Tracking the Disability Pendulum


This book is must reading for teachers, school administrators, parents, vocational rehabilitation counselors, disability rights lawyers, and Deaf Community leaders who hope to help take the citizenship interests of deaf and hard-of-hearing people to the next level. The book helps these constituencies make the essential connections between raising and educating deaf children and the rights and opportunities those children hope to enjoy.

To fully benefit from this book, readers need to put the material into context. First, with appropriate advocacy strategies, the rights of people with disabilities will continue to expand. The disability rights pendulum swings from one side to the other, but it moves forward. Second, disability laws like the Americans with Disabilities Act (ADA) are just one flank of the disability rights fight. The best-written laws are of limited value to deaf, hard-of-hearing, and deafblind children who do not have the springboards of loving, communicating families, quality schools, reasonable accommodation, accessible transportation, government support programs that reward work and independence, inclusive business people, and welcoming communities. This is an important consideration in assessing why the ADA has, to date, had little or no impact on the overall employability of individuals with disabilities. Third, this book is a reminder about the connection between the promise of the ADA as Congress wrote it, the vagaries of presidential elections, and our need for vigilance in the confirmation of federal judges and Supreme Court judges with lifetime appointments who will rule on future ADA cases.

*The Disability Pendulum* provides an insider’s view of how the ADA became law. Professor Colker explains the passion and the data that generated the law, the goals and architecture of the law (private employment, public services, privately owned businesses), as well as the language of the law (e.g., disability, reasonable accommodation, undue hardship). She next describes the journey of the ADA through Congress in 1990, culminating in a 377–28 vote in the House of Representatives and a 91–7 vote in the U.S. Senate.

Colker describes a clear judicial backlash against the letter and spirit of this legislation since its passage. The federal appellate courts and the U.S. Supreme Court have overwhelmingly ruled against plaintiffs in ADA cases while significantly narrowing and complicating the definition of disability. The courts have interpreted the constitutional scope of the ADA so narrowly that it is difficult for private individuals with disabilities to bring suits against states unless they can show a constitutional deprivation of due process. Appellate judicial decisions in ADA cases are overwhelmingly pro business, against plaintiffs with disabilities. The negative ADA judicial “pendulum swing” could be repaired by amending the ADA in Congress, but people with disabilities worry that the amendment process would open the entire ADA to assaults by a White House and Congress that are much more pro business than the Congress that passed the ADA in 1990.

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