-school and kindergarten programs;
- ✓ *Academic Support* – providing the structure and capacity in every school to meet the needs of every learner by establishing, for example, focused intervention and remediation strategies that capture student learning problems early;
- ✓ *Parental Support* – encouraging effective parent and community support for children;
- ✓ *Benchmarks* – defining performance standards (benchmarks) for course content; using frequent and

Continued on page 6

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ENHANCING TECHNOLOGY ACCESS AND ATTITUDES (ETA): A DISABILITY AWARENESS PROGRAM FOR STUDENTS, TEACHERS, PARENTS, AND PROFESSIONALS

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SEGAIL FRIEDMAN

Information Specialist

Individuals with disabilities are no different than anyone else. They work, play, attend school, and are active members of their community. Persons with disabilities, however, also may face additional challenges in their lives. Because many people are not familiar with what it is like to live with a disability, they can be frightened by or insensitive to people with disabilities and their needs. Therefore, STAR (Statewide Technology Access and Response System for Alabamians with Disabilities) has developed an entertaining and informative program to explain what it is like to live with a disability, as well as to educate attendees about how assistive technology can help people with disabilities live more independently.

Enhancing Technology Access and Attitudes, or ETA, programs use speakers with disabilities from your community. They will share their experiences and answer any questions. The program also provides hands-on activities to give participants the chance to experience how individuals with disabilities meet some of their daily challenges.

For individuals with disabilities, assistive technology helps overcome many challenges at school, in the workplace, and in the community. As part of the ETA presentation, participants will have an opportunity to try different devices and equipment currently available and learn from ETA speakers about the vital role that assistive technology plays in their lives.

The objectives of ETA are:

- to increase understanding about various disabilities through active learning experiences, and to foster more positive attitudes toward individuals with disabilities;
- to facilitate community and school partnerships;
- to promote acceptance of individuals with disabilities in all aspects of school and community life; and
- to promote awareness about the importance of assistive technology in overcoming a disability.

The ETA program is free of charge and, though originally designed for students, can be customized for different audiences such as parents, teachers, and professionals. Among the topics that can be added to the ETA curriculum are:

- the role of assistive technology in a student's transition to the community;
- accessing and utilizing community resources;
- developing a funding strategy to purchase assistive technology; and
- inclusion of assistive technology in the individualized education plan.

Call STAR at (334) 613-3480 or toll-free at 1-800-STAR-656 to have a customized ETA program presented to your group or organization.

FEDERAL BENEFITS KNOW YOUR CHOICES FOR RECEIVING PAYMENTS

Segail Friedman, Information Specialist

The Federal Government is converting to electronic deposits for benefits payments. But, whether you receive Social Security, Supplemental Security Income (SSI), Veterans benefits or retirement benefits, you still have at least three choices to receive your Federal payments. Through the Electronic Funds Transfer (EFT) Campaign during 1999 the Federal government took the initiative to inform people of ALL their choices—both electronic and paper-based.

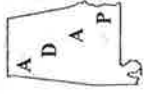
CHOICES

Direct Deposit. Recipients who have an account at a financial institution may choose Direct Deposit, which ensures payments are made electronically, and go directly into the recipient's account on time, every time. With Direct Deposit, weather, illness or vacation schedules won't affect when your payment gets into your account—it happens automatically. Gone are the days of waiting in line to cash or deposit your check. Thus there is no more fear about lost or stolen checks. Direct Deposit is simple, safe and secure.

Electronic Transfer Account, ETASM. For people who do not have an account at a financial institution, the U.S. Treasury Department has developed a low cost, federally insured account available to all Federal benefit recipients regardless of their financial background. The fee for an ETA is no more than \$3.00 per month. This allows you at least 4 cash withdrawals and 4 balance inquiries per month from a teller and/or ATM at the option of the financial institution. The ETA provides a monthly statement and imposes no minimum balance **except** as required by law. It provides people on fixed and/or low incomes access to the safety and security of EFTs.

Third Choice. Benefit recipients who are unable to speak or read English, pay required fees, locate convenient banking facilities or manage an electronic account because of mental or physical disability may continue receiving a paper check.

In eight states, recipients have a fourth choice for receiving Federal payments. Residents of the Southern Alliance of States (SAS) made up of Alabama, Arkansas, Florida, Georgia, Kentucky, Missouri, North Carolina and Tennessee can receive state benefits on a *Benefit Security*[®] Card. This Card gives beneficiaries access to state benefit payments at ATMs, point-of-sale terminals and financial institutions. For a small monthly fee, the same card can be used for Federal benefit payments.



ADAP is a statewide, independent program established to protect, promote and expand the rights of adults and children with disabilities.

Airmail is published to provide information on issues and events of interest to people concerned about the rights of persons with disabilities. Organizations and individuals are encouraged to submit articles to be considered for publication, plus editorials. Inquiries may be sent to Segail I. Friedman, Information Specialist, at the address printed below.

Airmail is published by Alabama Disabilities Advocacy Program (ADAP) of The University of Alabama School of Law Clinical Programs.

Promise Kept

A gentleman, who has difficulty walking and limited use of his arms, requested that the Fairfield, AL, Home Depot store purchase an electric scooter for his use in the store. He pointed out that other people with disabilities could use the scooter, and Home Depot promised to get a scooter. After numerous requests and numerous promises, and no scooter, ADAP was contacted.

One of ADAP's attorneys contacted Home Depot on behalf of our client. We are happy to report that a scooter has been purchased. ADAP's client has been shopping and reports that it is now so convenient and easy to shop at Home Depot.

Thank you Home Depot!

NEW GUIDANCE

The Equal Employment Opportunity Commission released its newest ADA Guidance on Disability-Related Inquiries and Medical Examinations of Employees.

Check out:

www.sedbtac.org/whats_new/pr/pr2000727.html
www.eeoc.gov/docs/guidance-inquiries.html

Also check out:

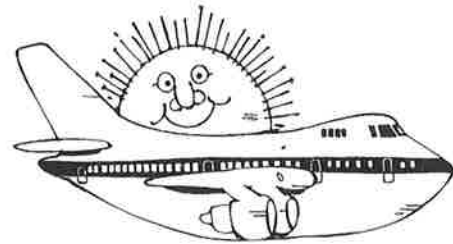
Questions and Answers: Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees under the ADA at:
www.eeoc.gov/docs/ganda-inquiries.html

DELTA AIRLINES INTRODUCES 'AIR CHAIR'

**adapted from monday morning, vol. 6, No. 13*

Delta Air Lines has introduced the first-ever hydraulic lift carry-on chair—the Delta Air Chair—used to transport passengers with disabilities onto aircraft.

