

## Federal Courts' Evolving Definition of "Disability" and "Emerging Disability"

**Background:** Under the new disability paradigm, social, behavioral, and environmental factors play a far greater role in helping to define persons with disabilities than in the past. Existing measurement approaches define impairments at the organ level or document functional limitations in daily living; however, it is clear that legal opinions, too, can offer much insight into the nature and definition of disability.



### Research question:

1. How are the courts defining and determining "disability" in Americans with Disabilities Act (ADA) employment discrimination cases?

**Purpose and anticipated benefits:** By studying legal definitions of "disability," a more precise definition of disability can be crafted and used to determine the number of persons with disabilities.



**Who:** Project Director Michael Fox, Sc.D., (as viewed in photograph to the left) with Robert Meade, J.D.

**When:** 2002-2003

**Method:** An analysis of employment litigation brought under Title 1 of the Americans with Disabilities Act was done that did not include employment cases brought under either the Rehabilitation Act of 1973 or state law. Westlaw was used to obtain the information on 544 cases that were summarized, stored in Excel spreadsheets, and then analyzed using SPSS. All U.S. Circuit Court of Appeals cases between 1995 and 2003 based on Civil Rights, key number 1215, "Discrimination by reason of handicap, illness, or illness" were included and addressed the question of whether a person had a disability based on a "physical or mental impairment that substantially limited one or more major life activities of such individual." Unpublished cases were not included nor were cases that did not include an analysis of the disability and focused instead on procedural issues, which brought the final number of cases included to 528. Cases were categorized by plaintiff or defendant victory at the appellate level. Clinical consultants at the University of Kansas Medical Center helped code the diagnoses or conditions associated with each case. When people had multiple conditions, the diagnosis that the court focused on the most was used to represent the case. Disability categories used and exemplar conditions represented: **Physical** (incontinence, HIV, cancer, pregnancy, sinusitis, hepatitis C, stroke, pneumonia); **chronic disease** (multiple sclerosis, obesity, epilepsy, lupus, gastrointestinal

impairment, arthritis, diabetes, amyloidosis, seizures, allergies, Grave's disease, heart condition); **cognitive behavioral** (mental disability, depression, alcoholism, narcolepsy, neurosis, personality disorder); and **injuries** (upper or lower extremity, carpal tunnel syndrome, head injury, vision impairment, paralysis, amputation, peroneal neuropathy, chemical inhalation, burns).

**Results:** The employer won all issues in most of the cases. From legal opinions and summaries of Circuit Court cases testing the limits of the Americans with Disabilities Act, results indicated that injuries are dominant test cases, followed by cognitive/behavioral problems. Among chronic disease test cases, there appears to be a geographic advantage to plaintiffs in the 6th and 10th districts (Michigan, Ohio et.al; Kansas, Colorado, et al.)

Also evident was that a disability was defined by its relationship to the nature of a person's work; thus, people with similar conditions are covered by the Americans With Disabilities Act differently based upon what both the "reasonable accommodation" is, and the nature of the "life activity" affected. Emerging disabilities may not be best measures because of the unique nature of each case. In the review of ADA cases adjudicated at the federal appellate and circuit court levels within the last 10 years, 72% of published judgments appeared in favor of the employer, though this may be misleading since it does not reflect settlements being made before reaching final judgments.

**Conclusion:** All victims of employment disability discrimination shared common experiences, but there were significant differences in the discrimination experiences by employees within the four disability categories. Also, it appears that emerging disabilities, such as asthma or multiple chemical sensitivity, will likely play an increasing role in the understanding of Title 1 of the Americans with Disabilities Act. The increase in plaintiffs with chronic disabling conditions (hidden disabilities) wins in recent years suggests a greater recognition by the courts of the effects of these conditions.

**Policy implications:** Emphasis on the daily impact of disabling conditions will help support Title 1 claims. Victories based on legal technicalities rather than merits of the argument must change if the Americans With Disabilities Act is to be the appropriate legal recourse for people with disabilities. Congress should reexamine Title I effectiveness to determine whether it adequately plaintiffs discriminated in the workplace because of disability.

#### **Project output:**

- Fox, M.H., & Kim, K.M. (2004, June). Understanding emerging disabilities. *Disability & Society* 19(4), 323-337.
- Kim, K.M., & Fox, M.H. (2004, March). Knocking on the door: The integration of emerging disability groups into independent living. *Journal of Vocational Rehabilitation* 20(2).
- Fox, M.H., & Mead, R. (2004, Fall). The relationship of disability to employment protection under Title 1 of the ADA in the United States Circuit Courts of Appeal. *The Kansas Journal of Law and Public Policy* 13(485-513).

- Kim, K.M., & Fox, M.H. Moving to a holistic model of health among persons with mobility disabilities. *Qualitative Social Work: Research and Practice*. Accepted for publication November/2005.
- Presentations: "Identifying Persons with Disabilities under the New Paradigm." Department of Health Policy & Management Seminar, January 11, 2002; "Medicare and Medicaid: Implications for Stroke Survivors," 11th Annual Stroke Survivor Conference, Kansas City, MO, May 4, 2002; "Medicare and Medicaid: Implications for Persons with Parkinson's Disease"; KCK Parkinson's Support Group, June 10, 2002; RTC/FPIL National Advisory Group, Kansas City, MO, October 24, 2002; Working Conference on Independent Living, Kansas City, MO, October 26, 2002; Disability Forum, American Public Health Association, Philadelphia, PA, November 11, 2002; national partners meeting held in Kansas City, MO, October 30, 2003.