Perspective

The Archival Setting and People with Disabilities: A Legal Analysis

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Abstract: Legal rules and regulations, with increasing regularity, determine how we operate our institutions. The Americans with Disabilities Act illustrates this point well. It has affected archives in several ways, and will continue to do so. The act influences archival employment practices and will assuredly influence the nature and quality of service made available to patrons with disabilities. This article explores, in general terms, the relevance of the Americans with Disabilities Act to the archival setting.

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ON 26 JULY 1990, PRESIDENT George Bush signed into law the Americans with Disabilities Act (hereafter referred to as the ADA).[1] In terms of scope and substantive content, there can be little doubt that the ADA is the most compelling and significant federal legislative attempt to lessen, if not eradicate, the harm and disparate treatment of persons who are deemed to be disabled.[2]

Over 40 million Americans are estimated to have a disability. And, as our population continues to age, it is fair to assume that this number, which bears a relationship in both absolute and relative terms to the total population, will continue to grow. In other terms, it appears that one in seven persons in this country may be regarded as having a disability. People with disabilities, if provided with a fair and equal opportunity, are just as likely as their nondisabled fellow citizens to seek employment and to use public facilities. Assuming this to be true, it follows that people with disabilities have played and will continue to play an enormous role in American society—a role that can no longer be ignored.

The purpose of this article is to explore several aspects of the ADA and to examine the ways in which it will most likely affect the archival setting. Archives, like any other public or quasi-public institutions, employ people and make available to users their services and resources. To the extent that archives engage in such activities, it is clear that ADA affects them and creates legal obligations that were not readily apparent before the passage of the ADA.

This examination of the effects of the ADA on archival institutions and the profession has three parts. It begins with a brief review of the archival literature as it relates to people with disabilities. Second, a generalized historical overview of the legislative and judicial attempts to "reform" our attitudes and conduct with respect to people with disabilities is offered. And finally, the ADA, or at least those provisions most relevant to the archival setting, will be discussed. It is hoped that this method of exposition will help to make the archival community more aware of the legal duties imposed by the ADA.

Archival Literature and People with Disabilities

If the quantity of a profession's literature is an indication of that profession's interest in or awareness of a particular subject, it is fair to say that American archivists have not shown a particularly keen affinity for the disabled person. Bluntly stated, it is difficult to find articles or essays in the archival literature that are concerned with either the disabled employee or the disabled patron.[3] Even the most diligent researcher is not likely to find more than a handful of references to these subjects in the literature.

Two articles, however, deserve particular attention. Both articles predate the ADA and therefore do not focus on current legal obligations. Nonetheless, these articles are important in that they serve as a reminder

[1]P.L. 101-336, 42 U.S.C. 12,101, *et seq.*

[2]For the purposes of this article, *disability* is defined as it is in the ADA (2)(A), as a "physical or mental impairment that substantially limits one or more of the major life activities of [an] individual."

[3]Librarianship, by way of contrast, has produced literally hundreds of articles and books concerned with people with disabilities. Three excellent monographs on the subject, including extensive references to other publications, are Eunice Lovejoy, *Portraits of Library Service to People with Disabilities* (Boston: G. K. Hall, 1990); Keith Wright and Judith Davie, *Library and Information Services for Handicapped Individuals*, 2nd ed. (Littleton, Colo.: Libraries Unlimited, 1983); and Rashelle S. Karp, *Library Services for Disabled Individuals* (Boston: G. K. Hall 1991). One bibliography on the subject of library service for people with disabilities reportedly contains almost 800 entries. See *That All May Read: Library Service for Blind and Physically Handicapped People* (Washington, D.C.: National Library Service for the Blind and Physically Handicapped, Library of Congress, 1983).

that people with disabilities are most certainly a part of the archival setting.

The first article, published in 1979, was written by Lance Fischer.[4] Writing from his perspective as an archivist, a user of archives, and a deaf person, Fischer offers insightful and useful comments. His focus, as one might expect, is on the deaf researcher in an archival setting.

Fischer points out that archivists must gain a more fully developed awareness of the "dilemma of the deaf."[5] To do this, he suggests that the assistance of knowledgeable groups be sought and that archival managers consider the use of workshops to increase staff sensitivity. Fischer continues by noting the importance of interpreting services in assisting the deaf. According to Fischer, sign language skills are quite simply the most productive way to enhance bilateral communication between the archivist and the deaf patron. The author describes several other remedial measures, discussing, for example, the use of teletypewriters and the improvement of visual aids.

