

WISCONSIN. SUPREME COURT. INTERDISCIPLINARY
COMMITTEE ON THE COURT-RELATED NEEDS
OF THE ELDERLY AND PEOPLE WITH DISABILITIES

ACCESS

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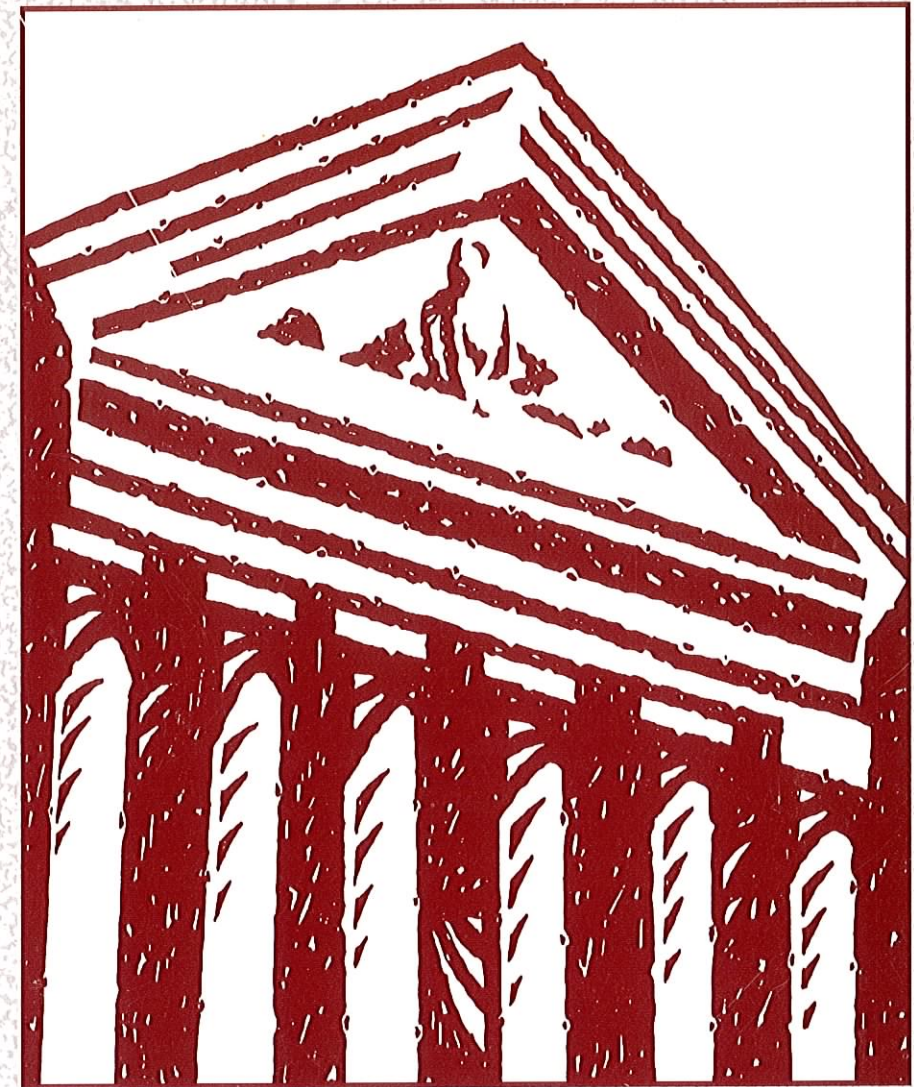
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ACCESS



**Final Report of the Wisconsin Supreme
Court Interdisciplinary Committee
on the Court-Related Needs of the Elderly
and People with Disabilities.**

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*Final Report of the Wisconsin Supreme Court
Interdisciplinary Committee on the Court-Related
Needs of the Elderly and People with Disabilities*

This project was conducted by the Coalition of Wisconsin Aging Groups' (CWAG) Elder Law Center in cooperation with the Supreme Court of Wisconsin under Grant No. SJI-92-12J-E-137 from the State Justice Institute. Points of view expressed herein do not necessarily represent the official positions or policies of the CWAG, the Supreme Court of Wisconsin or the State Justice Institute.

Cover design by Jerry Hildebrand.

"[S]olutions are as limitless as a willing imagination can conceive."

**Galloway v. the Superior Court of the District of Columbia,
et al., 816 F.Supp. 12 n.11 (D.C.D.C. 1993)(discussing
Americans with Disabilities Act).**

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First, Chief Justice Nathan S. Heffernan and the Wisconsin Supreme Court deserve the thanks not only of the Committee and its staff, but of all Wisconsin citizens, for their continuing recognition of the need to secure equal access to justice for *all* citizens.

We thank the State Justice Institute (SJI), too, for its recognition of the significance of the Americans With Disabilities Act for state court systems, and for its financial support of the project.

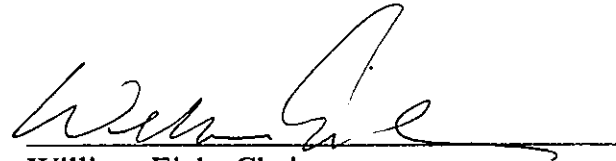
Special thanks are also due to the Coalition of Wisconsin Aging Groups, and particularly the director of its Elder Law Center, Attorney Betsy J. Abramson. Attorney Abramson, along with several members of the Committee, attended the National Judicial College conference which gave birth to this project. From the beginning, she provided invaluable support, advice, supervision — and just plain hard work — to the formation of the Committee and its deliberations. The Coalition, as the "home" of the SJI grant, provided invaluable financial and administrative support for the project, recognizing that its own mission to improve the quality of life in Wisconsin for people of all ages would be well-served in this endeavor.

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Gwenn Bever, the court reporter for the Taylor County Circuit Court who provided real-time reporting at the Committee's several meetings and hearings, also played a crucial role in the Committee's work. In addition to providing instantaneous computerized transcription of the proceedings for the benefit of Committee members with hearing impairments, she educated many of us in the process and benefits of real-time court reporting and was invaluable in compiling the information contained in the report on the subject. Ms. Bever volunteered countless hours to these demanding tasks and her work was always of the highest quality. She is indeed a treasure.

Finally, profound thanks are due to each and every member of the Committee. They are the true authors of this report, and they were tireless in their dedication to the

project, devoting weeks, if not months, of their own time to this important and often difficult task. Some came to the Committee with extensive knowledge of, and commitment to, the ADA, and others, newly-exposed to the Act, brought their own expertise to the collective enterprise. It was this blend of personal and professional knowledge and experience, and dedication to the public interest — and, as is often so important in the work of a large and diverse group, a sense of humor matching their sense of purpose — which we believe gave the Committee its unique strength. They are true exemplars of the Wisconsin Idea, and they have earned not only our own sincere and heartfelt gratitude, but that of all citizens of the state.



William Eich, Chair
Chief Judge, Wisconsin Court of Appeals



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1. INTRODUCTION

In March 1993, Chief Justice Nathan S. Heffernan, on behalf of the Supreme Court of Wisconsin, convened a thirty-member Interdisciplinary Committee to study and make recommendations to ensure that the elderly and people with disabilities have equal access to the state's court system. The Committee's membership included county officials, experts in various aspects of court accessibility, people with disabilities and representatives of advocacy groups, judges, attorneys and design professionals.¹ William Eich, Chief Judge of the Wisconsin Court of Appeals, was named to chair the Committee.