The Delta Air Chair features a patent pending hydraulic lift system that elevates passengers to the height of the handrail so the airline employee can easily pass them over the armrest and lower



them into their seat. Currently, gate agents must lift passengers up from the carry-on chair, pass them over the armrest, and then lower them down into their seat. The new hydraulic technology promises to protect both passengers and airline employees from injury and to make the travel experience more comfortable for passengers with special needs.

Delta is testing more than 30 chairs in 16 of its airport operations throughout the United States. In 1999, Delta established a customer advocacy strategy to proactively design programs for customers with disabilities.

Delta says the hydraulic "Delta Air Chair" will enhance existing programs by providing a more efficient and dignified service for customers who require an aisle chair to board. They state they have a commitment to provide barrier-free travel to persons with disabilities.

LET YOUR BE HEARD **Vote**

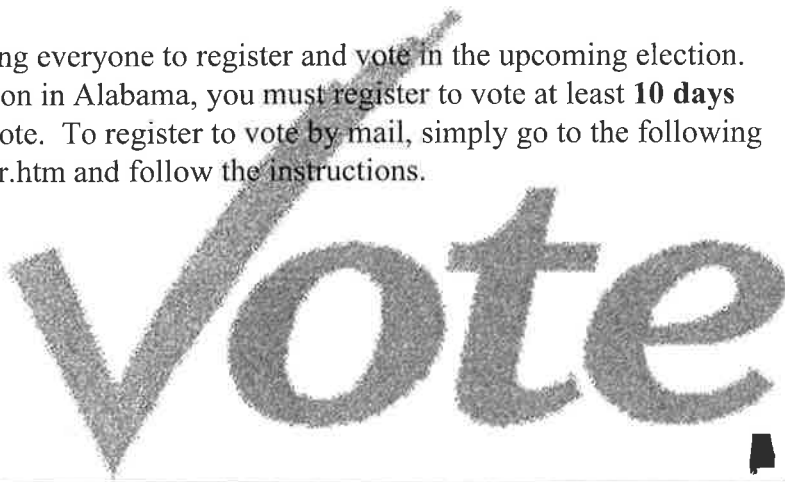
RIGHTS OF PERSONS WITH DISABILITIES WITH RESPECT TO VOTING

Patrick Hackney, Staff Attorney

The 2000 Presidential Election is rapidly approaching and ADAP encourages everyone, especially persons with disabilities and their family members, to register and vote in the upcoming election. Voting is one of the most fundamental rights in a democratic society. By voting in the upcoming election, persons with disabilities can send a message to government officials. That message is: Candidates who support the issues concerning persons with disabilities will be rewarded with votes from a group that historically has been underrepresented in the election process.

Although obstacles at polling places may hinder a person with a disability's ability to vote, there are federal laws, including the Americans with Disabilities Act (ADA), National Voter Registration Act (NVRA), and Voting Rights Act (VRA), in place to secure the right to vote for persons with disabilities. Title II of the ADA provides that public entities may not exclude or deny qualified individuals with disabilities the benefits of their programs, services, or activities. Under the ADA, a state or local government may have to provide a voter with one or more of the following accommodations: an explanation of instructions in a simpler language; a ballot accessible to individuals with hearing impairments; a friend or family member to accompany him or her into the voting booth; or assistance in casting a ballot (including curbside voting for inaccessible polling places). The NVRA, also called the "motor voter law," requires states to designate as voter registration agencies: (1) all offices that receive state funds and are primarily engaged in providing disability services and (2) all offices that provide public assistance. Such agencies must make available to their clients voter registration forms and assistance in completing them. In addition, the agencies must accept completed applications and transmit them to state officials. The VRA contains a provision requiring that any "voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice."

Again, ADAP is actively encouraging everyone to register and vote in the upcoming election. Please note that in order to vote in an election in Alabama, you must register to vote at least **10 days** prior to the election in which you wish to vote. To register to vote by mail, simply go to the following web address <http://www.fec.gov/votregis/vr.htm> and follow the instructions.

A large, stylized graphic of the word "Vote" in a bold, sans-serif font. A large checkmark is superimposed over the letter 'V', extending upwards and to the right. The graphic is rendered in a light gray, textured style.

ongoing evaluations to monitor student performance and to guide instruction and academic support needs;

✓ *Staff Development* – investing in sustained teacher professional development based on proven, research-based methodologies.

WHAT WILL IT COST?

On the issue of funding, the task force was direct. The interim report stated that significant additional funding would be required to implement the “Success Initiative” and that funds would have to be better allocated if student needs were to be met. In fact, the committee urged the Board not to move to eliminate social promotion and retention unless the state was willing to make long-term, substantial investments in all of the five program areas.

In concluding her presentation to the Board, Dr. Newton stressed the huge challenge that faced the task force, the Board and the Department of Education as they move forward in fleshing out the programming details of the “Success Initiative,” a timetable for its implementation, and cost estimates.

The task force was scheduled to present initial cost estimates and a proposed timetable for the rest of its work at the Board’s September 28 meeting.

WHERE DO STUDENTS WITH DISABILITIES FIT IN THE “SUCCESS INITIATIVE”?

The Social Promotion and Retention Task Force presented a vision of a comprehensive reform program that it believes could ensure excellence for all of Alabama’s schoolchildren – including children with disabilities.

While most of the Initiative’s programming still must be developed, the Task Force’s interim report included the following introductory statement regarding how the plan’s emphasis on high caliber performance standards would affect the education of children with disabilities:

“While all students with disabilities have individual learning needs, one should not automatically assume that a student receiving special education services would be unable to succeed at high academic levels. Children with disabilities are expected to meet the ... standards for promotion, unless a child’s Individualized Education Program (IEP) Team determines otherwise. In such cases, a child’s IEP Team should develop an individual promotion standard for that child. If the child does not meet an applicable standard, the child should be required, like non-disabled peers, to participate in ... intervention program[s].”

How do you, as parents, educators and advocates for children with disabilities, feel about this Initiative and its potential effects on children with disabilities? What benefits do you see? What pitfalls need to be avoided? ADAP would like your input as this reform effort continues. Contact Nancy Anderson at ADAP: 1-800-826-1675 or by e-mail at: ADAP@law.ua.edu.

SIDE BAR

PARTNERS IN POLICYMAKING OF ALABAMA

P.O. Box 301410
RSA Union Building * 100 North Union Street
Montgomery, Alabama 36130-1410
Montgomery: 334-242-3979
1-800-846-3735
FAX: 334-242-0797

The Alabama Developmental Disabilities Council is currently seeking applications from interested persons who have a developmental disability or who are parents of young children with developmental disabilities to participate in the 2001 Partners in Policymaking Program (PIPA).