In concluding, Fischer reminds the reader that many of these changes may be required by law and refers the reader to the Rehabilitation Act of 1973.[6] Finally, the author notes that deaf users must be sought; that is, archivists must "publicize the steps taken to accommodate the deaf."[7]

Brenda Beasley Kepley, writing in 1983, provides a comprehensive view of the patron with disabilities within an archival setting.[8] She notes, for instance, that 1981 was the International Year of the Disabled and argues that the archival profession, like many other occupational groups, must become more sensitive to and aware of the needs of patrons with disabilities. There are compelling legal reasons why archivists should become more involved with service to people with disabilities. Kepley refers, for example, to the Education for All Handicapped Children Act of 1975 and the Rehabilitation Act of 1973. She points out that archivists "lag far behind" professions such as librarianship and museum administration in their awareness of and efforts on behalf of people with disabilities.[9]

Kepley also discusses specific kinds of disabilities, such as deafness, blindness, limited mobility, and problems related to aging. The author suggests responses for accommodating such needs, and she provides a series of specific issues and proposed solutions. These include such matters as parking facilities and restroom accessibility. In concluding, Kepley lists the names and addresses of organizations that provide information and assistance to those interested in the problems of the people with disabilities.

The Fischer and Kepley articles are similar in several important respects. Both articles, on explicit and implicit levels, remind the archival community of its need to be more mindful of patrons with disabilities. Both authors call for a greater sensitivity to people with disabilities and briefly mention the fact that the legal system is playing an increasingly significant role in creating duties in this respect. Both offer specific suggestions on how to remedy shortcomings that may exist in the level of service offered by archives to the patron. In this regard, Fischer's article focuses on the needs of the deaf, while Kepley deals with a wider

[4]Lance Fischer, "The Deaf and Archival Research: Some Problems and Solutions," *American Archivist* 42 (October 1979): 463–64.

[5]Fischer, "The Deaf and Archival Research," 463.

[6]In referring to the Rehabilitation Act of 1973, Fischer quite correctly notes that the law may compel us to do more than we are doing for people with disabilities. The 1973 act has several limiting features, however.

[7]Fischer, "The Deaf and Archival Research," 464.

[8]Brenda Beasley Kepley, "Archives: Accessibility for the Disabled," *American Archivist* 46 (Winter 1983): 42–51.

[9]Kepley, "Accessiblity for the Disabled," 43.

variety of physical impediments. Finally, both writers are concerned exclusively with patrons with disabilities; neither Fischer nor Kepley deals with employment practices that may discriminate against people with disabilities who are employed or who seek employment in the archival setting. This lapse is understandable, considering the context of the articles. When the Fischer and Kepley articles appeared, the legal status of people with disabilities in the workplace was problematic, at very best; indeed, the ADA was enacted at least in part because the employment rights of people with disabilities were ill defined, difficult to enforce, and narrowly circumscribed under then-current law.

Kepley's and Fischer's articles represent well-defined and articulate statements of concern for the ways in which people with disabilities are treated in archival settings. In tone, the reader is given the impression that many of the authors' suggestions with respect to the improvement of services are optional. The authors are simply presenting an accurate reflection of the legal conditions that existed before passage of the ADA. Despite the fact that the ADA has made mandatory much of what was optional, Kepley and Fischer have made important contributions to the archival literature. Unfortunately, they are voices crying in the wilderness—but they are voices that can no longer be ignored.

Judicial and Legislative Antecedents to the ADA

Significant legislative enactments such as the ADA are rarely created in a vacuum. They exist, and must be read and understood, within their overall legal framework. This framework is made up of earlier statutes and court decisions that explicitly or implicitly set a tone for current and future applications of the law. The ADA must be approached from this perspective if its deeper impact and meaning are to be appreciated fully.

The ADA is the most comprehensive attempt by the federal government to deal with people with disabilities as they strive to participate fully in American life.[10] It would be a mistake to assume, however, that the ADA simply arose in a historical fashion. In point of fact, the ADA can fairly be seen as one major step in a process that began decades ago. This process, it should be mentioned, was assisted by both the judicial and legislative branches of government, as an illustration from the years immediately following the Second World War will show. As one might imagine, the Second World War produced many thousands of veterans, both men and women, who had been disabled in the course of providing military service. In response, Congress passed the Act of June 10, 1948, which in essence banned discrimination in federal employment on the basis of a disability.[11]

Without a doubt, the Act of 1948 had its limitations. It did not cover most Americans, nor did it apply to most employment settings. Nonetheless, it signaled, at a minimum, an awareness on the part of Congress that people with disabilities may be the victims of discrimination and that such discrimination is both unreasonable and legally indefensible.[12] The Act of 1948 was a beginning.