The Committee was charged to study the overall accessibility of the Wisconsin court system to the elderly and people with disabilities — with specific reference to the requirements of the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 *et seq.*, and to make recommendations to the Supreme Court of Wisconsin for improving access to all state court functions and services.² The Committee undertook to examine all uses of the state's courthouses, including the conduct of trials, jury selection and service, telecommunications, and a host of other court-related subjects, to hear and assimilate the views and suggestions of court officials, advocacy group leaders, courthouse users in general — and people with disabilities in particular — and members of the general public, and to distill from all this a set of specific recommendations to aid the Wisconsin court system in meeting its commitment to provide equal access to justice for all citizens.

This, the Committee's final report, provides general background on the ADA and the manner in which its requirements will affect the operation of the state court system, and offers specific recommendations for improving access to the courts by the elderly and people with disabilities. The report includes a suggested timeframe for implementation and a schedule of estimated costs for recommended improvements.

The Director of State Courts office has prepared and distributed a comprehensive report addressing accessibility problems in the state court system. It was an extraordinary effort which has been of great aid to this Committee and of considerable benefit to all users of the court system. The Committee hopes that its report, in conjunction with the Director's court-specific survey results, will aid the Wisconsin court system in planning for meaningful, cost effective improvements to ensure the system's accessibility to the elderly and people with disabilities.

¹ An outline of the process and procedures utilized by the Committee in its year-long study may be found in Chapter 3.

² The Committee's charge did not encompass or include locally-created municipal courts. Nevertheless, because many of the recommendations pertain to programs, services and activities common to courts at all levels, the Committee hopes they will aid municipal judges and other local officials to improve accessibility to, and delivery of, their services to the elderly and people with disabilities.

The ADA was passed by Congress in 1990. As Chief Justice Heffernan stated to the Committee at its first meeting:

"It would be an understatement to say that the courthouses of America are not exempt from the ADA. In my mind, they stand to the contrary. They must be exemplars of ADA compliance."

The Chief Justice went on to note the profound irony of litigants and other participants in the judicial process who come to court to seek enforcement of their federal civil rights under the ADA, only to be unable to achieve full access to the process because of a disability. As he remarked:

"What irony to enforce the rights assured by the ADA for a person who was unable to enter the room where the complaints were filed or acquire necessary information regarding procedures because of a disability.

What irony where a judge or juror is incapable of serving because of a courtroom that could not accommodate a wheelchair, a walker, or other equipment used by a person with a disability.

What irony if a witness were unable to give competent testimony because claustrophobia made the long wait unbearable.

And, what irony if an attorney were unable to pursue his or her case zealously because of the inability to participate in crucial proceedings because of a hearing impairment."

In fact, he concluded, "irony is too weak a word. It would be a gross injustice if the courts, as the very places where citizens go to enforce their rights, were themselves inaccessible."

The cost of implementing the ADA concerns public managers at every level of government. In Wisconsin, the operation of the state court system is a joint venture between state and county governments. Most court costs, including those involved in the construction, repair, renovation and maintenance of court buildings, are borne by the counties, which thus have the day-to-day responsibility of deciding when and how necessary improvements are to be made. And they make these decisions in the context of state and federal laws — now including the ADA — which require certain things to be done and certain steps to be taken.

The Wisconsin Constitution, however, gives the Supreme Court "superintending and administrative authority" over all state courts; and it is thus the Court which has the

overall responsibility to see to the implementation of applicable laws and regulations on a statewide basis, again including the requirements of the ADA.

The recommendations developed by the Committee do not constitute specific mandates to either state or county government. The provisions of the ADA, however, are mandatory; and the Committee's recommendations are intended to assist county and state decision-makers in implementing the ADA in their individual areas of responsibility.

In particular, the Committee hopes that its report will be useful to these decision-makers as they begin the budget processes for the coming years. To this end, the report includes recommendations for cost savings through bulk purchasing, county sharing of the more expensive technological equipment, and establishing administrative procedures for prompt identification of needs so that necessary accommodations can be timely provided to those in need of them. The report also includes, at Appendix H, a price list indicating the approximate cost of recommended items and services.

Appendix G of the report provides a list of local and national contact organizations. Consultation with local advocacy groups working with the elderly and people with disabilities can be of great assistance in securing the most accessibility for the constrained public dollar.

In his remarks to the Committee's opening session, Chief Justice Heffernan stated: "We are committed in earnest to the goals of the ADA: the full and equal participation of all Americans in public life, unimpeded attitudinally or structurally by physical or mental disabilities." Echoing those sentiments, Chief Judge Eich stated to the Committee:

"Carved in the granite facade of the Supreme Court building in Washington is a phrase that has become the motto of the American justice system: 'Equal Justice Under Law.'

As we all know, the goals exemplified in that motto have been elusive, to say the least. History shows that we have been painfully slow to recognize that large segments of the public — racial minorities and the poor, to name just two — have not fared well in the court system over time.

And while we have, in the past several decades, made great strides in extending access to justice to minorities and the poor — and, more recently, to women — we have ignored the court-related needs of the elderly and people with disabilities far too long.

I hope that, in Wisconsin at least, this Committee's work will be a firm first step toward righting that wrong; and that others will build on that work so

we finally will be able to make good on the promise of equal justice for *all* citizens."

It is this commitment to equality and ensuring full civil rights to all citizens that has inspired the Committee's work. We are indebted to the Chief Justice and the Court for the opportunity to participate in this important effort, and we respectfully submit this report with every hope that it will assist in ensuring equal access to justice to the elderly and people with disabilities.

2. THE AMERICANS WITH DISABILITIES ACT: ITS APPLICATION TO STATE COURTS

In July, 1990, Congress passed the Americans with Disabilities Act, 42 U.S.C. sec. 12101 *et seq.* The ADA, which has been hailed by many as the most important civil rights statute since the Civil Rights Act of 1964,³ prohibits discrimination against people with disabilities in many aspects of American social life, including employment,⁴ public transportation,⁵ public accommodations,⁶ and telecommunications.⁷ The purpose of the ADA as expressed by Congress is:

- (1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;
- (2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

³ The Civil Rights Act of 1964 prohibited discrimination in employment, housing, public accommodations and other areas on the bases of race, sex, religion, national origin, and ethnicity.

⁴ Title I of the ADA prohibits employment discrimination against people with disabilities. All court employees, whether they are paid by the state or county, including judges, clerks of court, probate commissioners, family court counselors, etc., are protected from employment discrimination on the basis of disability under Title I. The Committee's charge did not include addressing employment discrimination. For information regarding this important subject, we recommend the Equal Employment Opportunity Commission's Title I Technical Assistance Manual, which may be ordered from the Equal Employment Opportunity Commission. *See* Appendix G.

⁵ Portions of Title II of the ADA prohibit discrimination in public transportation and place affirmative duties on public carriers to provide accessible transportation. *See generally* 42 U.S.C. §12141 (Division B of Title II of the ADA).

⁶ Title III of the ADA prohibits discrimination against people with disabilities in public accommodations operated by private entities. This report does not address Title III of the ADA, except for those instances where public accommodations operated by private entities intersect with the court system. For example, law offices are covered by Title III of the ADA. Thus, offices of court appointed lawyers, who may be construed as "contractors" of the court system, are addressed minimally in the report. *See* Chapter 6.