Partners in Policymaking of Alabama is a leadership training program for self-advocates and parents. It provides state-of-the-art knowledge about disability issues and builds the competencies necessary to support advocates who can effectively influence public officials.

Partners learn about current issues and best practices and become familiar with the policy making and legislative processes at the local, state and federal levels. The overall goal is to achieve a productive partnership between people needing services and using services and those in a position to make policy and law. Partners attend two-day training sessions (Friday and Saturday) eight times a year, beginning in January 2001 and ending in August 2001. Each session is devoted to specific topics with nationally known experts and presenters.

Topics include:

- < History, People 1st Language and Parents and Independent Living Movement
- < Inclusive Education
- < Vision, State Systems and Service Coordination
- < State and Federal Legislation
- < Positioning and Assistive Technology
- < Supported Employment and Supported Living
- < Community Organizing and Advocacy
- < Civil Rights

Partners are expected to complete assignments between sessions and to commit to one major assignment, e.g., organizing a letter writing campaign or organizing special receptions or town meetings for public officials, etc.

Applications can be requested from the DD Council, or by contacting Jayne Chase at 800-846-3735. The Council's Partners in Policymaking Selection Committee will select 35 participants for the Partners Program. Applications must be postmarked by **November 30, 2000** to be eligible. Final selection will be made by December 11, 2000 and participants selected will be notified by December 18, 2000.

TELECOMMUNICATIONS RELAY SERVICES

The Federal Communications Commission (FCC) recently mandated a nationwide implementation of a three-digit number for accessing Telecommunications Relay Services.

Within a year, relay services will facilitate telephone conversations between people who have hearing or speech disabilities and those who do not, from any telephone in the country. Relay users need only to dial 711 and they will be connected to the nearest relay service.

To reach the largest number of consumers possible, the FCC is requiring carriers and relay providers, in cooperation with the states, to engage in ongoing and comprehensive education and outreach programs to publicize the availability of 711 access.

ANNOUNCING THE FREEDOM SELF-ADVOCACY CURRICULUM

www.mhselfhelp.org/freedom/
800-553-4539

If you would like to teach mental health consumers in your community how to become more effective self-advocates, then take advantage of the new Freedom Self-Advocacy Curriculum.

You can learn to teach three workshops covering the attitudes, skills, and knowledge necessary for effective self-advocacy. These workshops include role-plays and other activities, and they offer a variety of "advocacy modules" on topics such as housing, employment, advance directives, and managed care.

Visit the National Mental Health Consumers' Self-Help Clearinghouse web site today to print a complete set of training materials, including teachers' guide, students' guide, and handouts. If you do not have Internet access, please contact the Clearinghouse. They can send the materials for the cost of printing and postage. Also, you can access the information through your local library computer service for free.

The Clearinghouse has developed the Freedom Curriculum in conjunction with the National Mental Health Association (NMHA), the National Association of Protection and Advocacy Systems (NAPAS), and other organizations. ADAP is a member of NAPAS and supported development of this curriculum.

Airmail is funded 100% with federal funds through: • Administration on Developmental Disabilities (PADD) • Center for Mental Health Services (PAIMI) • U.S. Department of Education/Rehabilitation Services (PAIR and PAAT)

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LEE V. MACON : SPECIAL EDUCATION ISSUES SETTLED

Nancy Anderson, Staff Attorney

In August, the Alabama Department of Education, the U.S. Department of Justice and plaintiffs' counsel signed a consent decree, closing one more chapter of the state's long-standing school desegregation case, *Lee v. Macon*.

Two of the statewide issues that were brought out in this nearly 40-year-old litigation were the over-representation of African-American students in the mental retardation (MR) and emotional disturbance (ED) special education classifications and their under-representation in the specific learning disabilities (SLD) and gifted classifications.

The broad goals of the consent decree are to 1) draw awareness to the educational practices that lead to these misclassifications, 2) enhance regular education programming and services for at-risk students and decrease special education referrals, and 3) ensure that all special education eligibility determinations accurately reflect a student's disability and needs.

Staff training

Under the consent decree, the state will conduct extensive, ongoing training programs for school personnel.

Professional development programs will focus on instructional and behavioral intervention strategies to assist struggling students. Training will address the possible biases that lead to the over and under representation of African-American students in these classifications as well as the general characteristics of MR, ED, and SLD students. School personnel will be trained in the administration and interpreta-

tion of testing instruments commonly used in the special education evaluation process. The state also will develop and pilot a teacher mentor program that will provide support for newly certified teachers through the training and funding of 200 teacher mentors per year.

Prereferral Problem-Solving Through "Building Based Student Support Teams"

To enrich regular education services and to cut down on unwarranted referrals to special education, the consent decree requires that every school establish "Building Based Student Support Teams" (BBSST) by the year 2004. These Teams will be made up of school professionals who will draw on their individual strengths in a collaborative manner to address problems that are affecting a student's academic and behavioral performance.

A school's BBSST will evaluate any information that

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Demonstration and Resource Room

Scott Renner,
Information and Referral Specialist

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The Statewide Technology Access and Response system (STAR) demonstration and resource room is located in Montgomery. It is designed to demonstrate different types of Assistive Technology (AT) devices that can improve the quality of life for individuals with disabilities. The demonstration room has various types of AT devices like Augmentative Communication devices, CCTV, Kurzweil Reading Machine, Basic-D braille printer, environmental control units and adaptive switches. The demonstration room also has four computers with adaptive hardware and software. Some of the computer software programs are Dragon Dictate and Naturally Speaking Voice Recognition, Window-Eyes and JAWS THAT ARE Screen Reader programs for the visually impaired, Zoom Text Screen Magnification and on screen keyboard with a Touch Screen.

STAR has an equipment loan program that allows individuals and organizations to try equipment out for a two-week period to see how it might benefit an individual. Assistive technology can have a major impact in an individual's life and STAR is assisting in the awareness of the various types of AT. Please call Scott Renner at 800/782-7656 or 334/613-3480 to schedule a demonstration or inquire about the equipment loan program.

RESPIRE NIGHTS IN BIRMINGHAM, ALABAMA

Five Birmingham churches offer respite care one evening a month for children with disabilities and their siblings. If you don't live in Birmingham, go to the website below to find out how your church can set up a respite program.