For purposes of this discussion, the 1950s

[10]The ADA is, of course, a federal law. Many states, have passed acts that protect people with disabilities, especially in the area of employment discrimination. These state laws, while beyond the scope of this article, are not necessarily nullified by the ADA; they may in fact operate as parallel means of enforcement. See section 501(b) of the ADA 42 U.S.C. 12201(b). This interplay between federal law and state laws may raise interesting and sometimes troublesome legal issues.

[11]Act of June 10, 1948 Pub. L. No 617, ch 434,62 Stat. 351 (1948).

[12]The Act of 1948 is a remarkable piece of legislation in that it foreshadowed subsequent congressional attempts to deal with discrimination in the workplace. The centerpiece of such legislation, the Civil Rights Act of 1964 (42 U.S.C. 2000 et seg), would not appear for another sixteen years, however.

were not a particularly significant period, but by the latter half of the 1960s a number of relevant events began to occur. Congress passed the Architectural Barriers Act of 1968,[13] which sought to eliminate the physical impediments inherent in many public structures—impediments that prevented people with disibilities from gaining meaningful access to public places. Thus Congress required that buildings "constructed, altered or financed" by the federal government be made accessible to people with disabilities.[14] The Architectural Barriers Act, like the Act of 1948, depended on a federal connection; it applied only when federal monies were involved. But again, like the Act of 1948, it was an important, albeit limited, step in the right direction.

The next event, and unquestionably the most significant one aside from the ADA, was the passage of the Rehabilitation Act of 1973.[15] The Rehabilitation Act was—and for that matter still is—important for a number of reasons. First, it codified and solidified a number of preexisting vocational rehabilitation programs. It also created a number of guarantees for the people with disabilities, and it assigned to federal agencies responsibilities for recruiting and retaining employees with disabilities.

These same kinds of standards were imposed on federal contractors. In addition, entities receiving federal assistance were now, perhaps for the first time, required to refrain from engaging in any form of discrimination against people with disabilities. The Rehabilitation Act, in its amendment, further extended these broad antidiscrimination provisions to virtually all federal executive agencies including the U.S. Postal Service.

Perhaps most significant is the fact that the Rehabilitation Act of 1973 created a conceptual and definitional framework for dealing with discrimination. Many of the phrases and definitions now contained in the ADA were originally drafted for use in the Rehabilitation Act, and the many legal cases that have tested the act since 1973 provide an important interpretive guide for the ADA.

The Rehabilitation Act of 1973 nevertheless had several serious drawbacks. By virtue of its jurisdictional parameters, many employers and/or services simply were not covered. Enforcement, especially by private parties, was problematic. And, like any relatively new piece of legislation, it was subject to wide and sometimes divergent interpretations by the federal courts. The Rehabilitation Act of 1973, although a truly important enactment, still left much undone.[16]

In the meantime, the federal judiciary was supplementing the process of change. In *Alexander* v. *Choate*,[17] the U.S. Supreme Court had to decide whether discrimination under the Rehabilitation Act of 1973 was unlawful even if it was *unintentional*. In

[13]Architectural Barriers Act of 1968, 42 U.S.C. 4151, et seg (codified as amended, 1989).

[14]In 1973, the Architectural and Transportation Barriers Compliance Board (ATBCB) was created. See 29 U.S.C. 792. The purpose of the ATBCB was to induce compliance with the Architectural Barriers Act of 1968. There was an attempt in the early 1980s by the Reagan administration to disband the ATBCB. See Wright and Davie, *Library and Information Services for Handicapped Individual*, for a brief discussion of the episode.

[15]The Rehabilitation Act of 1973, Pub.L. No. 93-112, 87 Stat. 355 (1973).

[16]After passage of the Rehabilitaton Act of 1973, Congress continued the process of change, at least with respect to specific areas of American life. In 1975, for example, it passed the Education of All Handicapped Children Act, Pub.L. No. 94-103, 89 Stat. 486 (1975). See also the Developmental Disabled Assistance and Bill of Rights Act, Pub.L. No. 94-103, 89 Stat. 486 (1975).