⁷ The Title II regulations specifically require that public entities take "appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others. 28 CFR 35.160(a). Moreover, "[w]here a public entity communicates by telephone with applicants and beneficiaries, TDDs or equally effective telecommunications systems shall be used to communicate with individuals with impaired hearing or speech." 28 CFR 35.161 *See* Chapter 8.

- (3) to ensure that the Federal Government plays a central role in enforcing the standards established in [the ADA] on behalf of individuals with disabilities; and
- (4) to invoke the sweep of congressional authority . . . in order to address the major areas of discrimination faced day-to-day by people with disabilities.

42 U.S.C. §12101(b).

State and local governments, including state courts, are specifically covered by Title II of the ADA. As will be explained in this chapter, under Title II, courts may not discriminate in the provision of services, programs, and activities against people with disabilities and must make those services, programs and activities readily accessible to, and usable by, people with disabilities. This chapter provides an overview of the portions of the ADA relevant to court accessibility. It is not, however, a substitute for reading the Act and the pertinent regulations themselves. See Appendix I for Title II regulations.

It is important to note that the ADA is not the first major federal statute to address the needs of people with disabilities. The Rehabilitation Act of 1973 prohibits discrimination against people with disabilities, but only by the federal government and private entities receiving substantial federal funding. 29 U.S.C. §701 *et seq.* The ADA is modeled after the Rehabilitation Act, extending many of its provisions to other entities, including state courts. For example, the definitions of a "person with a disability" are essentially identical in the two statutes. The Rehabilitation Act, therefore, is likely to be a source to which attorneys and judges will turn as they begin interpreting the ADA in litigation. Court professionals should look to the Rehabilitation Act for guidance in implementing the ADA in their own courts.

Definition of a "Person with a Disability"⁸

Under the Act, a "person with a disability" is defined as one who:

- has a physical or mental impairment that substantially limits one or more major life activities;

⁸ Early in its work, the Committee decided that recommendations targeted specifically and exclusively to the elderly were inappropriate. First, the ADA expressly excludes age as a disability. H.R. Rep. No. 101-485(III), 101st Cong., 2nd Sess. 451; see also 28 CFR Part 35.104 (definition of "substantial limitation of a major life activity"). Second, the recommendations need not specifically address the elderly, for although senior citizens may have a variety of age-related disabilities, including hearing loss, Alzheimer's disease, or mobility impairments, these disabilities are addressed by the ADA and by the Committee's recommendations overall.

- has a record of such an impairment; or
- is regarded as having such an impairment.

42 U.S.C. §12102.⁹ When Congress passed the ADA, it found that over 43,000,000 Americans had disabilities.¹⁰ See generally 42 U.S.C. §12101.

The types of physical impairments protected by the ADA include, but are not limited to, "any physiological disorder or condition . . . affecting one or more of the following body systems: Neurological, musculoskeletal . . . respiratory (including speech organs), cardiovascular . . . [or] digestive." Mental impairments include "[a]ny mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities." Specific conditions mentioned in the Act include visual, speech and hearing impairments, cerebral palsy, epilepsy, multiple sclerosis, cancer, heart disease, diabetes, HIV disease (whether symptomatic or asymptomatic), and tuberculosis. 28 CFR 35.104 (definitions of disability(1)(i)-(ii)). It is important to remember, however, that such lists are not exhaustive, and that the statutory definition of disability, which turns on whether or not an impairment substantially interferes with a major life activity, is the starting point for determining whether a person is covered by the ADA.

⁹ Readers seeking more guidance are directed to (1) the regulations promulgated pursuant to Title II of the ADA, found at 28 CFR Part 35; and (2) the Title II Technical Assistance Manual available from the Department of Justice. The former appears as Appendix I; an order form for the latter appears as Appendix J.

¹⁰ It is difficult to obtain accurate statistics on the number and distribution of people with disabilities in the United States. The figure of 43,000,000 found by Congress has been criticized by some for being too high and by others for being too low. Some claim the number to be closer to 35 million; others claim that even 43 million excludes those with learning disabilities, some with mental illness, and the unknown number of people in our country who have HIV infection or AIDS who would fall within the definition of a "person with a disability" under the ADA. See Joseph P. Shapiro, *No Pity: People with Disabilities Forging a New Civil Rights Movement* (Times Books, 1992) at pp. 4-8. While information about the prevalence of certain disabilities in Wisconsin is available, and some is even broken down by county, this report does not include such demographics. By way of example, however, it is estimated that 464,000 people, or 9.5% of the total Wisconsin population require some form of long term support. These people are defined as those "unable to independently perform essential personal and social activities due to a chronic or long term illness or disability and who require or receive help from other persons to carry out activities of daily living and participate in community living." "A Profile of Wisconsin's Long Term Support Population," Wisconsin Department of Health and Human Services, August 1986 (based on 1980 Census of Population, among other sources). Other governmental offices, such as those listed in Appendix G, may be contacted for demographic information about people with disabilities in Wisconsin. It is important, however, that court professionals and others realize that not all disabilities are visible, and that one's assumptions about how many people with disabilities use, or would like to use, court services may be inaccurate.

The ADA protects only "qualified" people with disabilities. A "qualified" person is defined in the ADA regulations as someone who, "with or without [reasonable accommodation] meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." 28 CFR 35.104 (definition of "qualified individual with a disability"), emphasis added. In certain contexts, such as equal employment opportunity, the notion of "qualified" individuals with disabilities is very important. It is also significant in certain Title II contexts, such as government benefit programs, where specific qualifications may trigger or deny entitlement to benefits. With respect to the court system, however, the notion of a person with a disability being "qualified" is of limited value because there are virtually no "essential eligibility requirements." Anyone can file a lawsuit, sit and watch a trial, or be called as a witness. As a result, the requirement that a person with a disability be "qualified" has less relevance in matters pertaining to court access than in many other arenas.¹¹

Court Access: Non-Discrimination

Title II of the ADA provides:

[N]o 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.

42 U.S.C. §12132 (emphasis added).

State courts, as providers of public services, are clearly covered by this provision. This basic provision against discrimination in public programs is substantially explained and expanded in regulations issued by the Department of Justice under the Act. The regulations have the force of law and explain many of the concepts underlying the Act in considerable detail. As such, they should be required reading for all court professionals with ADA responsibilities. They will be discussed generally below, and are reproduced in Appendix I.¹²

¹¹ One exception is jury service, where citizens must, by statute, meet certain qualifications to be eligible for service. See Jury Process recommendations, Chapter 9.

¹² The Committee recommends that every Circuit Court and the Court of Appeals obtain a copy of the Title II regulations at 28 CFR Part 35. They appear in the Federal Register of Friday, July 26, 1991, and are reproduced at Appendix I of this report. (Note, this appendix includes only the regulations themselves, and not the commentary and section analysis that accompany them in the Federal Register. The Federal Register is available at most law libraries or from the Great Lakes Disability and Business Technical Assistance Center, 1-800-949-4232 (voice/TDD/TTY).

The Key: Program Accessibility

Whether one is referring to court systems or any other state or local government programs, the essential concept under Title II of the ADA is "program accessibility." As noted above, the ADA prohibits discrimination in the services, programs, and activities of the courts and other governmental agencies.

The key language in the ADA regulations is as follows:

A public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by people with disabilities.