<http://autism-alabama.org/ubb/Forum1/HTML/000042.html>

Special Education for Children with Disabilities in Adult Prisons

Paul Dezenberg, Staff Attorney

Private attorney Robert D. Drummond, Jr. and ADAP have settled a class action brought against the Alabama State Department of Education (SDE) and the Alabama Department of Corrections (DOC) concerning the education of children with disabilities incarcerated in adult prisons, *B.M.S. v. Edward Richardson, et al.*, Case No. 98-D-1253-N. The parties to this lawsuit identified a class of "those individuals incarcerated within the Alabama Department of Corrections who are eligible for special education and related services pursuant to the Individuals with Disabilities Education Act."

Under the terms of the settlement agreement, the course offerings available to these children has been expanded beyond what previously was offered, the Adult Basic Education program and the GED program, to include the full range of diploma, certification and other educational opportunities available from SDE consistent with the IEP process.

The settlement agreement requires that SDE implement an initial education program by January 15, 2001, and a fully implemented program by September 1, 2001. The educational program will include:

- (a) an identification process for children entitled to special education services;
- (b) procedures for conducting assessments;
- (c) appropriate curriculum programs;
- (d) effective and efficient instruction;
- (e) a vocational program; and
- (f) transition services.

To the extent that a child has not received an appropriate education program in the past, the SDE will provide class members with additional eligibility, which may include compensatory education. DOC will designate correctional facilities to assign eligible students, and it will transfer identified class members to the designated facilities.

If you have any questions about this case or would like a copy of the settlement agreement, please contact
ADAP Staff Attorney
Paul J. Dezenberg at
800-826-1675.

**Dates to be met:
January 15, 2001 and September 1, 2001**



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<http://www.adap.net>

may shed light on the issues that are interfering with a student's school performance. Such information may include, for example, medical or social histories, academic testing results, or family reports. Team evaluations also must include a functional assessment of the child's classroom environment. After reviewing all collected data, a Team will devise an intervention plan that addresses the child's needs. Depending on the child, an intervention plan might involve alternative instructional strategies and curricula or the implementation of a behavior management plan. The Team will monitor the effectiveness of the regular education intervention strategies to determine if the problem has been resolved or if additional strategies are warranted, including, perhaps, a referral for special education evaluation.

Special Education Referral Process Redesigned

Under the consent decree, the special education referral process has been redesigned to be more sensitive to other factors — aside from a suspected disability — that might affect a child's school performance. Now, the referral process must include an analysis of 1) the effectiveness of the prereferral intervention strategies implemented by the BBSSTs, 2) a child's medical and school histories, and 3) any environmental, cultural, language and/or economic concerns that might impact on the child's learning or that might call for different testing procedures to be used for that child.

Eligibility Criteria Changes and Reevaluations

The State Board of Education already has revised the eligibility criteria for ED, SLD and gifted classifications. The MR criteria will be revised to require a home version of an

adaptive behavior assessment. As noted above, the redesigned special education referral process will require school personnel to be more sensitive to any cultural differences that might mask a student's true abilities and thereby affect his performance in the areas evaluated.

Under the terms of the decree, a group of minority students who are currently identified under the MR classification will be reevaluated to determine if any of them has been inappropriately placed. Any minority student with a current full-scale IQ of 65 or higher must be reevaluated. Also, any minority student who was not assessed with an adaptive behavior test (home or school) must be reevaluated. Minority students who were identified as MR prior to July 1, 1999, and who are in at least the seventh grade, may continue to be reevaluated under the previously enacted MR eligibility criteria. The parents of these excluded students, however, must be given information about the new eligibility criteria and be given the option to have their child reevaluated under them. A child who doesn't meet the eligibility criteria for MR, will be evaluated for possible special education placement through another disability classification. If he doesn't meet the eligibility criteria for any disability, he will be exited from special education. All reevaluations must be completed by April 25, 2001.

If you have any questions about *Lee v. Macon* and the effects it might have on your child, please contact ADAP at 1-800-826-1675. Our special education work group will be happy to help you.

My View From the Gallery

by James Leonard

Professor of Law and Co-Director, Disability Law Institute

University of Alabama

v

Garrett

James Leonard, Professor of Law and Co-Director, Disability Law Institute, attended the oral argument of *University of Alabama v Garrett*. This is his report of the events as viewed from the U.S. Supreme Court Gallery.

University of Alabama v. Garrett is the most important disability law case that the U.S. Supreme Court has heard to date. The plaintiffs are Patricia Garrett and Milton Ash, state employees who sued the State of Alabama under the Americans with Disabilities Act for failing to accommodate their disabilities, breast cancer and respiratory impairments, respectively. Technically the issue in *Garrett* is whether Congress may override the sovereign immunity of states to private suits for money damages in federal courts when states violate the Americans with Disabilities Act. But *Garrett* also asks a more critical question: when may Congress enact laws, such as the Americans with Disabilities Act, which promote a national policy forbidding discrimination against minority groups, such as people with disabilities.

Garrett was argued at the Supreme Court on Wednesday, October 11th. Thanks to Neil Richards, a former Hugo Black fellow and clerk to Chief Justice Rehnquist, my wife (Joanne Brant, a constitutional law expert) and I were able to get reserved tickets for the oral argument. Since we had reserved tickets, we were permitted to skip the long lines forming on the Court's steps and report directly to the Marshall's office. At this point, a double irony occurred to me. While the Assistant Marshall checked our names off, I noticed a sign indicating that assistive listening devices were available to those who needed them, a truly sensitive concession by a government agency that was not subject to the ADA but would shortly decide part of its fate.

Having written extensively about the constitutional attack on the ADA, I was in a good position to anticipate the issues that were likely to arise in oral argument and the inclinations of the individual justices. During the Nineties the Court restricted the power of Congress to regulate state governments in a series of divided decisions (usually 5-4). Much of this effort has focused on Section Five of the Fourteenth Amendment, the provision that allows Congress to pass laws to enforce the rights guaranteed by Section One of the same amendment.

For people with disabilities, the critical Section One right is the equal protection of the laws, or the right to be treated by state governments without illegal discrimination. So far, the Court has interpreted the equal protection clause to give minimal protection to people with disabilities. In such cases as *Cleburne* and *Heller*, the Court has held that state governments can take any action regarding people with disabilities so long as there is a rational basis for it. An example of a rational basis is a refusal to make an accommodation just to save money. An example of an irrational basis would be a decision based on a prejudicial attitude toward people with disabilities and nothing else. One can quickly see that the

ADA, with its extensive accommodation requirements, provides greater protections for people with disabilities than a direct appeal to the Constitution.