[17]439 U.S. 287 (1985). The *Alexander* v. *Choate* decision looked to an earlier Civil Rights Act case, *Lau* v. *Nichols*, 414 U.S. 563 (1974), for guidance. In *Lau*, the Supreme Court ruled that equal treatment was not necessarily adequate when a disadvantaged group could not participate fully in the absence of affirmative assistance.

answering this question, the Court reached the conclusion that the impact of disparate treatment could well be unlawful even if the alleged wrongdoer acted without design or intent. This concept, it should be noted, was specifically carried forward into the ADA.

Court decisions, which sometimes decided against the rights of people with disabilities, have also affected the law as we understand it today. In *Southeastern Community College* v. *Davis*,[18] the Supreme Court held that the Rehabilitation Act of 1973 did *not* require federally assisted programs to offer individualized or personal attention or service. This holding, and its impact, has been addressed by the ADA, as will be shown later.

This brief history brings us full circle. Congress and the Courts, starting at least in 1948, have struggled with the way in which the nation deals with people with disabilities. While matters have not necessarily progressed in a straight line, it is clear that, for more than forty years, change has been occurring. The ADA can be viewed as a major effort on the part of Congress to fill in the gaps that remained. These gaps, sometimes caused by legislative inattention and sometimes brought on by unsympathetic court decisions, are to a large extent what the ADA is all about.

The ADA and Its Relationship to Archives

Although the ADA was signed into law in 1990, it was originally introduced into Congress in 1988. In the two years between its introduction and its passage, a great deal of "debate, negotiation, compromise, refinement and revision" took place.[19] What emerged is a rather complex and comprehensive legislative enactment.

It is not the purpose of this discussion to review every provision of the ADA. Rather, what follows here is a brief description of those portions of the ADA that are most likely to affect archives in the United States.

The ADA is divided into five parts, or titles. Title I is specifically concerned with employment. Title II deals with public services and, in later sections, with public transportation. Title III pertains to public accommodations, while Title IV relates to telecommunications. Title V contains a variety of miscellaneous matters. Of particular importance here are Title I and the public services provisions of Titles II and III.

In Title I, which pertains to discrimination in the workplace, Congress expanded rather dramatically the antidiscrimination provisions of the law. But first it had to define *disability*. Congress did so in the following language:

> The term "disability" means, with respect to an individual—(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment.[20]

This provision contains several key elements. The reader may note, for example, that both physical *and* mental impairments are covered. Secondly, the impairment must interfere with at least one major life activity. And, from subsections (B) and (C), it is possible to discern Congress's intent that some degree of objective evidence of the existence of the disability must exist. These

[18]442 U.S. 397 (1979).

[19]For an informative and insightful view of this process, see Lowell Weicker, "Historical Background of the Americans with Disabilities Act," *Temple Law Review* 64 (Summer 1991): 387–92. The author, now governor of Connecticut, was a U.S. senator in 1988. He was also one of the prime sponsors of the ADA at that time.

[20]42 U.S.C. 12,102 (2).

provisions leave room for interpretation; nevertheless, because the ADA's definition of a disability relies so heavily on earlier statutes on the subject, some guidance is available from preexisting case law.[21]

A second important definition addresses the question of jurisdiction. What groups and/or institutions are regulated by Title I of the ADA? On this point, Congress made one of its most important changes. By using broad definitions, Congress sought to ensure that all employers who meet certain minimal qualifying standards (or "covered entities") are regulated by the ADA. These standards include specific levels of employment as well as activities deemed to be "in an industry affecting commerce."[22]

Next, there is the matter of substantive coverage of Title I. In Section 102 of the ADA, Congress made it unlawful for all covered employers to discriminate against a "qualified individual with a disability" with respect to virtually all terms and conditions of employment. Thus, everything from hiring to termination, training to compensation, must be available on an equal basis to a qualified person with a disability. Note that Congress assumes that the person is qualified to perform the job in question. An employer may be required, however, to make a "reasonable accommodation" in order to provide the employee with a truly equal employment opportunity. According to the ADA, a "reasonable accommodation" might include, among other things, modifications to existing facilities, job restructuring, modification of equipment, or the provision of qualified readers or interpreters.[23]

Title I of the ADA is enforced by the Equal Employment Opportunity Commission (EEOC). The EEOC is the same federal agency that currently regulates most other areas of employment discrimination, including but not limited to cases of gender and racial discrimination. The EEOC has issued regulations concerning Title I of the ADA, but it has made it clear that many issues will simply have to be decided on a case-by-case basis.[24]

How does this situation affect a typical archival employer? Assuming that the archives in question does fall within the ambit of Title I of the ADA, virtually all employment practices, from recruitment to recordkeeping, will have to be viewed in a new way. For many employers, especially those not previously covered by analogous regulations, the ADA will mean paying special attention to everything from potentially discriminatory preemployment questions concerning an applicant's medical history to the eradication of barriers that currently restrict the mobility of employees with disabilities.

