

One oversight in the report on page 4 states that "primary enforcement rests with the U.S. Department of Justice and the federal court system." It is the state Superior court system which retains original jurisdiction of such disputes. Persons with disabilities seldom have access to either court system.

The conclusion of the report states that the Commission is committed "to promote equal opportunity for all people with disabilities." Yet they do not mention persons with non physical disabilities. There was no discussion of unlawful police training and abuses. Nor abuses by mental health professionals who operate with no oversight from laws, police nor the courts. The negative stereotype of persons with non physical disabilities remains unquestioned by the City's Commission and public officials.

At the September 11, 2000 meeting Councilor Davis said the "Commission is asking to move forward to create a readily achievable barrier removal in publicly accessible facilities. ... I want to ask the Manager would that come to the City Council from the Human Rights Commission, is that what you're anticipating?"

City Manager: "Yes, we're working with the City Solicitor's office and Human Services Department and Human Rights Commission. There is the potential to place before the Council an ordinance that could address that issue. That is the thought process in the works.

The people working on it ... I would not be surprised in the next month and a half or two months that there would be an ordinance recommendation before the City Council.

Councilor Davis: So this would make it easier for people with disabilities to go into public accommodations. That would be the goal of it. Restaurants, stores, hotels, non municipal ...

City Manager: Ultimately yes. Obviously. That's our goal.

Councilor Davis: In a slightly different vein, and I guess it's not... I'm not sure this is covered by the ADA. But it came to my attention that there is difficulty on the part of people with disabilities particularly in wheelchairs in finding housing in the city.

And I wonder ... I understand that there is a wheelchair accessible unit that's coming up in one of the developments that's being built but that there aren't a great number of those units available. I guess I will put in a separate council order asking about wheelchair accessible housing in the city and what need there is and what response there is to that need.

The way I heard about this is a woman who is struggling with a disabling disease who herself is unable to find housing in the city. And is finding it very very difficult to go through the maze of bureaucracy which many people have to go through but she has

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that added problem that the only kind of unit that's good for her is one that's handicapped accessible. So I will bring that in as a separate order.

That's not covered by ADA is it? Housing? Private housing?

City Manager and Councilor Davis: No.

Councilor Davis: OK well I'll do that separately. Thank you for this report.

It is ten years since the ADA became law. For many persons with disabilities there is still no access, physical nor legal to public buildings nor services. In 1973 The Rehabilitation Act (Title 29 United States Code 794a) prohibited disability discrimination in federally funded entities. The ADA of 1990 extended those protections to private entities. Yet on September 11, 2000 the Cambridge City Manager answered unequivocally that the ADA does not apply to private housing.

* * * UNITED STATES LAW * * *

On Tuesday September 12, 2000 Michael Muehe, Executive Director of the Cambridge City Commission on Disabilities told me that the ADA does not apply to private housing. Mr. Muehe said that the Fair Housing Act of 1968 (45 U.S.C. 3601-3631) applies and that is why the ADA does not.

Title 42 United States Code 12181 (Americans with Disabilities) (7) defines "Public Accommodation [as] The following private entities are considered public accommodations for purposes of this title [42 USCS §§ 12181 et seq.], if the operations of such entities affect commerce--

(A) an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor."

Title 28 Code of Federal Regulations 36.104 "Definitions [states] Act means the Americans with Disabilities Act of 1990 (... 42 U.S.C. 12101-12213 and 47 U.S.C. 225 and 611) ...

Place of public accommodation means a facility, operated by a private entity, whose operations affect commerce and fall within at least one of the following categories--

(1) An inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of the establishment as the residence of the proprietor."

Title 28 Code of Federal Regulations 36.201 (b) "General [states] Landlord and tenant responsibilities. Both landlord who

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owns the building that houses a place of public accommodation and the tenant who owns or operates the place of public accommodation are public accommodations subject to the requirements of this part. ..."