Since the landmark *Flores* case in 1997, which struck down the Religious Freedom Restoration Act, a five member majority has insisted that Section Five may only be used to remedy equal violations that the Court itself has identified. The Court has stated that Congress may regulate activities that are not of themselves illegal so long as such regulations are necessary to prevent illegal activities and are no broader than necessary to achieve this goal. The Court has also insisted that Congress document such needs carefully in the legislative history of an act. Using this framework, a majority consisting of Chief Justice Rehnquist and Justices Thomas, Scalia, Kennedy and O'Connor have struck down federal statutes which, among others, have attempted to protect religious minorities, women and the elderly. Justices Ginsburg, Souter, Breyer and Stevens would have given Congress a freer hand.

I expected a similar line-up in *Garrett*, but was somewhat surprised after the Justices began to question the lawyers. Jeffrey Sutton, representing UAB, spoke first and argued that the ADA exceeded Congress's power. The gist of his reasoning was that the ADA and its legislative history deal with actions that may be discriminatory in effect but are not unconstitutional. He also argued that the breadth of the ADA (Title II, for example, applies to all state activities) was excessive, and that the states have moved on their own to correct disability discrimination. Sutton's arguments were received skeptically by Justices Breyer and Souter, who felt that Congress's extensive findings of discrimination were adequate.

More importantly, Justice O'Connor also inquired into the significance of the ADA's history. It was obvious from her questioning that she was troubled by the existence of extensive Congressional findings of disability discrimination. (The Court's previous Section Five cases had turned in large part on the virtual absence of any Congressional findings). Even though O'Connor kept a poker face through the argument, the fact that she asked these questions allowed me to think for the first time that a very different 5-4 majority might, just might, uphold the ADA. To do so, however, she will have to set aside strong arguments by Sutton that the Court must jealously guard its "*Marbury*" power to decide what the Constitution means over any contrary interpretations by Congress.

The plaintiffs in the case were represented by Michael Gottesman, a Georgetown law professor. He contended that the ADA did respond to an extensive record of irrational mistreatment of people with disabilities. Justice Scalia pressed Gottesman hard on the precise nature of the record, suggesting that it does not focus specifically on irrational state conduct and that individual, unverified stories of discrimination related at the hearings were unreliable. Gottesman responded that Congress also relied on studies detailing the causes of prejudice and the history of discrimination. For the most part, Gottesman's arguments were skillful and finessed the problems of dealing with a legislative history that was completed in 1990 and could not anticipate the restrictive Section Five rules that the Court developed later in the Nineties.

I thought it was a pity that Gottesman had only 15 minutes for his argument. Each side gets 30 minutes, but Gottesman had to split the plaintiffs' half hour with Solicitor General Seth Waxman who argued for the ADA on behalf of the United States. Waxman quickly alienated Justice Kennedy by suggesting that the ADA met the Section Five standard but merely lacked the "magic words." Kennedy responded with a tense voice that Waxman had trivialized the important matter of maintaining a proper balance of state and federal authority. Justices Scalia and Kennedy also wanted to know how Congress could discover constitutional violations when courts had rarely done so.

By the end of oral argument, I was convinced that O'Connor held the keys to *Garrett*. While no one doubts her credentials as a staunch defender of federalism, it was obvious that she was concerned about what effect to give the ADA's extensive legislative findings of discrimination. A decision by O'Connor to break with her fellow conservatives may be unlikely, but I can't say now that it's impossible.

A ruling in favor of Garrett and Ashe would confirm that disability discrimination is a national problem requiring a national solution, though the precise effects would no doubt turn on the reasoning the Court adopts. Will legal protections for people with disabilities collapse if the Supreme Court rules in UAB's favor? It's hard to say what effect such a ruling would have ultimately. The only issue before the Court last week was whether the state can avoid paying money damages to plaintiffs who have suffered discrimination. There have been suggestions that parts of the ADA may be subject to attack under the Court's increasingly restrictive Commerce Clause interpretations. If so, then an adverse Section Five decision could leave parts of the ADA without constitutional authority (a point that Michael Gottesman was quick to make). But it will be two or three years at least before the Court makes any such rulings.

For the moment, persons in the position of Garrett or Ash will still have the option of going to a federal court and asking for injunctive relief against state officials, for example an order to rehire, to cease certain practices or to provide accommodations. Prevailing plaintiffs will still be able to receive attorney fees at a court's discretion. Most importantly, state agencies receiving federal funds can be sued under Section 504 of the Rehabilitation Act, which provides protections that are essentially identical to the ADA's. Although not all state entities receive federal money, many do.

Perhaps the greatest impact of an adverse decision will be symbolic. The passage of the ADA represented a bipartisan and nearly unanimous legislative consensus that disability should not bar a person from meaningful participation in American life. For the disabled, their friends and families, it may be difficult not to feel that an important acknowledgment has been taken away, even if comparable legal remedies exist elsewhere. I do not mean to downplay the importance of the federalism issue. How we divide power between national and state governments is a critical question, with its own symbolic cargo. But there is no doubt that *Garrett* has the potential to affect many people.

Excitement, Exhilaration, Enthusiasm, Anticipation

were all in evidence at the thrilling Rolling Freedom Express kick-off in Birmingham, AL on September 22nd. The destination was Washington, DC to provide support for the Americans with Disabilities Act. These pictures are worth more than a thousand words.



*Photos by
Birmingham
Independent
Living Center
& ADAP.*



ADAP ADOPTS PRIORITIES FOR FY 2001

With input from consumers, advocates, ADAP's councils, and the public at large, the following priorities were adopted for FY 2001. Thank you to everyone who provided the information for the establishment of the following priorities.

Children's Issues (PADD, PAIMI, PAIR)

- * Protection of the rights of children with disabilities who are placed in or at risk of being placed in foster care
- * Protection of children from abuse and neglect in residential facilities
- * Advocating for provision of appropriate services for children with multiple needs

Education (PADD, PAIR, PAIMI)

- * Advocating for the education of children with disabilities in the least restrictive environment with appropriate supports and services
- * Advocating for develop-

- ment and implementation of appropriate education programs for children aged 3 to 21, pursuant to the Individuals with Disabilities Education Act and Section 504
- * Advocating for appropriate practices, procedures and policies with respect to the discipline of children with disabilities

Residential Placements (PADD, PAIMI)

- * Advocating for safe and appropriate treatment conditions in residential placements
- * Advocating for appropriate community placements and supports for persons in institutions and for appropriate transitional services for those persons

ADA/Discrimination Issues (PAIR, PADD)

- * Advocating for reasonable accommodations in employment
- * Advocating for access to state and local government programs and services
- * Advocating for access to public accommodations

Assistive Technology (PAAT)

- * Advocating for Medicaid payment for augmentative communication devices for children with disabilities
- * Advocating for provision of AT to children with disabilities

