

HOW MUCH HISTORY DO WE NEED? DEFENDING

We were fighting for Frankie and LaTonya and their lost childhoods in a courtroom in Montgomery, AL. With its heavy velvet drapery, rows of carved wooden chairs, and its undercurrent of hushed dignity, the courtroom looked more like a movie set than the legal battleground it was. A thousand miles from Ewing, it was an unlikely spot for a Trenton State alum to find herself recalling a key decision reached five years earlier in the shadow of Green Hall. Toward the end of my undergraduate years, I had decided not to continue with plans to become a teacher of deaf students, but to apply to law school instead. In that courtroom, however, just two years ago, I realized those two impossibly different career paths had come together.

As Judge W. Harold Albritton, the embodiment of a dignified federal judge, spoke, I frantically reviewed the arguments I had rehearsed the previous night. Arguments sped through my mind's eye like an old-time movie on fast forward. It was the judge's words, spoken with the assurance of a man long accustomed to making weighty decisions, that froze the tape running through my mind. "This case," he intoned, "is going all the way up to the United States Supreme Court." With a nervous gulp, I began my argument. I knew then that my Trenton State experience would not be a distant echo of a career set aside, but would instead be a foundation for a career in legal advocacy.

As it happened, the case did not go to the Supreme Court, but the question of state liability under the Americans with Disabilities Act (ADA) was before the high court last year. The Supreme Court's decision and other decisions that followed are troubling, but more about that later.

In 1991, I had come to college from a small town in northwest New Jersey to major in deaf education. Even before entering high school, I had already set my heart and mind on the idea of teaching deaf children. My decision to attend TSC, one of only 44 accredited deaf education programs in the United States, seemed predestined. With a

scholarship from the TSC Alumni Association, and an extraordinary faculty, there was no question Trenton State was the right place for me.

During my senior year, I student taught at the Katzenbach School for the Deaf in Ewing and the Sterck School for the Deaf in Newark, DE. The experiences were invaluable. I loved the children in my classes and the rewards that only teachers can appreciate. But I began to see the possibilities for me to improve education for deaf children and to impact educational policy from outside the classroom.

Winning a \$30,000 Truman Fellowship also played a hand in reformulating my childhood dreams into career goals. My faculty adviser at the time, Kevin Miller, nominated me and gave invaluable help during the application process. I never expected to win, but thanks to him and other professors like William DeMeritt, it happened. Being named a Truman Scholar gave me the confidence to leave a very comfortable path and acknowledge that I was drawn more toward advocacy than teaching.

Taking a different road

In his famous poem "The Road Not Taken," Robert Frost recalls how "two roads diverged in a yellow wood/and sorry I could not travel both and be one traveler...." For a deaf education major, the decision to leave the field of education and enter law school was one giant step along a road I had never expected to travel. I made that decision standing in front of Green Hall, fervently hoping I would not regret it. So began my journey toward the federal district court in Montgomery.

During that first year at the University of Connecticut School of Law in Hartford, I often felt my former life in education tugging at my new one in the law. While my contracts professor spoke about the law, my thoughts would wander off to recess and children laughing and swinging on jungle gyms. The strictures and precedents of the law seemed completely disconnected from the hope and optimism that imbues the field of education.

THE RIGHTS OF THE DEAF

by Mary Ammann Vargas '95



“ I CAME TO REALIZE MY TRAINING AS A TEACHER HAD VALUE IN THE LEGAL WORLD. ”

leading to such unspeakable agony that the very stones of the courthouse would seem to cry out for relief.” He could have been describing any number of the cases involving discrimination based on disability that we see at the NAD Law Center. He could have been describing the case of Frankie and LaTonya.

Always present, but never taught

In 1988, when Frankie entered Alabama’s Barbour County school system, he was a 4-year-old boy ready to learn. He was also deaf. For 10 full years, Frankie went to a school that did not teach him any language or fulfill the most basic guarantees of an appropriate education. The same was true of an unrelated older girl, LaTonya. Year after year, the two children were placed in the same classroom for children with mental retardation simply because they were deaf. Their teacher, trained to work with children who are mentally retarded, could not communicate with them. Year after year they existed while their childhoods drifted out of reach. They had no language and no ability to communicate with other children of their age. They received no education, although they went to school every day.