28 CFR 35.150(a)(emphasis added).

Thus, all court programs, services, and activities must be accessible to people with all of the various disability types contemplated by the Act's definition of "disability." However, the Act's reference to considering court services "in [their] entirety" places the focus on program accessibility, as opposed to the more limited notion of physical accessibility. While physical accessibility is obviously a large part of program accessibility, courts are not necessarily required to make substantial physical alterations to ensure that every courthouse space in which services are delivered is physically accessible, for example, to people who use wheelchairs. Title II's focus on the accessibility of programs, services, and activities leaves significant room for courts to modify the use of existing structures to accommodate people with disabilities.¹³ Simple administrative changes, such as relocating a certain function from an inaccessible space to an already accessible one, may correct many problems. See 28 CFR 35.150(b). Readers will see this flexibility reflected in the Committee's recommendations.

Examples of Program Accessibility

Many court professionals are undoubtedly already providing the required "program accessibility" to people with disabilities without knowing they are doing so. Every time

¹³ Two circumstances are likely to give rise to substantial physical alteration. First, if administrative changes to make a program accessible to people with disabilities are ineffective, the statute requires that "structural changes" be made. In this event, a transition plan regarding structural changes required to ensure program accessibility must have been completed by July 26, 1992, 28 CFR 35.150(d), and the alterations themselves must be completed "as expeditiously as possible," and no later than January 26, 1995. 28 CFR 35.150(c). Second, any new construction, including additions or alterations to existing spaces, must comply with specifications set forth in the Act and accompanying regulations. 28 CFR 35.151.

a clerk reads a form aloud to a person with a visual impairment, for example, he or she is providing access to a program where accessibility would otherwise be denied. Every time a proceeding is relocated to a wheelchair-accessible space, the program has been made accessible to the wheelchair-user. Every time a judge slows down his or her questions or remarks to a witness or juror, or asks if the presence of a supportive family member would be helpful because of a party's mental or emotional impairment, the judge is providing "program accessibility." These are only a few of literally hundreds of creative, cost-free measures that can go a long way toward complying with the underlying requirements of the Act.

Existing Buildings versus New Construction: The ADA Accessibility Guidelines (ADAAG)

Under the ADA, there are very different requirements for existing buildings and for new construction or renovation projects. The Committee's report and recommendations focus primarily on existing buildings, although many of the items discussed are equally applicable in either situation.

A. New Construction

Any new construction or renovation begun by a court after January 26, 1992, must be designed so that the facility is "readily accessible to and usable by people with disabilities." In developing such designs, public entities may choose between two sets of compliance regulations: (1) the Uniform Federal Accessibility Standards (UFAS) and (2) the ADA Accessibility Guidelines (ADAAG). 28 CFR 35.151. The ADAAG is found at Federal Register, Vol. 56, No. 144, Friday, July 26, 1991. Each Wisconsin county should have received a copy with their Title II Circuit Court Accessibility Report from the Director of State Courts. If a court is planning any such construction or renovation, either as a result of this report or for any other reason, these sections of the ADA regulations and the ADAAG must be consulted.

B. Existing Buildings

For existing buildings (by far the majority of those affected by this report) there are no specific physical requirements. Existing buildings are subject only to the "program accessibility" requirements discussed above. That is, there is no affirmative requirement that existing buildings be "retrofitted" (or remodeled) to conform with either UFAS or ADAAG.

It may be, however, that providing program accessibility will be impossible without some physical renovation. For example, a clerk of court's office may be too small to provide a table or counter at an appropriate height to allow a person who uses a

wheelchair to fill out a form. If the layout of the building does not provide for setting up a table near the clerk's office, renovating the existing clerk's office by lowering a portion of the existing counter may be an inexpensive alternative.

In the event program accessibility is impossible without "structural alterations," such alterations must comply with ADAAG or UFAS, and transition plans for such structural alterations were required to be in place by July 26, 1992. 28 CFR 35.150(c) and (d). See Footnote 13. Such structural alterations will be necessary in only a minority of cases. Court professionals are urged to remember that program accessibility is the key, and that this usually can be achieved without costly renovations or construction.

Limitations on Courts' Duties to Accommodate

The letter and the spirit of the ADA require that people with disabilities be fully included in court programs. This mandate is not absolute, however. Program accessibility is the rule, but there are four limited exceptions to courts' duties to accommodate people with disabilities.¹⁴

1. Program Accessibility

First, as discussed above with reference to ADAAG and UFAS, in ensuring program accessibility, courts need not necessarily make "each of [their] existing facilities accessible to and usable by people with disabilities." 28 CFR 35.150(a)(1). The regulatory language enables courts to reorganize existing programs (for example by moving proceedings from inaccessible locations to accessible ones, or by reprinting a form in large print or Braille) to ensure program accessibility. By focusing on program accessibility, Title II of the ADA limits the need to modify existing buildings.

2. Historic Buildings

Second, courts are not required to take any action which would "threaten or destroy the historic significance of an historic property."¹⁵ 28 CFR 35.150(a)(2). This is not to say, however, that historic buildings are exempt from all ADA requirements. To the contrary, the Act states that, in ensuring program accessibility in an historic property, the court must "give priority to methods that provide physical access to individuals with disabilities." 28 CFR 35.150(b)(2). In some appropriate cases, however, the regulations

¹⁴ In addition to the regulations cited below, see also 28 CFR 35.164.

¹⁵ Historic properties are defined as those that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under state or local law. 28 CFR 35.104 (definition of "Historic Properties").

suggest assigning guides to assist people with disabilities in maneuvering through historic buildings, or "other innovative methods," as alternatives to renovation. 28 CFR 35.150(b)(2)(iii).

3. Fundamental Alteration

Even in providing program accessibility, a court is not required "to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program or activity." 28 CFR 35.150(a)(3). For example, a person whose disability prohibits him or her from leaving home may wish to file a lawsuit. While an attorney would be able to take care of most of the pre-trial matters (filings, motion hearings, etc.) requiring court appearances, a trial would very likely necessitate the party's presence in court. That person might request, as an accommodation, that the trial be conducted in his or her home. The court may consider this request to impose a "fundamental alteration in the nature" of the conduct of trials. It is a case-by-case determination which, in some instances, may have to be resolved through litigation.

4. Undue Financial or Administrative Burden¹⁶

Finally, a court is not required to make accommodations for people with disabilities which would result in "undue financial and administrative burdens." 28 CFR 35.150(a)(3).

(a) Financial Burden

All public managers are concerned about finances. As Chief Justice Heffernan noted in his address to the Committee, public money is constrained and many government entities face budget difficulties, if not outright deficits. With this in mind, the Committee has attempted to recommend creative, cost-effective solutions. It is true that many means of accommodation — the provision of new technologies, structural improvements, or additional personnel — may be quite expensive, and courts will be faced with the need to consider these financial burdens in the light of the Act's program accessibility mandate.

¹⁶ To the Committee's knowledge, there have as yet been no cases decided under the ADA interpreting the "undue" burden language. The Committee therefore cannot predict the outcome of a lawsuit interpreting this language. Each court should make its own best judgment, and take very seriously the implications of failing to make an accommodation on the basis of an "undue burden" argument. The only cases that have, to the Committee's knowledge, been decided under the ADA involve allegations of employment discrimination on the basis of disability. In one, where attorneys from a Milwaukee firm defended a Chicago-based company in a nine-day trial, a jury found for the plaintiff and awarded, among other damages, \$500,000 in punitive damages. Although this amount was lowered by law to the statutory maximum of \$200,000, it indicates that, at least in some instances, the cost of non-compliance may be substantial.