Title 28 Code of Federal Regulations 36.207 (a) "Places of public accommodation located in private residences [states] When a place of public accommodation is located in a private residence, the portion of the residence used exclusively as a residence is not covered by this part, but that portion used exclusively in the operation of the place of public accommodation or that portion used both for the place of public accommodation and for residential purposes is covered by this part."

This, like the ADA sounds excellent on paper. But as we see as recently as Monday September 11, 2000 neither the city manager nor the Executive Director of the Commission on Disabilities knew the law. This is before any consideration of the lack of enforcement. The statements made by Mr. Muehe and the City Manager are not accurate. The ADA does apply to some private housing units.

* * * MASSACHUSETTS LAW * * *

In Massachusetts several state laws provide greater protections than the ADA or other federal laws. That includes Articles One, Ten, Eleven, Nineteen, and Twenty-One, and Amendments LXXVII, CVI, and CXIV of the Massachusetts Constitution; M.G.L. Chapter 151B; the Massachusetts Civil Rights statute M.G.L. Chapter 265 § 37; and Chapter 272, § 98, 98A, 98B, 98C.

M.G.L. Chapter 272 § 98 prohibits discrimination in public accommodations for several categories, but not persons with disabilities. § 98A is for persons with physical disabilities. §98B is for persons on welfare or public works. § 98C prohibits libel due to race, color or religion, but not disabilities. None of these statutes address discrimination against persons with non physical disabilities. This is current public policy in Massachusetts.

* * * CAMBRIDGE MUNICIPAL CODE * * *

The Cambridge Municipal Code already provides protections within the city. Cambridge Municipal Code Chapter 14.04 addresses Fair Housing protections. This Chapter addresses the protections named in Title 42 U.S.C. 3601 et seq, and M.G.L. Chapter 151B.

Cambridge Municipal Code Section 2.76 defines the Human Rights Commission. It's stated purpose (Ch. 2.76.020) is "to protect the human rights of all citizens of the City." This became law in 1984.

Cambridge Municipal Code Section 2.76.120 subsection A of the Municipal Code of Cambridge states, "It is an unlawful practice for the City ... or any of its agencies, departments, subdivisions or

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employees to discriminate against any person in the provision of services, facilities ... or other opportunities because of the ... disability ... of such persons." On Dec. 2, 1998 the Acting Director of the HRC Ms. Vali Buland told me they do not accept complaints against the city. This is contrary to the stated mission of the HRC.

Chapter 2.76.150 subsection I.1 of the municipal code states that with a finding of an unlawful practice the HRC shall initiate a criminal complaint in a court of proper jurisdiction.

Chapter 2.76.160 B states "it is the policy of the City ... to prevent discrimination against such [named categories of] individuals in the provision of City services in ... housing ... and public accommodations." The local law already exists. It is not being enforced.

The Cambridge Commission on the Handicapped was formed in 1979 under Chapter 2.96. It is now called the Commission for Persons with Disabilities. Chapter 2.96.070 states the powers and duties of this Commission are (A) "to insure the equal status of the handicapped ... [; and] (B) to review recommendations and policies of all departments, divisions and agencies of the City ..."

"(D) To initiate, coordinate and monitor the enactment of legislation which promotes equal status of the handicapped on the City, State and Federal levels, and to insure that appropriate regulations are adopted and enforced ... "

I remind the Council that I spoke to them in December, 1998 and January, 1999 on this very subject; the lack of action contrary to legal duty of the Human Rights Commission. Writing more statutes and ordinances will not make the laws effective. They require enforcement. It was a City attorney acting as director of the HRC who refused to take complaints.

The US government uses taxpayer funds to provide regional centers across the country which provide information on the ADA. None of them can legally enforce or provide funds to enforce any of the statutes of the ADA.

Lawyers, not most but all, refuse to litigate on behalf of persons with non physical disabilities for common law torts. Exceptions exist for employment and on occasion physical access to buildings. Persons with non physical disabilities cannot gain access to local, state and federal agencies for protections from criminal acts against them.

