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## Introduction to "Persons with Disabilities": Special Issue of *Behavioral Sciences and the Law*

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## Introduction to this issue

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### PERSONS WITH DISABILITIES

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In 1990, the United States Congress enacted legislation protecting the civil rights of persons with disabilities. The Americans with Disabilities Act (ADA) (1990) has been termed the most significant civil rights legislation since the 1960s (Rothstein, 1992/1994; see also Drimmer, 1993; Gostin & Beyer, 1993). The intent of the ADA is to provide “not only equal treatment [for persons with disabilities], but also equal *opportunity*” (Rothstein, 1992, p. 19, emphasis in original). The purpose of the ADA is not only to eliminate intentional discrimination, but also to change “policies and practices that have a discriminatory impact” on persons with disabilities (p. 19).

The ADA was implemented in the wake of decades of growing awareness of and responses to the numerous societal barriers confronted by persons with disabilities. The civil rights movement for persons with disabilities was spawned by grass roots movements (Scotch, 1984). Over time, this civil rights movement has been aided by behavioral science research as well as by legal actions (see, e.g., Scotch, 1984, 1988; see also Ainlay, Becker, & Coleman, 1986; Asch & Fine, 1988; Rothstein, 1992/1994; Shapiro, 1993).

It is still too early to assess the ultimate success of the specific ADA legislation, much less the general disability-rights, advocacy movement. Nevertheless, as the articles in this special issue of *Behavioral Sciences and the Law* reflect, the behavioral-science-and-law community has much to contribute to the elimination of the marginalization of persons with disabilities in modern society. As shown in the articles in this issue, these efforts can include a) assessing progress in light of legislation and policy reforms, b) identifying on-going barriers, and c) offering ideas for different ways to conceptualize not only the problems, but also the solutions to problems confronting persons with disabilities. Ultimately, these and the other efforts being undertaken in the legal, social, and political arenas should help in the fight to fully integrate persons with disabilities into every part of the social fabric.

The issue begins with two articles that report on empirical research. First, Professor Peter Blanck presents results from his longitudinal study of the ADA. Specifically, Professor Blanck has been examining employment integration and economic opportunity. His article summarizes the findings from his program of research: There are seven core findings, indicating both successes in employment (e.g., an increase of employment in integrated work settings) as well as continuing concerns (e.g., wage disparities as a function of gender; a leveling off of economic opportunities).

The other empirical study is presented by Professor Delbert Rounds. Professor Rounds interviewed individuals with legal blindness in order to learn about their experiences of criminal victimization. One of only a handful of studies on the impact of crime on persons with disabilities, the research indicates that although individuals with legal blindness may not be victimized at rates different than sighted persons, the legally-blind appear to be vulnerable to specific kinds of victimization and their victimization experiences may differ from other crime victims' experiences.

The remaining five articles assess different issues related to persons with disabilities. All draw, to some degree, on behavioral science research to argue for the elimination of barriers to persons with disabilities so that they can share the same social and legal rights and responsibilities as non-disabled persons.

Professor Harlan Hahn offers a sociopolitical definition of disability. Instead of conceptualizing disability as a functional impairment, Professor Hahn advocates the use of a *minority* model that stresses *attitudinal discrimination* as the principal problem facing disabled persons. Professor Hahn suggests that the reconceptualization of disability could benefit persons with disabilities in both social scientific and legal contexts. For example, it would focus social scientific investigations on such issues as the concept of *aesthetic anxiety*. Research undertaken in light of the minority/attitudinal model, Professor Hahn argues, could have the same positive consequences in aiding persons with disabilities in their fight for legal and social equality as did social scientific research regarding race issues.

Professor Michael Perlin presents a different twist on sociopolitical implications of disability issues. He shows how a seemingly “minor” decision by the United States Supreme Court in the mental disability case of *Godinez v. Moran* (establishing a unitary standard for the determinations of competence to stand trial, competence to plead guilty, and competence to waive counsel) had a substantial influence on the way in which the courts recently handled the high-visibility case of Colin Ferguson. Ferguson, a very bright but mentally disabled Black man, was the defendant charged with the murder of six people and the wounding of 19 others. Professor Perlin uses the filters of *sanism* and *pretextuality* to examine the Ferguson trial and to provide insight into how the American criminal justice system reacts to defendants with mental disabilities.

Whereas Professor Perlin analyzed criminal law issues that disabled persons with mental disabilities rather than enabled them, Professor Roger Levesque analyzes recent civil law reforms that have the same consequence. Professor Levesque’s focus is on the way in which laws (statutes and case decisions) have intruded on the rights to engage in sexual, marital, and parental relationships. His analyses are very similar to Professor Perlin’s in the demonstration of sanist and pretextual approaches to these issues taken by the law. Professor Levesque advocates that the law adopt the approach taken by many (but not all) social scientists—viz., the examination of behavior in context without preconceived, moralistic positions, resulting in individual assessments of competency—in order to provide a better understanding of rights and abilities for persons with mental disabilities, and, ultimately, an end to restrictive legal rules.

Professor Donald Hantula and Ms. Noreen Reilly also focus on persons with mental disabilities. They contend that under the reasonable accommodation provisions of the ADA, persons with mental disabilities should and could have successful employment opportunities if only the social and managerial environments were to be modified. Professor Hantula and Ms. Reilly suggest the use of behavior analysis and performance management perspectives as bases for analyzing, developing, implementing, and evaluating reasonable accommodation for persons with mental disabilities. They also argue that the changes needed for persons with disabilities would actually benefit non-disabled employees as well.

Finally, Dr. McCay Vernon, Dr. Lawrence Raifman, and Professor Sheldon Greenberg analyze the problems associated with providing Miranda Warnings to deaf suspects. They provide caselaw, empirical, and analytical evidence demonstrating that present law enforcement practices fail to inform deaf suspects of their legal rights, resulting in adverse consequences for both law enforcement and the suspects. Dr. Vernon and his colleagues identify techniques that not only promote an awareness of the problems, but also help to address the problems for criminal justice officials and for deaf suspects.

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