The NAD Law Center and an Alabama attorney filed complaints in federal court on behalf of Frankie and LaTonya seeking compensatory education and money damages. A few hours after the oral argument in the case, and before the trial began, the state of Alabama settled. The agreement, estimated to be worth \$2.5 million, is believed to be the largest special education settlement in the history of the United States. These two children will have a

second chance. Under the terms of the settlement, they will receive whatever education they need until they reach age 25, four years longer than the law provides. The financial portion of the settlement provides both Frankie and LaTonya, now 18 and 20 respectively, with a yearly stipend greater than the salary earned by most schoolteachers in the state of Alabama.

Frankie and LaTonya’s case never made it to the Supreme Court, but it has a special meaning for me, perhaps because it is a story of the law offering hope. No question, the childhood each lost cannot be replaced. In that sense, their story is a tragedy. But it is the teacher in me, the hope that TSC professors like Kevin Miller, Harold Tariff, and Barbara Strassman taught me to cherish as an educator, that has confidence in their future.

My fellowship has long since ended, yet I remain at the NAD Law Center with a teacher’s optimism. Frequently, cases bring me home to New Jersey. In August 2001, the NAD Law Center and a New Jersey lawyer, Clara Smit, entered into a landmark settlement with the state of New Jersey Administrative Office of the Courts and eight New Jersey municipalities: South Plainfield, Paramus, Clifton, Freehold, Woodbury, Nutley, Paterson, and Englewood. The settlement resolved a lawsuit alleging that New Jersey citizens who are deaf were denied access to municipal courts on the basis of their disability. Under the settlement, the state of New Jersey Administrative Office of the Courts has agreed to policy changes to prevent discrimination from recurring in the courts. Training for municipal court judges and staff, and guidance from the state to all 536 municipal courts also will be provided. Signs will be posted in all courtrooms throughout the state informing citizens that qualified sign language interpreters and assistive listening systems are available at no cost. In addition, all

As law school unfolded, I sought out opportunities to connect my college experience with this world of cases and courts. At the end of my first year, I began representing clients at the Yale Law School Advocacy for Persons with Disabilities Clinic in New Haven. As I began representing parents of children with hearing disabilities, I came to realize my training as a teacher had value in the legal world.

It was after my second year of law school that I learned of the National Association of the Deaf Law Center in Silver Spring, MD. The NAD Law Center is the litigation and advocacy arm of the National Association of the Deaf, the nation’s oldest and largest consumer-based organization advocating on behalf of individuals who are deaf and hard of hearing. With a small, but passionately dedicated staff, it engages in nationwide impact litigation on behalf of people who have been denied access to the courts, health care, employment, and education simply because they are deaf.

In 1998, I graduated from law school and received a two-year fellowship from the Skadden Fellowship Foundation to work at the NAD Law Center focusing on representation of people who were denied access to health care and the courts. It was the opportunity of a lifetime and the realization of dreams that took root at college. Yet, even as I began work at the Law Center, a part of me longed to reconnect with deaf education and to use the knowledge from my college years. I had no idea that was just about to happen.

