

SYMPOSIUM: FULFILLING *OLMSTEAD*

Introductory Remarks

Professor Peter Edelman*

Good morning. It is wonderful to see everyone. The Georgetown Journal on Poverty Law and Policy is one of the few poverty journals in law schools around the country. We started almost thirty years ago because a student, Leonard Adler, said we had to have such a review. The people in charge said “no” repeatedly, but Leonard won out. And it’s just wonderful that we have it.

This symposium, which we host every other year, always covers important topics and this year is no exception. I want to say thank you to everyone at the Journal, especially Symposium Editor Eric Swenson and Editor-in-Chief Sarah Hainbach. I also want to thank everyone who came to speak and all who came to listen. It is an all-star roster. Thank you to everyone, those who come from nearby and especially those who came from afar.

We are here to reflect on the twentieth anniversary of the *Olmstead* case. When talking about disability, the obvious point is that people with disabilities disproportionately have low incomes: It is at least double, in percentages, as opposed to people who do not have disabilities.¹ No further explanation is needed that disability and poverty go together.

Perhaps critics will say we are not doing the right things. We certainly have more to do. While the federal government has worked to support veterans with disabilities since 1917, the truly enormous developments in disability programs did not begin until 1956. That year marked the beginning of the tremendous trilogy with the passage of Social Security Disability Insurance (SSDI). Medicaid came in 1965, and then Supplemental Security Income (SSI) was enacted in 1972. To be sure, these things need to be even more improved, but they represent the idea of an entitlement for people who have disabilities, and these three things are, really, a miracle.

And it did not stop: In 1973, Section 504 of the Rehabilitation Act prohibited any organization receiving federal funds from discriminating against anyone with a disability.² In 1975, the Education for all Handicapped Children Act mandated equal access to education for all children with physical and mental disabilities (the law was renamed IDEA in 1990).³ Millions and millions of children in mainstream

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1. JESSICA SEMEGA ET. AL, INCOME AND POVERTY IN THE UNITED STATES: 2018, at 13 (2020), <https://www.census.gov/library/publications/2019/demo/p60-266.html>.

2. 29 U.S.C § 794 (1973).

3. Education For All Handicapped Children Act of 1975, Pub. L. No. 94-142, 89 Stat. 424; Individuals with Disabilities Education Act of 1990, Pub. L. No. 101-476, 104 Stat. 1142.

schools had not gone to school at all, or they were in places where they were separately segregated in ways that were not necessary and not right. And then the Americans Disabilities Act in 1990 prohibited discrimination to individuals in all areas of public life. These are powerful acts, and these things have been done and they are so important.

Today we will discuss people with intellectual or developmental disabilities who have been taken out of institutions and what has been accomplished there. Of course, when we are talking about mental health in institutions, we have a long way to go and we all know that. But, twenty years after *Olmstead*, we are here to celebrate the progress we have made. I hope that the brief history reminds us of the truly amazing achievements that we have accomplished and serves as a kind of wind at our backs to help us push forward.

Today, we are here to talk about what we still need to do.

One, we need to integrate. We need to finish integrating, if you will. Think about employment; too often we are still delivering employment services that are segregated, not integrated. IDEA services end at age twenty-two and people are left on a cliff. *Olmstead* is a litigation vehicle; it is being used right now to pursue supported employment and competitive employment through litigation against federal, state, and local governments, and should continue to be.

Second, we hear about the criminalization of poverty via fines and fees and bail. Too often, something happens to a child in school, some minor thing, and instead of being sent to the principal, the child is sent to court. We know particularly that this disproportionately happens to children of color.⁴ But the fact is that children with disabilities are also arrested disproportionately in connection with their disabilities and sent to court. In Virginia, for example, African American students are sent to court at a rate of 25.3% and children with disabilities at 33.4%.⁵ We need to do much better for all the children who are being sent to court.

So, thank you to all of you who are here. We are going to learn a lot. You are in for a great day.

4. Tamar Lewin, *Black Students Face More Discipline, Data Suggests*, N.Y. TIMES (Feb. 14, 2020), <https://www.nytimes.com/2012/03/06/education/black-students-face-more-harsh-discipline-data-shows.html>.

5. PETER EDELMAN, NOT A CRIME TO BE POOR: THE CRIMINALIZATION OF POVERTY IN AMERICA 121 (2017).