It is also true, however, that many accommodations for people with disabilities are quite inexpensive. Permitting a juror with chronic back pain to stand rather than sit in the jury box costs nothing. Providing documents in large print for people with visual impairments will frequently be as simple, and as economical, as using the "enlarge" function on a photocopying machine.

Experience with the Rehabilitation Act of 1973 suggests other cost-effective accommodations. As noted, that statute prohibits, among other things, employment discrimination by the federal government and entities receiving substantial federal funds. According to a 1982 study conducted by the Department of Labor, half of the accommodations made in the workplace to comply with the Rehabilitation Act cost "little or nothing." Another 30% cost between \$100 and \$500.¹⁷ Thus, accommodating people with disabilities is not always the costly undertaking that many may assume.

(b) Administrative Burden

Several of the Committee's recommendations suggest changes in the administration of existing court programs, many of which may be achieved at small cost. One of the major recommendations — the appointment of a court ADA coordinator in each county — is essentially administrative, and because the duties can, in most cases, be assumed by an existing county employee, additional costs would be minimal. Similarly, the ability of existing court staff to make themselves available, on reasonable request, to assist people with disabilities in finding their way around the courthouse, or in gaining access to otherwise irretrievable files or library materials, can provide necessary accommodations at little, if any, additional cost.

Determining what type of administrative burden will be considered "undue" may well depend in the final analysis on the outcome of individual litigation. Courts now, though, must make administrative changes to achieve program accessibility with the knowledge that this statutory language does limit their obligations.

Finally, it is important to note that the duty lies with a person with a disability to make his or her needs for an accommodation known to the court system. Courts must develop procedures and expertise to respond to requests for accommodations; but they need not — and, in fact, should not — on their own, try to deduce an individual's needs based on his or her appearance, behavior, or similar factors. Such inferences would frequently be inaccurate, if not stigmatizing. While the duty on people with disabilities to make their needs known does function as a limit on courts' obligations in this area, it

¹⁷ "A Study of Accommodations Provided to Handicapped Employees by Federal Contractors," prepared by Berkeley Planning Associates, June 1982 for the United States Department of Labor, Employment Standards Administration, cited in Joseph P. Shapiro, No Pity: People with Disabilities Forging a New Civil Rights Movement (Times Books, 1992) at pp. 115-116.

must be stressed that courts must make their programs, services, and activities accessible once the need to do so has been brought to their attention. The federal regulations require public entities to make information available to the public regarding its duties under Title II of the ADA and to "apprise [interested persons] of the protections against discrimination assured them by the Act." 28 CFR 35.106.

Conclusion

In making courts and court services accessible to people with disabilities, it is essential that all those who work in the judicial system recognize that the goals of the system and the goals of the ADA are one and the same: the provision of court and judicial services to *all* members of the public. Ensuring access to the courts by people with disabilities is only one aspect of the system's fundamental obligation to serve the public.

Many think of the ADA as a very expensive building code; although structural alterations are part of the Act, many of its other requirements, as will be seen in this report, can be met without undue difficulty or great public expense.

That is not to say that compliance with ADA requirements is an uncomplicated or simple process in all instances. The Act has its complicated side, for it requires examination not only of architectural and building specifications, but of the array of administrative systems and services employed by the courts in delivering services and programs to the public. Again, as this report attempts to show, making court services available and accessible to people with disabilities may often be achieved without undue financial or administrative burdens.

And it is clear that such efforts benefit not only people with disabilities, but many other users of, and participants in, the system as well. For example, parents pushing strollers benefit from wheelchair ramps; large-print forms and signs will aid many people with only very minor visual impairment; and it has been recognized that "real-time" court

reporting¹⁸ benefits *many* courtroom users, enabling them to see testimony instantaneously on a computer screen.¹⁹

Striking the balance between the burdens and benefits of providing various accommodations will require creative thinking on the part of courts and court personnel; but as one judge stated in striking down a "no-blind-juror" policy in a District of Columbia trial court, solutions to the problem of program accessibility in the courts "are as limitless as a willing imagination can conceive." *Galloway v. Superior Court*, 816 F.Supp. 12, n.11 (D.C. Dist. 1993).

¹⁸ Real-time court reporting is a stenography system which enables anyone with a properly set up computer terminal to read on a screen, virtually instantaneously, the court reporter's notation of every word said in court. The Committee became very familiar with this technology; several of its members used the real-time court reporting services provided at every meeting. To the Committee's knowledge, two courtrooms in Wisconsin are already using real-time regularly. Both courtrooms are occupied by members of this Committee. Judge Gary Carlson of the Taylor County Circuit Court uses real time every day in his courtroom. As a member of the Committee, he offered the services of the real-time court reporter who works with him, Gwenn Bever, to report all of the meetings. Second, Judge Richard S. Brown of the Court of Appeals uses real-time in oral arguments. See Communications recommendations chapter and Appendix H (Price List) for more detailed description of real-time court reporting, companies from whom it is available, and approximate prices.

¹⁹ *National Law Journal*, December 13, 1993 at 25. For example, litigators may search through a document during a break in the proceedings for a particular point in previous testimony.

3. COMMITTEE FORMATION AND PROCESS

Committee Formation: The Reno Conference

The Committee grew out of, and is part of, a national effort to examine the implications of the ADA for state courts. The enterprise was launched in earnest in February, 1991, when the National Judicial College in Reno, Nevada, held a 4-day working conference entitled, "Court-Related Needs of the Elderly and People with Disabilities." Several prominent Wisconsin judges and attorneys with expertise in the needs of the elderly and people with disabilities traveled to Reno to attend the conference. The Wisconsin conferees were:

- Judge Richard S. Brown, Court of Appeal of Wisconsin, District II
- Judge Robert R. Pekowski, Chief Judge, Circuit Court of Dane County
- Judge Patrick T. Sheedy, Chief Judge, Circuit Court of Milwaukee County
- Attorney Betsy J. Abramson, Director, Elder Law Center of the Coalition of Wisconsin Aging Groups; and
- Attorney V. K.-Wetzel, Director of Judicial Education.

The Reno conference resulted in a 270-page report, entitled A Blueprint for the Future, which includes the recommendations that emerged from the conference. Each recommendation is accompanied by issue summaries and policy papers discussing the substance of the particular recommendations.²⁰ The Blueprint also lists selected state action plans and numerous references.

Upon their return, the Wisconsin conferees wanted to pursue the state action plan outlined in the Blueprint. They sought the ear of the Chief Justice and proposed that the Supreme Court of Wisconsin convene an Interdisciplinary Committee for that purpose. The Chief Justice approved the project, and it was agreed that Attorney Abramson, Director of the Elder Law Center of the Coalition of Wisconsin Aging Groups, would draft a grant application to the State Justice Institute ("SJI"),²¹ seeking funding for the project, including salary for a full-time Project Coordinator.

²⁰ A Blueprint for the Future is available from the American Bar Association Commission on Legal Problems of the Elderly or from its Commission on Legal Problems Mental and Physical Disability Law, 1800 M Street, NW, Washington, DC, 20036. A smaller booklet containing only the recommendations was separately published, and is available from the same sources.