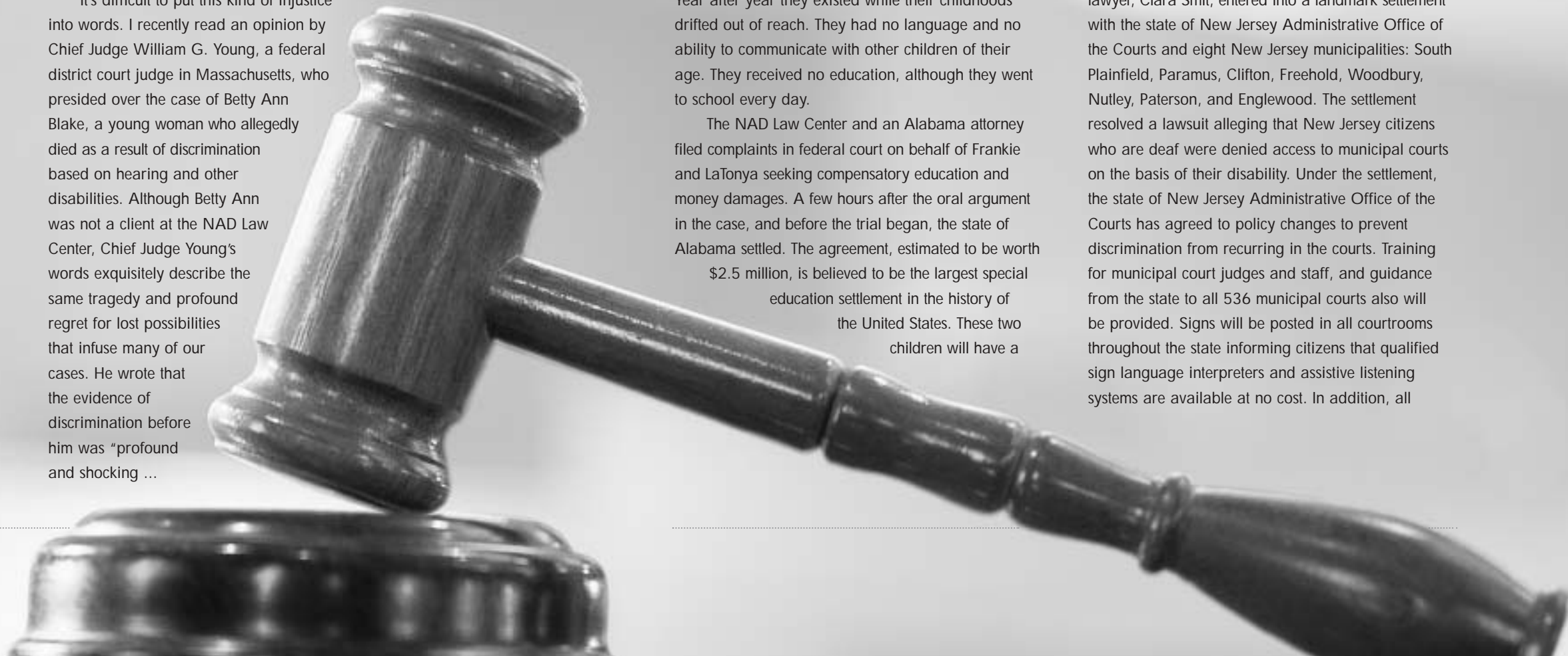
Getting down to cases

As a young attorney, I have been fortunate. While many lawyers work long hours for nameless and faceless corporations, or for people who have committed terrible crimes, the clients who come to the Law Center have stories that make me want to go to work every morning. Their experiences cry out for an advocate: a man whose leg was amputated without his permission, a woman who miscarried and was sent home without being told, a man who was held in jail unable to ask why he was there or when he would be released. Most shocking is that these stories

are not dim memories about wrongs from long ago. These happened in the late 1990s and the new millennium; they involve today’s Americans who are being denied the most fundamental rights and dignities.

In Houston, TX, in 1996, two young, deaf men were arrested separately and held in detention centers. Arrested and detained without interpreters, and unable to make a telephone call because the facilities did not have telecommunications devices for the deaf, one of these men was unable to explain to medical personnel that he needed essential medication. The other, a young student, appeared in court without representation and without an interpreter to translate the proceedings or the charges against him. The discrimination cases we filed against the state of Texas, the city of Houston, the county of Harris, and two judges, were settled, resulting in an award of monetary damages and substantial policy changes to the judicial and detention systems in Texas. Both cases were about the fundamental right to understand the nature and circumstances of detention and the denial of the most basic right to communicate about matters of the utmost importance.

It’s difficult to put this kind of injustice into words. I recently read an opinion by Chief Judge William G. Young, a federal district court judge in Massachusetts, who presided over the case of Betty Ann Blake, a young woman who allegedly died as a result of discrimination based on hearing and other disabilities. Although Betty Ann was not a client at the NAD Law Center, Chief Judge Young’s words exquisitely describe the same tragedy and profound regret for lost possibilities that infuse many of our cases. He wrote that the evidence of discrimination before him was “profound and shocking ...



municipal court summonses and court stationery will now include the international logo signaling the availability of interpreters and listening systems.