The reasons given by state police officers is that police cannot rely on what persons thought to be mentally ill say. That implies that normal people do not lie. Huh?

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But as we see, the City Manager's statements, the President's statements, the Governor's statements and many others cannot be relied upon either. Police investigators noted "testilying" in court by police under oath. The disparate treatment by police is a violation of the ADA and other laws. But where is the enforcement? There is none.

The Cambridge Police have been trained contrary to the ADA of 1990 and the Rehabilitation Act of 1973 for more than a generation. All officers presently employed by the City have been trained under irrational and unlawful standards by the Massachusetts Criminal Justice Training Council. Their written curricula on how police should treat persons with mental disabilities and epilepsy can be obtained for your perusal from the MCJTC.

I complained about one year ago and was told that they are being rewritten. Nonetheless current police are unaware that they act unlawfully; using standards that they were trained to implement.

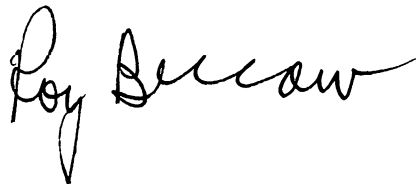
On one occasion in 2000 a Cambridge police officer explained an inaccurate standard for taking a person they thought to be mentally ill into custody. The officer said the standard was "being a danger to oneself or another." But M.G.L. Chapter 123 clearly states that the standard is "likelihood of serious harm."

The City Council could do more to provide access to rights and privileges enjoyed by other citizens by urging the American Bar Association, the Massachusetts Bar Association and the Boston Bar Association to provide access to lawyers for persons with disabilities.

The laws already exist. They are simply not being enforced. Neither the MCAD nor the Cambridge Human Rights Commission addresses disability discrimination. The Massachusetts Office on Disability explained that they regularly dismiss such complaints.

Concurrently the City Council could write ordinances with severe penalties for non compliance. At present the ADA requires private litigation, and then there is seldom any substantial damages available. The Attorney General may bring an action. But that seldom happens. Without severe penalties, there is no incentive for public accommodations to comply with the ADA or related laws.

Roy Bercaw

A handwritten signature in cursive script that reads "Roy Bercaw". The signature is written in dark ink and is positioned to the right of the typed name.

ENOUGH ROOM
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Members of the
Cambridge City Council
795 Mass Avenue
Cambridge MA 02139

September 14 2000

Re: City Council
Discussion of ADA

Honorable Councillors,

I write to you about the discussion of the "report on the progress of the implementation of the ADA in Cambridge" from the City Manager 00-61 dated 7/31/00 on the September 11, 2000 agenda.

The memo dated August 30, 2000 to the City manager from Jill Herold (Human Services) states "Since the enactment of the ADA, the City of Cambridge has been committed to its full and fair implementation. ... " Though the City posts such signs it still has to address many areas of overt policies and procedures which openly conflict with requirements of the ADA and related state and federal laws.

It is scandalous that this memo only addresses physical access to buildings and sidewalks. I do not by any means believe that the City has even complied with that area.

Each winter season many sidewalks remain snow-covered. Persons in wheelchairs and those who use guide dogs and canes for walking are unable to navigate many sidewalks. The city regularly fails to insure access to the sidewalks each year. The emphasis is on keeping the streets clear not the sidewalks.

There is no reference to discrimination against persons with non physical disabilities who remain forgotten by local, state and federal legislators. Some are still denied access to the police for protection and the courts for relief. Denial of access to City, State and Federal services is as much a violation of the local, state and federal laws as denial of physical access. This is not considered by the city in this current report.

On Page 4 the report states "the Commission lacks the resources necessary to achieve comprehensive citywide compliance." If there were not enough police officers to maintain the public safety in the City, the Council would appropriate money. Why isn't there any funding for lawyers to litigate the failure to comply with these laws?

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Consent Communication #6

A communication was received from Roy Bercaw, Editor, Enough Room, relative to the "Report on the progress of the implementation of the ADA in Cambridge.

In City Council September 18, 2000

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