²¹ The State Justice Institute is a private, non-profit corporation established by Congress in 1984. "The purpose of the Institute shall be to further the development and adoption of improved judicial administration in State courts in the United States." 42 U.S.C. §10702.

Attorney Abramson's grant application was endorsed by numerous leaders in Wisconsin's court system, including the Chief Justice, the Director of State Courts, the Director of Judicial Education, numerous Wisconsin judges and several prominent individuals and organizations in the state's disability and elderly advocacy network. It was also supported by the American Bar Association Commission on Mental and Physical Disability Law. The grant was approved by SJI for a 15-month term, from January 1, 1993 to March 31, 1994.

The grant set forth numerous goals for the Committee, directing it to: (1) survey the Wisconsin courts to assess current accessibility; (2) conduct public hearings; (3) make contact with other state court systems; and (4) conduct outreach to Wisconsin advocacy groups and networks for the elderly and people with various disabilities. Most importantly, the grant required that the Committee report to the Supreme Court of Wisconsin by the end of its term, March 1994, setting forth its recommendations for improving access to the judicial system for people with disabilities.

Because of his background in law and government, his efforts to secure equal access to the courts for women and minorities, and his leadership in the Wisconsin judiciary, the Chief Justice turned to Judge William Eich, an experienced trial judge and Chief Judge of the Wisconsin Court of Appeals, to chair the Committee. Judge Eich shepherded the very diverse Committee to this consensus report by allowing time at every meeting for mutual education and spirited debate, as well as orderly parliamentary decision-making.

Committee Process: Appointment of Members

Upon approval of the grant, Attorney Abramson, Director of State Courts Moran and Judge Brown acted as the hiring committee to engage the full-time Project Coordinator for the 15-month project. Attorney Juliet M. Brodie was hired in this position, to report directly to Attorney Abramson as a part of the Coalition of Wisconsin Aging Groups' Elder Law Center staff. Chief Judge Eich and Attorney Brodie proposed to the Chief Justice the membership of the Interdisciplinary Committee. Chief Justice Heffernan approved the recommendation, and sent letters of appointment in March, 1993.

The membership of the Committee was diverse. It included attorneys, judges, people with disabilities, a representative from the Wisconsin Manufacturers and Commerce organization,²² design professionals, county government representatives,²³ and advocates

²² Although the Committee's mandate was limited to recommendations regarding public entities -- state courts -- it was considered important to have private business represented on the Committee. Jeff Kluever was appointed by James Haney, President of the Wisconsin Manufacturers and Commerce, to represent that body on the Committee.

for people with various disabilities. The categories, of course, are not mutually exclusive; the Committee included several attorneys and judges, for example, with various disabilities.

In addition to those already identified, the Committee included the Executive Directors of both the Wisconsin Alliance for the Mentally Ill and the Wisconsin ARC (formerly the Association for Retarded Citizens), several lawyers in private practice, including a former Milwaukee police officer who is now blind, a business litigator from Madison and a legal services attorney who has a bi-polar mental illness. The Committee also included three members of the National ADA Network. These three are, first, a litigator from Menomonie who uses a wheelchair, second, a member of the staff of the Community Options Program in the Department of Health and Social Services, who is also a former member of The Wisconsin Council on Physical Disabilities, and third, the Director of Consumer and Regulatory Affairs at Ultratec, a manufacturer of telecommunications devices for the deaf. The then ADA-Coordinator for Dane County was also a Committee member. In addition, the Committee included a senior official of the largest manufacturer of telecommunications devices for the deaf in the U.S., who herself has a hearing impairment.

Committee Meetings

The Committee met bi-monthly from March, 1993, through March, 1994. Each meeting was conducted as a public meeting, and appropriate notices to the public and the media were posted and distributed. The agendas for these six day-long meetings were varied, and changed as the Committee's work progressed.

The first two meetings were educational sessions. Because the Committee members came from such diverse personal and professional backgrounds, it was felt that education on the pertinent provisions of the ADA, the functioning of the Wisconsin court system, typical court uses and users, and the needs of people with various disabilities, would aid

²³ Early in the grant process, Attorneys Abramson and Brodie met with the President of the Wisconsin Counties Association (WCA), Mark Rogacki. Because of the counties' substantial role in the operation of the state court system, Abramson and Brodie felt it essential to meet with the leadership of the WCA. At that meeting, they explained the purpose of the grant, the background of the Reno conference, and sought the advice of the WCA on priorities and potential points of conflict in making recommendations for improving accessibility. They also sought recommendations of people to represent the WCA on the Interdisciplinary Committee. As a result of this meeting, Janice Lichter (Milwaukee County), Peter DeSantis (Marathon County), and Tom Kieweg (Ashland County) were named to the Committee.

the Committee in its discussions and deliberations.²⁴ By the mid-point in the Committee's work, members had been divided into five working subcommittees: (1) Physical Access, (2) Communicatory Access, (3) Training Issues, (4) The Jury Process, and (5) Cost and Funding.²⁵ The subcommittees served as the Committee's basic organizational units and drafted the original versions of the recommendations contained in this report.

Each subcommittee drafted recommendations in its own subject area, which were reviewed and formally approved by the full Committee. The subcommittees also drafted the commentary accompanying each recommendation. Judge Eich and Attorney Brodie coordinated the activities of the subcommittees and assisted in the identification of issues cutting across subcommittees and in drafting and editing the commentary and recommendations.

The Cost and Funding subcommittee, chaired by Judge Richard S. Brown, who had attended the conference in Reno, functioned somewhat differently. In addition to writing its own recommendations and accompanying commentary, this subcommittee designated from its own membership liaisons to each of the other four subcommittees. These individuals worked with the members of the various subcommittees to assist them in identifying and assessing cost factors for the recommendations, and in locating sources for the equipment or materials recommended. The price list which appears as Appendix H is the result of this collaborative effort.

Public Hearings

In addition to holding its own public meetings, the Committee conducted two public hearings to hear the concerns, experiences, and suggestions of Wisconsin citizens on the subject of court accessibility. The first hearing was in the Milwaukee area, in Greenfield, on July 15, 1993, and the second in Stevens Point on August 19, 1993. Chapter 4 describes the public hearing process and testimony.

²⁴ The Committee's second meeting included a panel presentation on the basic workings of the court system and the needs of people with disabilities in various roles (e.g., as attorneys, parties, witnesses, jurors, etc.) in that system. The all-day meeting was videotaped and has been edited down to a 2-hour videotape, available for rental from the Coalition of Wisconsin Aging Groups--Elder Law Center for \$10 for one week. The Committee recommends use of this videotape as a basic educational tool.

²⁵ A list showing subcommittee membership is attached as Appendix D.

Survey of Current Accessibility

As mentioned above, a major activity taking place in conjunction with the Committee's work was the comprehensive survey of current circuit court accessibility by the Director of State Courts office. Under the ADA, all public entities are required to perform "self-evaluations" to "evaluate [their] current services, policies and practices, and [their] effects" on accessibility to people with disabilities. 28 CFR 35.105. The Director of State Courts office, using a survey tool developed by the National Center for State Courts under a grant from the U.S. Department of Justice, surveyed both the physical and program accessibility of all circuit court programs, services, and activities. Wisconsin state courts conduct their proceedings and programs in more than 100 buildings across the state, and each one had to be thoroughly studied with respect to physical accessibility of court programs. Director Moran engaged Theresa Lomperski, an independent consultant with expertise in barrier-free design, to conduct the facility survey. Ms. Lomperski was also a member of the Committee and served as the coordinator of the physical access subcommittee.