ADAP's four programs are designated as follows:

- PADD = Protection and Advocacy for Persons with Developmental Disabilities
- PAIMI = Protection and Advocacy for Individuals with Mental Illness
- PAIR = Protection and Advocacy for Individual Rights
- PAAT = Protection and Advocacy for Assistive Technology

ADAP Success Stories

P ADAP represented an 11 year old Medicaid eligible client with multiple disabilities who needed an Augmentative and Alternative Communication (AAC) device. Pursuant to Alabama Medicaid's policy for funding AAC devices, an AAC evaluation was completed for the client, and the appropriate prior approval paperwork was submitted to Alabama Medicaid. Even though the paperwork was submitted over seven months ago, neither the submitting entity or the client's legal guardian had received a response from Alabama Medicaid. In early October of 2000, ADAP contacted Alabama Medicaid's attorney regarding this matter. ADAP promptly received a fax from the Alabama Medicaid Associate Director of the Prior Approval Unit stating that prior approval had been granted for the full amount (\$11,796.30) requested for the AAC device.

A DAP represented a special education student with a severe expressive language impairment at a Due Process Hearing. The threshold issue in the case was the type of AAC device that would enable the student to receive a Free Appropriate Public Education (FAPE). The school system argued that the student was receiving educational benefit from the AAC device and accompanying services it was currently providing to the student. ADAP argued that the student received minimal and trivial, if any educational benefit while using this device, and presented expert testimony and evaluations recommending a different type of AAC device for the child as necessary in order for him to receive a FAPE.

The hearing lasted a full day and a half. There were opening arguments, direct examinations of witnesses and cross-examinations of witnesses at the Hearing. Each side presented numerous exhibits. A court reporter was present at the hearing to transcribe the proceedings. A hearing transcript (about 500 pages) was sent to each side a few weeks after the hearing. Each side then submitted post-hearing briefs along with proposed orders. Unfortunately, the hearing officer ruled in favor of the school system. He found that the school system's AAC device and ac-

companying services had provided and is providing the student with a FAPE. In spite of this ruling, the school system subsequently purchased a new AAC device for the student that was very similar to the type of device ADAP attempted to secure for him at the Due Process Hearing. The student now uses this new AAC device everyday.

A DAP represented an adult with a psychiatric disability in a housing dispute. The client required a pet cat for therapeutic reasons. The client had a prescription from her medical doctor and a letter from her treatment professional documenting her medical need for a therapeutic pet cat. The client asked her apartment resident manager for a reasonable accommodation in the form of changing the "no pets" rule to allow her to have a pet for therapeutic reasons. The resident manager refused to provide this reasonable accommodation for the client. ADAP informed the resident manager of his obligations under the Fair Housing Act to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy the dwelling. As a result of ADAP's involvement, the resident manager allowed the client to have her therapeutic pet in her apartment.

A DAP represented a special education student with multiple disabilities who needed an aide at school. The student required assistance each day at school to address his bathroom needs. The student was forced to be out of school an entire week because he did not have an aide to help him with this. Prior to ADAP's involvement in the situation, different "substitutes" were hired each day by the school system to address the student's bathroom needs. As a result, the student had different individuals changing him each day. The student endured a loss of dignity as a result of this unacceptable situation. ADAP negotiated with the school system. As a result of ADAP's involvement, the school system immediately posted a full-time aide position for emergency hire. ADAP also ensured that only one individual was employed by the school to work with the student on his bathroom needs until a full-time aide was hired. ■

THE WORK SITE

The Social Security Administration announced the launching of a new web site—*The Work Site*—which contains important information and support for disability beneficiaries, employers, service providers, advocates and others whose goal is to help those persons with disabilities work.

Persons with disabilities face serious challenges when attempting to enter the workforce. Assistance programs are often complex and poorly coordinated, forcing individuals to piece together information and to develop work strategies on their own. They often find that employers are reluctant to hire persons with disabilities, which can discourage them from looking for work. Young people with disabilities, especially those who are leaving school and preparing to work, lack role models and mentors to guide them. *The Work Site*, developed by the Social Security Administration's (SSA's) Office of Employment Support Programs is designed to be an important information source.

Throughout America, employers are looking for new workers, and Americans with disabilities are looking for jobs. To help bring the two together, the SSA has established *The Work Site*. Go to www.ssa.gov/work and you will find information on everything from training programs for people with disabilities to tax incentives for employers who hire them. "Everyone wins when all Americans have a chance to work."

The web site is fully accessible to people with disabilities. This is significant since fewer than five percent of all Internet sites are accessible to people who are visually or hearing impaired or have limited dexterity. *The Work Site* is built to serve the information needs of its five principal customers and provides the information in easy to understand terms.

Airmail is funded 100% with federal funds through: • Administration on Developmental Disabilities (PADD) • Center for Mental Health Services (PAIMI) • U.S. Department of Education/Rehabilitation Services (PAIR and PAAT)

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THE CHANGING FACE OF ADVOCACY

Allen Fortson, Director, DMH/MR Internal Advocacy Program

Ed.note: Appreciation and thanks to Mr. Fortson for accepting ADAP's invitation to write on the changes in advocacy.

The Department of Mental Health and Mental Retardation's (DMH/MR) Office of Advocacy Services was established in 1986 as part of a consent decree in the long-standing *Wyatt* federal lawsuit. Thanks to visionary thinking by such individuals as former DMH/MR Commissioners Ken Wallis and Emmett Poundstone, the need for an office internal to the Department to help promote the rights of recipients within the Alabama DMH/MR service delivery system was recognized. Then Commissioner Wallis selected a young social worker by the name of Kathy E. Sawyer (who, by the way, is our

current DMH/MR commissioner) to develop and implement an Office of Advocacy Services. Ms. Sawyer established a program which has continued to grow and take on ever-increasing challenges in the protection of the rights of patients and clients being served in Alabama's DMH/MR service system.

As originally designed, the advocacy program served only those patients and clients receiving services in residential facilities operated by the Alabama DMH/MR. However, in October of 1997, there was a major expansion of the program, with advocacy services becoming available to clients and residents in community programs certified by, or under contract with, the Alabama DMH/MR. It required the hiring of additional Advocacy staff, many of whom had consumer/family backgrounds. Advocacy services provided in the community include: complaint investigation/resolutions service; monitoring of conditions in community programs through certification reviews;

information and referral services; and rights education programs.