Despite these victories, as disability rights lawyers we are not completely untouched by the current political and judicial trends that threaten rights so recently won and so dearly needed.

Calling our better angels

In June 2001, the United States Supreme Court, in *University of Alabama v. Garrett*, determined that state employees with disabilities cannot sue their employers who discriminate against them for money damages under the Americans with Disabilities Act. Now, courts across the United States are examining other portions of the ADA. Defense attorneys and defendant states continue to argue that there is insufficient evidence of widespread discrimination by states against individuals with disabilities to justify Congress' actions in enacting the Americans with Disabilities Act. Some court decisions have set limits on liability under the ADA, based on an analysis of the history of disability discrimination in this country.

Yet, a glimpse at the historic treatment of individuals with disabilities reveals that almost every state engaged in forced sterilization of people with disabilities and denied employment rights, voting rights, and marriage rights. Not long before *Garrett*, the Supreme Court described the manner in which U.S. citizens with disabilities were treated as, "A regime of state-mandated segregation and degradation...that in its virulence and bigotry rivaled, and indeed paralleled, the worst excesses of Jim Crow."

Given the reality of our history, these new attacks on disability rights laws as being unjustified are particularly disconcerting. For those of us who are constantly bombarded by new stories of discrimination that cry out for justice, this is a cruel irony and a bitter disappointment. It also is a call to our better angels. It is a call for individuals with disabilities to tell their stories and it means that each citizen must bear public witness to the reality that discrimination persists at great cost to all of us, both

financially and morally. It is a battle that is being fought around the country and just a few miles from The College of New Jersey.

Detaining the deaf in Mercer County

In 1994, Ronald Chisolm was detained at the Mercer County Detention Center in Trenton as a result of an open bench warrant that had been issued without his knowledge years earlier in another state. (The warrant was subsequently quashed when it was learned it had been issued erroneously.) Although Chisolm is deaf and communicates in American Sign Language, he was allegedly denied interpreter services throughout his detention and in his interactions with the Mercer County Court.

Chisolm alleges that as a result of ineffective communication, he was improperly classified as an unemployed vagrant, resulting in an increased security rating at the detention center. In fact, Chisolm had been employed by the same company for 13 years and had lived at the same address for three years. Chisolm also alleged in his complaint that without an interpreter, he was unable to understand the charges against him, the reason for his arrest, or the length of his detention. Chisolm further alleged that although it was required by law, Mercer County Detention Center did not have a telecommunications device for the deaf. Therefore, Chisolm was unable to call family, friends or his lawyer to find out why he was being detained or to obtain his release.

Days after being detained on incorrect intake information, Chisolm was brought before Judge Thomas DeMartin at the Mercer County Court. Despite a New Jersey law that prohibits incarceration of a deaf person pending the arrival of an interpreter, Chisolm alleges that he was remanded back to Mercer County Detention Center for an additional six days pending the arrival of an interpreter. Chisolm ultimately gained his release only when a friend contacted an attorney who intervened on his behalf.

Chisolm filed a complaint for disability discrimination against the Mercer County Court and Patrick McManimon, director of the Mercer County

Detention Center. After having his case dismissed by the U.S. District Court for the District of New Jersey, the United States Court of Appeals for the Third Circuit held that Chisolm had presented sufficient evidence of discrimination to proceed to trial against both defendants. The Office of the Attorney General for the State of New Jersey, which defended the Mercer County Court, had taken the position that the state was immune from suit for disability discrimination, but Chisolm finally will have his day in court.

It would be a terrible shame if the wrongful acts that the ADA was designed to prevent are allowed to continue because they have not been acknowledged by politicians or history books. How much more history do we need? Examples of discriminatory action against individuals with disabilities are legion. As Judge Young wrote about the suffering of Betty Ann Blake and her parents, "the very stones of the courthouse would seem to cry out for relief."

Unhappily, too many employers and service providers are simply not listening. All of us (the disabled, their lawyers, lawmakers, and concerned citizens everywhere) must make sure those anguished cries are heard.

Mary Vargas '95 is a staff attorney with the National Association of the Deaf Law Center in Silver Spring, MD. She and her husband, Nelson, a lawyer with the U.S. Department of Justice, live in Gaithersburg, MD.



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