Ms. Lomperski trained a team of District Court Administrators and oversaw administration of the facility survey. Blank samples from the Physical Access Survey are reprinted as Appendix B to this report. Ms. Lomperski had responsibility for the production of county-by-county reports which demonstrated particular exceptions to the ADA Accessibility Guidelines (ADAAG) in court buildings.

Mr. Moran's office also surveyed the accessibility of circuit court programs, services and activities. (A blank sample of the Program Access Survey is attached as Appendix C.) This survey covered telecommunications, staff training, written forms, policies and procedures for accommodating people with disabilities, and other non-physical aspects of court accessibility.²⁶ Title II Circuit Court Accessibility Reports, outlining the results of both the physical and program surveys, have been sent to each county.

²⁶ County Administrators may request a copy of their county's report from their local district court administrator.

4. SUMMARY OF PUBLIC HEARINGS

Introduction

Under the grant from SJI, the Committee was required to conduct public hearings. The Committee welcomed the hearings for they enabled it to gather information and ideas on court accessibility directly from members of the public. In addition to listening to the witnesses appearing at the hearings, the Committee solicited written and videotaped testimony from those unable to appear. All in all, a total of 37 witnesses testified. In addition, an ad hoc group of attorneys and other professionals whose careers focus on mental health and developmental disabilities submitted written testimony as a group. This document appears in Appendix E.

Publicity Efforts to Solicit Witnesses

Considerable effort was expended in publicizing each of the public hearings. An ad hoc working group of Committee members was convened to oversee the hearing process, and to plan the individual hearings, including making final proposals to the full Committee regarding dates and locations, arranging for accommodations for witnesses with disabilities, and designing and implementing publicity strategies to reach the many citizen groups it thought would be potentially interested in testifying.

The working group divided the state into geographical areas to be targeted for publicity for each of the hearings and divided possible witnesses into three general categories: (1) people with disabilities and their advocates; (2) court professionals, such as clerks of court, judges, and attorneys; and (3) county personnel, such as county board chairs, executives, and administrators.²⁷ In addition, the working group designed a campaign to publicize the public hearings through appropriate local media.

A Notice of Public Hearing was prepared for each hearing. Copies of the Notices are attached as Appendix F.²⁸ Appropriate cover letters were drafted for the various targeted groups, and copies were distributed along with the notices according to the campaign plan. To notify people with disabilities and their advocates, mailing lists were collected from many sources, including the Centers for Independent Living of Wisconsin,

²⁷ While many court professionals are, in fact, county employees, the groups were solicited separately for testimony.

²⁸ The differences in the two Notices, particularly the inclusion on the August 19th Notice of a list of groups represented on the Supreme Court Committee, reflected the ideas of the full Committee for increasing the number of witnesses at the second hearing.

the Cochlear Implant Society, the Office of the Hearing Impaired, the Wisconsin Council of the Blind, the Wisconsin Coalition for Advocacy, the Bureau on Aging, the Victim/Witness Office, the Governor's Committee on People with Disabilities, numerous other specific offices in the Department of Health and Human Services, and a host of individuals and offices with which the Project Coordinator had become familiar in the course of the Committee's work. In addition, the many Committee members who work in disability networks were asked to distribute Notices and encourage people to appear.²⁹

To solicit testimony from court professionals and county personnel, the Project Coordinator collected mailing lists from the Director of State Courts office and the Wisconsin Counties Association. Notices and letters were sent to all county human and social service departments, juvenile court clerks, registers in probate, and clerks of circuit court, as well as the justices of the Supreme Court of Wisconsin, court of appeals judges, and all circuit court judges in the state. Cover letters requested that recipients post the Notices in a conspicuous place and encourage people to testify.

Finally, the ad hoc committee and the Project Coordinator drafted press releases and public service announcements and distributed them to appropriate print and electronic media in the targeted areas. Both hearings received media coverage. The Milwaukee Journal reported on the Greenfield hearing, which was also attended by a radio reporter who interviewed the Chair of the Committee, the Project Coordinator, and Committee members. A Wausau television station covered the Stevens Point hearing and conducted similar interviews. In addition, the Project Coordinator did numerous advance radio interviews that were played in the target areas in the days leading up to the hearings. The interviews explained the purpose of the Committee and the necessity for public input as the Committee crafted its recommendations regarding priorities for court accessibility.

Accommodations for Witnesses

Both hearings were held in facilities that are accessible to people who use wheelchairs. Because the restrooms at the Greenfield City Hall were not accessible to all wheelchair-users, the Committee engaged two personal care attendants through the Southeastern Wisconsin Center for Independent Living to assist potential witnesses. Sign language interpreters and real-time court reporters were engaged for both hearings to assist people with hearing impairments. Because there is no public text telephone at the Greenfield City Hall, the Committee furnished a portable TDD/TTY for public use.

²⁹ As one example, these contacts included a lengthy mailing list obtained from Committee member Vande Zande, who works in the Bureau of Long Term Support in the Department of Health and Human Services. This statewide mailing list included well over 150 contacts in the disability advocacy community.

Summary of Experiences and Current Status Reported

At both hearings, witnesses testified to a wide range of personal and professional experiences and offered suggestions for improving court accessibility.³⁰ The following summary breaks down the testimony into two basic categories: (A) how the court system works well to serve people with disabilities, and (B) the need for improvements.

A. How the Court System Works Well

Many court officials, including judges, clerks of court, and registers in probate, testified to the efforts already underway in circuit courts to accommodate people with disabilities and to make court programs accessible to all. While knowledge of the ADA varies greatly from county to county, and from individual to individual, there are many court professionals who, well before passage of the ADA, spent years attempting to accommodate people with various disabilities. Since passage of the Act, these efforts have increased. Some counties have already appointed ADA Coordinators, are incorporating accessibility into plans for physical plant renovation, and are training their staffs in necessary accommodations for people with varying types of disabilities. Some county officials testified that they have not encountered problems they have been unable to address adequately. What follow are a few examples of the topics covered by witnesses at the two hearings on these subjects:

- Many witnesses provided detailed descriptions of the current state of physical accessibility to the courts, and efforts currently being made to make improvements.
 - In one county, jury rooms for two large courtrooms are being made wheelchair-accessible (it was noted that deliberation and jury restrooms are not part of this renovation).
 - The same county is improving the accessibility of its public restrooms.
 - One county has lowered its elevator buttons to enhance wheelchair accessibility.
 - Another county has requested \$10,000 in its current budget for real-time court reporting.

³⁰ The testimony was not taken under oath. Full transcripts of both public hearings are available upon request (for the cost of reproduction) from the Elder Law Center, 1245 E. Washington Ave., Madison, WI 53703.