In January 1998, Governor Don Siegelman selected Kathy Sawyer as the new Commissioner of the Department of Mental Health and Mental Retardation. One short year later, Commissioner Sawyer and James Tucker of ADAP, were able to forge an agreement designed to bring closure to the nearly three-decade-old *Wyatt* lawsuit. As part of the agreement, Advocacy staffing was increased to 26 full-time equivalent advocates. Commissioner Sawyer named a workgroup to examine how advocacy performed their role of protecting the rights of the patients and clients using DMH/MR services, and make recommendations for improvements to the program. This Workgroup consisted of consumers, family members, ADAP representatives, providers, and other advocacy groups. The changes mandated in the *Wyatt* Agreement, along with the workgroup recommendations, brought about further improvement to the Advocacy Program.

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Homecoming Queen is more than Beauty

Ed. note: Thanks and appreciation to Jewel Brooks, *Eagle* Lifestyles Editor, of the *Daily Mountain Eagle* for permission to use this story and pictures.

Segail Friedman, Information Specialist

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Andrea Kirkpatrick was thrilled when her dream was fulfilled and she was crowned Homecoming Queen at Carbon Hill High School. "It's great," she beamed when asked how it felt to be queen. There were lots of hugs from well wishers following the homecoming parade through town. For her it was a major achievement as she is a student with multiple disabilities. Andrea is probably the first student with disabilities who has won the crown.

Andrea was one of 32 girls who competed for homecoming queen this year. Finally, it was narrowed down to the top ten and Andrea was the winner with \$1,900 raised. With family and grandparents helping out, and many people and businesses in Carbon Hill giving support, Andrea raised more money than any other candidate.

Life has not been easy for Andrea. Currently an 11th grader, she has fought a myriad of health problems since she was born—from Tourettes Syndrome to multiple sclerosis to a brain tumor. Four years ago she underwent brain surgery and even then the doctors could not correct all the problem, so she still has seizures. The doctors said she probably would not walk again and would not even be able to feed herself. "She has done a lot better in the last year or two. We think it is a miracle," says her mom, Sharon Kirkpatrick.

For most of her school years, Andrea missed as many days of school as she attended. Only in the past two and a half years has she been able to attend



Andrea with escort JJ. Hadder

regularly. Even though she still has seizures, most days Andrea feels like being at school. She attends special education

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Homecoming court (back, l-r): Amber Davis, LaShae Mote, Amanda Brown, Sarah Knight; (front, l-r) princesses Melishia Summers and Jeanette Hobbs with Andrea (center)

Person centered planning is not a new concept. It has been in existence for over eighteen years. The recent growth and popularity of the person centered planning movement has developed from the actual success of the planning, along with the growth in the number of agencies that have adopted person centered planning as the preferred method of planning for individuals.

Person centered planning is a very simple idea. Focus on the strengths, gifts and abilities of people, not on their deficiencies, whether real or perceived. How many parents and family members have attended meetings where the focus of the “professionals” has been on the “problems” of our loved ones? For example, my son, Wilson has



ADAP is a statewide, independent program established to protect, promote and expand the rights of adults and children with disabilities.



Airmail is published to provide information on issues and events of interest to people concerned about the rights of persons with disabilities. Organizations and individuals are encouraged to submit articles to be considered for publication, plus editorials. Inquiries may be sent to Segail I. Friedman, Information Specialist, at the address printed below.

cerebral palsy. “Professionals” choose to focus on the negatives and the clinical aspects of Wilson’s disability. “Professionals” search for ways to “fix” my son’s disability. Wilson does not need “fixing.” He is great. Wilson has many gifts to offer. He is bright, funny, compassionate, persistent, patient, tolerant. The list goes on and on.

Person centered planning focuses on an alternative set of values. This type of planning is grounded in the belief that all people should be included in every aspect of community life. Further, people should have choice—choices on how to spend time and who to spend time with, what kind of job to have, what kind of food to eat—the basic choices many people take for granted every day.

SOME KEYS TO PERSON CENTERED PLANNING:

- Look at individuals in a positive way. Know and seek to understand the individual.
- Be guided by the person, not the person’s disability.
- Uphold values that enhance humanity and dignity.
- Be innovative with unconventional solutions.
- Have a sense of humor and humility.
- Look for the good in people and help bring it out.

Numerous books, articles and videos on person centered planning can be located at: <http://inclusion.com>

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Legislative Acts Bring Significant Changes and Advancement for ADAP

Ann Marshall, Coordinator of Outreach and Training

Two new pieces of legislation recently signed into law will have great impact on the Alabama Disabilities Advocacy Program, Alabama's federally funded protection and advocacy (P&A) system, and other P&As across the country. These Acts establish new federal mandates significantly enhancing the authority of ADAP and other P&As. The new authorities represent a significant advance for the P&A network. Below is a brief recap of the two legislative acts, followed by a short description of the new Traumatic Brain Injury P&A program.

On October 30, 2000, President Clinton signed into law the Developmental Disabilities Assistance and Bill of Rights Act of 2000.

The Act, referred to as S.1809, repeals and replaces the old DD Act in its entirety. Most significantly, the new Act expands P&A authority to gain access to records and individuals in order to investigate abuse and neglect. These new provisions involve many areas, including time frames for release of records, expanded access to individuals with developmental disabilities where they are provided services and assistance, and changes in access to records of individuals who have guardians.

On October 17, 2000, the President signed into law the Children's Health Act of 2000.

The Act establishes new federal mandates significantly enhancing the authority of the P&A System.

SPECIFICALLY THE ACT:

- (1) amends the Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act to authorize P&As to serve persons living in the community when the programs reach specific funding levels, and establishes a PAIMI Act Native American Program;
- (2) creates a P&A program serving persons with traumatic brain injury (TBI); and
- (3) establishes nationwide standards on the use of restraint and seclusion by federally funded health care facilities, with a requirement that facilities covered by the PAIMI Act report restraint-related deaths (reports most likely will be directed to the P&A System).

It is unclear whether the restraint and seclusion provisions will become effective before the Department of Health and Human Services issues its implementing regulations. (We will address this issue in the future.) However, the PAIMI Act and TBI program amendments appear to become effective upon enactment. The bill may be accessed on the Congressional website by going to: <http://thomas.loc.gov>, then type "H.R. 4365" in the bill number search box at the top of the screen, then select the last item ("Enrolled Bill"). Go to Sections 3206, 3207, and 1305 to see the provisions on PAIMI, restraint, and TBI, respectively.

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CONGRESS CREATES A NEW TRAUMATIC BRAIN INJURY P&A PROGRAM

The Public Health Service Act was amended through the Children's Health Act to create a program of grants for P&As (protection and advocacy programs such as ADAP), administered through the Administrator of the Health Resources and Services Administration (within HHS), for the purpose of enabling P&As to serve persons with traumatic brain injury (TBI). This new program is modeled after an existing P&A program, PAIR (Protection and Advocacy for Individual Rights), and follows its approach to funding.