Title I of the ADA is formidable. Nonetheless, there are ways to become more familiar with its provisions. The EEOC's regulations, as well as its question-and-answer publication, provide a convenient starting point. The EEOC is also expected to publish a technical assistance manual. Also, most archives are aligned with a larger parent organization with a human resources department, which can often provide technical assistance on this matter. Of course, there is an enormous amount of published literature already available on the ADA, most of which specifically deals with Title I. And finally, specialized legal counsel can

[21]This definition is virtually identical to the definition of *individuals with handicaps* as used in the Rehabilitation Act of 1973.

[22]See 42 U.S.C. 12,102 (2). Fifteen employees are considered a minimal qualifying employment level. Initially, and during a hiatus period, a minimum of twenty-five employees is to be considered the qualifying number.

[23]See 42 U.S.C. 12 111 (9). By virtue of 42 U.S.C. 12 111 (10), there is an "undue hardship" exception to the reasonable accommodation rule. This exception, however, is multifaceted and most likely quite narrowly defined.

[24]The Code of Federal Regulations now includes the EEOC's regulations concerning the ADA.

be of great help. While this alternative is costly in the short term, a review of current employment practices by a specialist can prove cost effective in the long run.

As suggested earlier, Title I is not the only provision of the ADA that is relevant to the archival setting. Title II, at least those portions dealing with public services, is most certainly pertinent to this discussion. As a starting point, it is necessary to consult once again a definition contained in the ADA: *public entity*, which is defined by Congress as follows: "the term 'public entity' means—(A) Any state or local government; (B) Any department, agency, special-purpose district, or *other instrumentality* of a state or states or local government."[25]

Next, we must consult the following, rather broad, admonition to public entities as defined above:

> Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.[26]

Taken together, the two ADA sections quoted above establish rather forcefully several basic legal propositions. First, it is made clear that public entities are subject to Title II of the ADA. In turn, Congress has chosen to define *public entity* as any state or local governmental body or "other instrumentality" of a state or local government. Presumably, this would include any and all archival institutions that are a part of local or state government as well as government-related educational institutions. To be sure, this is broad jurisdictional language; yet it is difficult to ascertain the number or percentage of archives in the United States that fall within its ambit.[27] It is probably fair to say, however, that many hundreds of archives will be deemed to be public entities within the meaning of the ADA.

What are the consequences of such a classification? Referring to the second provision quoted above, we must now consider the fact that public entities cannot discriminate against a person with disabilities in "services, programs, or activities." On its face, this prohibition seems perhaps neutral at best. However, its meaning, as revealed by other provisions of the ADA, may require a great deal more effort than initially seems necessary.

The section quoted above uses the term *qualified individual with a disability*. Congress was precise in defining this phrase. It defines such an individual as one

> who, *with or without* reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of *auxiliary aids* and *services*, meets the essential eligibility requirements for the receipt of services.[28]

This provision is critical because it means that a person with a disability is entitled to the same level of service provided to all other individuals, even if that means that the public entity must modify its policies, remove barriers, or make available auxiliary aids or services.[29] If we think of it

[25]42 U.S.C. 12131 (1). Emphasis added.

[26]42 U.S.C. 12132.

[27]Researchers such as Paul Conway may provide us with a glimpse at the nature and quantity of archives. See Paul Conway, "Perspectives on Archival Resources: The 1985 Census of Archival Institutions," *American Archivist* 50 (Spring 1987): 174–91.

[28]42 U.S.C. 12131 (2). Emphasis added.

[29]In 42 U.S.C. 12102 (1), Congress defined *auxiliary aid or service* as using "qualified interpreters," "qualified readers," or the modification or acquisition of equipment or devices.

another way, the optional may now be mandatory.[30] Prior to the ADA, some service-providing institutions believed that people with disabilities, although welcome, were nonetheless not entitled to the assistance of specific affirmative measures that equalize access. Those same institutions may now discover that such attitudes and the practices that they spawn are no longer in compliance with the law.

