

January 17, 2007

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Judicial Review Committee/ Task Force

RE: Access to Connecticut Courts¹: Court related needs of the elderly and persons with disabilities. Opening the Courthouse doors.

Dear Lawmaker:

Inaccessible justice is justice denied, especially for the elderly and persons with disabilities, who may have problems reaching the courthouse doors and once inside, may have difficulty fully participating in the judicial process. The justice system should commit itself to the removal of attitudinal barriers and serve as a model of accessibility based on the principle of "universal design," which requires a barrier-free and technologically enhanced environment in which "what is needed by one is available to all".

Federal, state, local, and private funders should provide sufficient resources to ensure that this model is achieved.

The justice system should work with the aging and disability networks to enhance access to effective legal representation and judicial support services; effect appropriate referrals to related community services; provide knowledgeable people who understand the needs of all; and resolve every dispute in an appropriate forum and in a timely fashion.

State and court agencies need to conduct a self-assessment to determine whether their laws conform to federal statutes. Amendments to state laws may be appropriate to eliminate communication barriers.² Judges have dealt with communication accessibility

¹ The State of Connecticut and the State of Connecticut Judicial Branch is a public entity that receives Federal Funds. As a Public Entity the Branch is subjected to Title II of the Americans with Disabilities Act and by receiving Federal Funds the Branch is subjected to section 504 of the Rehabilitation ACT of 1973.

² See **II-8.0000 ADMINISTRATIVE REQUIREMENTS** *Regulatory references:* 28 CFR 35.105-35.107; 35.150(c) and (d).

II-8.1000 General. Title II requires that public entities take several steps designed to achieve compliance. These include the preparation of a self-evaluation. In addition, public entities with 50 or more employees are required to --1) Develop a grievance procedure; 2) Designate an individual to oversee title II compliance; 3) Develop a transition plan if structural changes are necessary for achieving program accessibility; and 4) Retain the self-evaluation for three years.

See The Americans with Disabilities Act Title II Technical Assistance Manual Covering State and Local Government Programs and Services

issues on a case-by-case basis. Because judges and lawyers may often be unfamiliar with federal and state laws concerning the elderly and disabled, or laws, policies and practices may not have been developed, there is a wide disparity as to what constitutes a fair trial for individuals with hearing, vision, speech, physical, mental, or emotional condition(s) causing difficulty in learning, remembering, or concentrating disabilities.³

In enacting the Americans with Disabilities Act (ADA or ACT), Congress was acting within the constitutional framework that has been laid out by the Supreme Court. The Equal Protection Clause prohibits invidious discrimination, that is “a classification whose relationship to [a legitimate] goal is so attenuated as to render the distinction arbitrary or irrational.

The evidence before Congress demonstrated that persons with disabilities were sometimes excluded from public services for no reason other than distaste for or fear of their disabilities, (negative reactions to sight of disability), prejudice manifested in a variety of ways including “reaction[s] of aversion,” reliance on “false” stereotypes, and stigma associated with disabilities that lead to people with disabilities being “thought of as not quite human.” The negative attitudes, in turn produce fear and reluctance on the part of people with disabilities to participate in society. Congress thus concluded that persons with disabilities were “faced with restrictions and limitations *** resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society.” 42 U.S. C. 12101 (a) (7)

These decades of ignorance, fear, and misunderstanding created a tangled web of discrimination, resulting in and being reinforced by isolation and segregation. The evidence before Congress demonstrated that these attitudes were linked more generally to the segregation of people with disabilities. This segregation was in part the result of government policies in “critical areas [such] as *** education, communication, voting and access to public services.” 42 U.S.C. 12101 (a) (3).

People with disabilities have access to generally available goods and services; often they could not afford them due to poverty. Over 20% of people with disabilities of working age live in poverty, more than twice the rate of other Americans. See *National Council on the Handicapped, On the threshold of Independence 13-14 (1988)*. Congress found this condition was linked to the extremely high unemployment rate among people with disabilities, a result of discrimination in employment combined with inadequate education and transportation. *** even when not barred by “outright intentional exclusion,” people with disabilities “continually encounter[ed] various forms of discrimination, including *** the discriminating effects of architectural, transportation and communication barriers. 42 U.S.C. 12101 (a) (5).

³ Census 2000 counted 49.7 million people with some type of long lasting condition or disability, (excluding people in the military or in institutions). They represent 19.3% of the 257.2 million people who were aged 5 and older—or nearly one in five. Connecticut counted 17.5% of its population as similar, with 3.1% having sensory disability, 6.9% physical disability, 4.2% mental disability, and 2.3% self-care disability. That’s disability, we all know that we are all getting old.

As Justice Marshall explained, "lengthy and continuing isolation of [persons with disabilities] perpetuated the ignorance, irrational fears, and stereotyping that long have plagued them." *Cleburne*, 473 U.S. 432, 464 (1985). Congress could reasonably have found government discrimination to be a root cause of "people with disabilities, as a group, occupy[ing] an inferior status in our society, and [being] severely disadvantaged socially, vocationally, economically, and educationally." 42 U.S.C. 12101 (a) (6)

The Supreme Court has also recognized that the principle of equality is not an empty formalism divorced from the realities of day-to-day life, and thus the Equal Protection Clause is not limited to prohibiting unequal treatment of similarly situated persons. The Equal Protection Clause also guarantees, "that people of different circumstances will not be treated as if they were the same." See *United States v. Horton*, 601 F.2d 319, 324 (7th Cir), cert. Denied, 444 U.S. 937 (1979) (quoting *Ronald D. Rotunda and John E. Nowak, treatise on Constitutional Law* 520 (1978)).

By definition, persons with disabilities have "a physical or mental impairment that substantially limits one or more *** major life activities." 42 U.S.C. section 12102 (2) (A). Thus, as to that life activity, "the handicapped typically are not similarly situated to the non-handicapped. See *Alexander v. Choate*, 469 U.S. 287, 298 (1985). The Constitution is not blind to this reality and instead, in certain circumstances, requires equal access rather than simply identical treatment.

While it is true that the "Constitution does not require things which are different in fact or opinion to be treated in law as though they were the same," *Plyler v. Doe*, 457 U.S. 202, 216 (1982), it is also true that "[s]ometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike." *Jenness v. Fortson*, 403 U.S. 431, 442 (1971).

Thus, there is a basis in constitutional law for recognition that discrimination exist not only by treating people with disabilities differently for no legitimate reason, but also by treating them identically when they have recognizable differences. Similarly, it is also a denial of equality when access to facilities, benefits, and services is denied because the State refuses to acknowledge the "real and undeniable differences between [persons with disabilities] and others," *Cleburne*, 473 U.S. at 444.

Yours for a Barrier Free Courthouse



William Mulready

PS; Some of the above information came from the draft recommendations of a National Conference on the Court-Related Needs of the Elderly and Persons with Disabilities in Reno, Nevada on February 20-23, 1991 which drew close to 200 judges, court administrators, attorneys and representatives of the aging and disability networks, outlined in *Court-Related Needs of the Elderly and Persons with Disabilities a Blue print for the future*, by the American Bar Association and the National Judicial College.