Under the TBI program, P&As will be funded to provide the same types of services currently provided under the DD Act. In particular, the bill specifies that P&A services may include information, referrals and advice, individual and family advocacy, legal representation, and specific assistance in self-advocacy. Essentially, this program authorizes a new funding stream targeted for services to persons with TBI. The funding structure under the program will depend on Congressional appropriations.

The bill contains an authorization of appropriations of \$5 million for fiscal year 2001 (the "authorization" represents the maximum amount that may be appropriated for that year). ADAP and other P&As are currently working with appropriations staff to secure an initial (FY 2001) appropriation of at least \$1 million for the program. In future years, we hope to steadily increase the appropriation so that it becomes a strong national program.

Depending on the level of appropriations, ADAP will have no, minimal or full funding for a TBI P&A. ADAP will develop plans to work with this new constituency as the program becomes funded.

During the coming months, *Airmail* will feature articles about the significant changes impacting ADAP and the P&A System. We will share details with our readers about:

- * National seclusion and restraint standards
- * Required reporting about seclusion & restraint deaths to authorities, including P&As
- * Expanded access to individuals with developmental disabilities in facilities and community settings
- * Changes in access to records of individuals with developmental disabilities, including time frames for release of records and access for those with guardians
- * Changes in the Protection and Advocacy for Individuals with Mental Illness program which will expand coverage to those living in the community, not just in 24-hour facilities
- * Changes in the advisory council and also in priority setting

INCLUDED IN THESE CHANGES ARE:

I **NCREASED ADVOCACY STAFFING**

Staffing increased to 26 full-time equivalent advocates. This means greater accessibility to advocates by consumers and their families, and more advocates to bring about improvement and change in Alabama's service delivery system.

T **HE ESTABLISHMENT OF A BIRMINGHAM ADVOCACY OFFICE**

A new advocacy office was established and staffed in the Birmingham area to provide greater advocacy access and services to the many clients served in the greater Birmingham area. The office is located in Hoover at:

Region II East Community Services Office
100 Chase Park South, Suite 200
Hoover, AL 35244
205/988-4400

S **PECIALIZATION OF ADVOCACY DUTIES**

Where advocates previously served a dual role of providing services both in DMH/MR Facilities and in Community Programs as well, now Advocates have been assigned to either *DMH/MR Facility Advocacy* duties or *Community Program Advocacy* duties. This will allow advocates to focus more on the clients they serve, and their specialized issues.

C **OMMUNITY ADVOCATES WILL BE MAKING UNANNOUNCED RANDOM AND FOR-CAUSE VISITS OF CONSUMER RESIDENTIAL HOMES AND PROGRAMS, INCLUDING DMH/MR FOSTER HOMES**

This will allow for more face-to-face contact between advocates and the clients they serve. Advocates will be able to talk with clients individually, see where they reside and receive services, and address any rights related issues.

A **DVOCATES WILL NO LONGER ROUTINELY PARTICIPATE IN FORMAL CERTIFICATION REVIEWS OF COMMUNITY PROGRAMS**

This will allow advocates more time to address individual and systems advocacy issues with the clients they serve. Advocates will continue to participate in the certification of new programs, and in other programs as deemed appropriate by the Director of Advocacy services. Advocates will receive copies of all certification reports so that they may follow up on any rights related problems that have been identified.

T **HE ADVOCACY 800 LINE HAS BEEN EXTENDED TO 24 HOURS PER DAY**

The advocacy toll-free line was extended to 24 hours a day, effective November 1, 2000. While this is not a crisis line for emergencies, advocates will be on call to handle any rights related issues that require immediate attention.

A **DVOCATES WILL BE NOTIFIED OF SERIOUS COMMUNITY INCIDENTS**

This will allow advocates to follow-up and take appropriate actions, if required, to ensure the safety and well being of clients, and to see that rights-related issues are appropriately addressed.

The Advocacy Program has changed, and will continue to evolve to meet the needs of clients served by the Alabama Department of Mental Health and Mental Retardation. The program is always open to suggestions and input, and will be happy to offer help and assistance on rights related issues. Interested parties may call the advocacy toll-free line at 1-800-367-0955.



Peace on Earth

During this season our thoughts turn to peace for all people. May this time of year be special to you and your loved ones.

Alabama Disabilities Advocacy Program

Workforce Investment Act (WIA) passed in 1998 marked the beginning of a new opportunity to develop a coordinated workforce investment system.

The purpose of WIA is to create a national workforce preparation and employment system that meets the needs of job seekers and those seeking to advance their careers, as well as the employment needs of the nation's employers. The goal is to create an integrated workforce investment system that improves the quality of our workforce, sustains economic growth and productivity, and reduces dependency on welfare. Title I of WIA is enacted to meet the needs of both individual job seekers and employers by providing job seekers with access to employment and training opportuni-

ties and linking employers to a pool of qualified applicants. The main feature of Title I is the creation of "One Stop" employment centers where job seekers can access a broad range of employment-related and training services in a single central location.

The Southeast Regional Office for the Department of Labor's Employment and Training Division, located in Atlanta, provides a valuable web site at www.reg04.doleta.gov/. All eight states in Region IV have received One-Stop implementation grants. Kentucky and North Carolina were the first to receive implementation grants in 1995. Florida and Tennessee received implementation grants in 1996. Alabama, Georgia, Mississippi and South Carolina received implementation grants in 1997. To find information about One-Stop Centers in your state go to State Links at www.reg04.doleta.gov/state.htm and then select your state of interest.



Angela and Mom, Sharon Kirkpatrick

classes and plays tambourine in the band. Her mom said she is prone to have seizures at school but usually comes out of it all right. "This affects her activities. She can't visit and go places like other kids. One of us has to be with her. Most people wouldn't know what to do if she had a seizure," Mrs. Kirkpatrick said.

Mrs. Kirkpatrick remembers that at the age of ten her daughter was not even able to converse with people. She gradually got over that when her sister started playing softball and the team asked Andrea to be the bat girl. That was the beginning of Andrea coming out of her shell. Being involved in normal activities of life made a big difference, especially because people around Andrea were kind and made her feel welcome.

Andrea's family, mother, dad and especially her grandmother, Gail Kirkpatrick, always encourage her and are a big source of encouragement. Earlier this year Andrea accompanied her grandmother to Montgomery to help carry the torch through Alabama on its way to Washington, DC, in support of the Americans with Disabilities Act.

Congratulations to Andrea and may she continue to have a positive impact on everyone's life.



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