- One county is currently remodeling its law library — including the installation of revolving shelves — to make it accessible to wheelchair-users.
- Because of acoustics in courtrooms that make it difficult for many people with hearing impairments to participate fully in proceedings, one county is working on a system to make existing sound systems portable so they may be moved to where they are needed.
- Some counties have taken the Director of State Courts' survey process as an opportunity to meet together to discuss the ADA on a district-wide basis.
- In all counties represented at the two hearings, staff assist people with disabilities on an ad hoc basis, e.g., taking people with visual impairments into a separate room to fill out papers, where additional time may be allotted and other accommodations made; accepting a filing from a person who uses a wheelchair at the front door of a building that does not have an elevator or is otherwise inaccessible.
- In many counties, testimony from people who use wheelchairs is taken from alternative locations, such as the bailiff's box or the floor in front of witness box.³¹
- One court system representative testified to the use of "follow-up" evaluation questionnaires, and stated that this practice provides feedback on the value of accommodations and other useful information.
- One county agency (Milwaukee County Office on the Handicapped) provides 5000 hours of sign interpretation services per year, although there was no testimony regarding what percentage of that time is allocated to court services. The agency's representative also testified to his willingness to share resources and ideas on how to establish similar programs in other counties.
- This same county office has a "newspage" that is sent to a mailing list of 2700 people, including legislators and judges. Again, this type of service could be used as a model for informing various communities about court services and access.

³¹ Some people who use wheelchairs are not satisfied by this accommodation, and do not consider it "program accessibility." See below, "Recommended Improvements."

B. Improvements Recommended³²

Mobility

- A District Court Administrator who conducted surveys of physical accessibility testified that in his opinion there was not "a single courtroom [in his district] that was accessible in terms of the judge's bench, the witness, the jury box, or the clerk's area." He went on to note that the one of the major problems with making these areas accessible is lack of space.
- Many counters where court programs are administered are too high to accommodate people who use wheelchairs.
- It is difficult to fingerprint a person with spasticity (a portable fingerprinting unit was recommended).
- One litigant with a mobility impairment and considerable chronic pain testified that he had been made to wait, endure postponements, and that no accommodation for his disability was made. He specifically noted that some traditional courthouse furniture is very uncomfortable for people with chronic musculo-skeletal pain.

Witnesses recommended, among other things, the following in this area:

- The availability of portable ramps to assist people who use wheelchairs.
- Wheelchair-users should not be segregated from other court users (e.g., made to testify from outside witness box, or sit apart from other jurors, or sit simply in the aisle as a court observer). One witness said, when asked his views on this subject, "I would have felt being segregated and placed on the spot in the public eye, basically, being out, not with everyone else."
- Wheelchair seating in observer areas should be dispersed, and not located in a single area. However, if all in one area, the front of the courtroom is preferable.
- Wheelchairs should be available at court for the "frail" who don't bring them, but need them to gain full access to court programs and services.

³² It should be noted that these are not the formal Recommendations of the Committee, but rather suggestions made by witnesses at the public hearings.

Communications

- One court employee testified that the most frequent complaint she receives is from elderly people with hearing impairments.
- It was noted that simple amplification (e.g., use of microphones) doesn't help everyone with a hearing impairment.
- Many witnesses testified to what they considered the failures of the current state reimbursement statute for sign language interpreters. One said that sign interpreters need to be recognized as professionals, and that the current statutory rate of state reimbursement (\$35 per half day) is "an insult."
- There was testimony about the overall shortage of sign language interpreters in the state, which requires repeated rescheduling of proceedings for people who use sign language.
- It was recommended that the Director of State Courts office request state funding for real-time reporting for each county. Court reporters who have real-time equipment currently pay for these systems themselves. One reporter testified that her system cost \$20,000.
- The same court reporter testified that Wisconsin has fewer than 10 full time real-time court reporters, and that half of the 200 court reporters statewide are training themselves (at their own expense) in real-time reporting.
- The court reporter testified that real-time court reporters all use their own time and money for training and the purchase of equipment. This includes using "vacation days to attend the seminars . . . noon hours to build up computer dictionaries . . . and also personally pay[ing] for the computer equipment."
- The reporter said that the cost per courtroom for real-time (presumably excluding the stenographic equipment itself) is \$1000.00. Bulk purchasing could lower the cost.
- Finally, she said that there should be a financial incentive for court reporters to learn real-time: payment for training, higher hourly wage, etc. It was suggested that payment for "video splitters and monitors" be covered by individual counties.
- One witness testified that some judges oppose introduction of real-time into their courtrooms.

Witnesses also recommended the following in this area:

- People in courtrooms should wear body microphones when necessary.
- Attention should be paid to sight lines and facing people with hearing impairments who rely on lip-reading.
- Time should be set aside for people with communicatory impairments to use the accommodations afforded them, e.g., written notes between client and attorney.
- The availability of large print documents should not be noted in small print on "regular" documents. This witness went on to specify that large print size should be minimum 14 point and maximum color contrast.
- Every juror questionnaire should be in large print.
- One witness noted that some mental impairments should be considered, in some cases, a communicatory impairment and that some people with such impairments may need a "translator," comparable to a sign language interpreter.
- Every court should have a TDD/TTY, and its number should be listed on all business cards, letterheads, forms, and other court documents distributed to the public.

Court Administration

- One judge testified, regarding funding for ADA improvements, "I think there should be a Supreme Court rule which gives the Chief Judge the power in each district to order it And I think the Supreme Court under their sum sufficient budget has the power to do that."³³
- Another witness noted that leadership from the Supreme Court of Wisconsin is necessary for implementation of the ADA in Wisconsin's courthouses. This witness asked whether such non-accessibility would be tolerated by the Court or whether some formal accountability and enforcement mechanisms would be established.

³³ The Supreme Court of Wisconsin's sum sufficient budget does not include funding for trial court operations or facilities.

- It was recommended that all courts maintain lists of local resource agencies, such as sign interpreters, agencies serving people with mental impairments or providing personal assistants, etc. This information should be shared with staff, and staff should be trained in how to use it.
- It was noted that people with disabilities will not be the only beneficiaries of many accommodations; many will increase efficiency and save court time overall.
- It was also noted that transportation is a major problem for elderly people involved in the court system.
- One witness suggested that county organizations (such as Milwaukee County Office of the Handicapped) share information about how they got started, the types of services they offer, how people learn of them, how to network into court system, and similar matters.
- Another suggested that the state pick a "sample" county, bring it into full compliance with ADA, and report state-wide on how it was done, what was effective, what the cost was, and similar matters.
- It was recommended that volunteers be used for escorts/advocates through the courthouse and court system.

Mental Impairments

- One witness noted that people confuse hearing loss with "loss of intelligence."
- Another stated that in his county there are no policies or procedures in place to address needs of people with mental illness or mental retardation.

Training Recommended by Witnesses

- Judicial education on disability issues in general was recommended. Specific topics included the medication and privacy needs of people with disabilities. With respect to the latter, it was noted that jurors or others needing accommodations should not be asked to identify their needs in front of the public in a full courtroom, and that provision should be made for such discussions to be held before the smallest group possible. Witnesses also suggested that people with mental illnesses should be allowed to testify

at commitment or other hearings in person, if able, or to permit others to testify on their behalf.

- Bar associations should inform attorneys of accommodations available at court and of procedures for requesting them.
- Education for everyone in the court system on mental illness issues was recommended.
- Attorney education was recommended regarding how best to familiarize clients/witnesses with disabilities with the court process; including information tailored to people with mental impairments.
- Attorney education was also recommended to be conducted by people with disabilities regarding overcoming reluctance to accept them as clients, how to accommodate them, and how to advocate for them in the courts.
- Sensitivity training was recommended for jurors, due to the fact that their co-jurors may include people with disabilities.
- It was recommended that training should be organized at state level, and that staff training should include simulation exercises/devices regarding various disability types.