A third, and perhaps most provocative, feature of the ADA is found in the "public accommodation" provisions of Title III. In these provisions Congress made it unlawful for any entity that operates a place of public accommodation to discriminate against a person with a disability with respect to the "equal enjoyment" of such a facility.[31] This provision seems to require public accommodation facilities to take steps to ensure equal access. The use of "auxiliary aids and services" is once again referred to, and, as noted earlier, this phrase can mean providing readers or interpreters, among other things.[32]

What is perhaps most interesting about this aspect of the ADA is its broad coverage. Places of "public accommodation" are "private entities" that provide twelve defined kinds of service. Thus, a "museum, *library*, gallery or other place of public display *or collection*" are included in this provision.[33] Similarly, virtually all kinds of private educational services are covered by the public accommodation rules.[34] Although archives are never specifically mentioned, it is probably fair to conclude that most if not all private archives, to the extent that they fall within the groupings described above, are covered by the "public accommodation" sections of the ADA.

This provision of the ADA, like most others in the same act, does not operate in absolute terms. Thus, certain types of "defenses" are available to institutions and businesses.[35] With respect to the public accommodation rules, for example, an entity may be excused from compliance if it can demonstrate that the taking of affirmative measures "would fundamentally alter the nature" of the service provided. Such defenses must be approached carefully.[36] It does not appear that Congress, in fashioning the ADA, was especially hospitable to devices or maneuvers that seek to avoid compliance with the law.

One final note concerning enforcement: the ADA was not a hollow gesture by Congress. Depending on the nature of the violation, a wide range of remedies, both public and private, are available. Everything from back-pay awards to general monetary damages to injunctions are available under the ADA.[37] Even civil penalties, amounting to as much as $50,000, are provided. Noncompliance can be costly.

Conclusion

This article was intended to provide a brief and introductory survey of the ADA. It is a complex piece of legislation, and its meaning will change as new regulations are issued and as court decisions interpret and reinterpret its parameters. Thus, this article should be read and understood as no more than a starting point. Any person seriously interested in learning more about this sub-

[30]For a rather exhaustive and informative analysis of these provisions of Title II, see Timothy Cook, "The Americans with Disabilities Act: The Move to Integration," *Temple Law Review* 64 (Summer 1991): 393–469.

[31]See 42 U.S.C. 12182 for the full text of this antidiscrimination provision.

[32]42 U.S.C. 12182 (b) (2).

[33]42 U.S.C. 12181 (7) (H).

[34]42 U.S.C. 12181 (7) (J).

[35]42 U.S.C. 12182 (b) (2).

[36]See Gregory Crespi, "Efficiency Rejected: Evaluating Undue Hardship Claims Under the Americans with Disabilities Act," *Tulsa Law Journal* 26 (Fall 1990): 1–36. See also 42 U.S.C. 1.

[37]See, for example, 42 U.S.C. 12188 and 42 U.S.C. 12203 (c) for examples of remedial provisions of the ADA.

ject would be well advised to seek out more detailed expositions. These can be obtained through a variety of sources; published literature on the subject is voluminous.[38] Similarly, the number of guides, both official and commercial, will almost certainly increase. Expert legal advice is, of course, always available, as is internally available institutional guidance.

In the final analysis, archives simply have no choice. They, like other service-providing institutions, are simply going to have to become more attuned to the spirit and letter of the ADA. It is an act that affects who we employ and how we provide service to the public. If this sounds rather pervasive in scope, it is intended to be. One commentator has suggested that the ADA is the most important piece of civil rights legislation since the Civil Rights Act of 1964.[39] If this is true, archives must gain a greater awareness of the ADA; the optional quite simply, has become mandatory.

[38]For a good general introduction to the subject, see Dick Thornburgh, "The Americans with Disabilities Act: What It Means to All Americans," *Labor Law Journal* 41 (December 1990): 803–07. For a treatment of the employment discrimination provisions, see Arlene Mayerson, "Title I—Employment Provisions of the Americans with Disabilities Act," *Temple Law Review* 64 (Summer 1991): 499–520. As to Title III public accommodation provisions, see Robert Burgdorf, "Equal Members of the Community: The Public Accommodation Provisions of the Americans with Disabilities Act," *Temple Law Review* 64 (Summer 1991): 551–81. As was suggested earlier, library literature on the subject should not be ignored (see Note 3); see also Jessica Bray, "The Americans with Disabilities Act of 1990: New Questions," *RQ* 31 (Spring 1992): 315–24; and Donald Foos and Nancy Pack, *How Libraries Must Comply with the Americans with Disabilities Act* (Phoenix: Oryx, 1992).

[39]Thornburgh, "The Americans with Disabilities Act," 803.