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Johan Rempel: Good morning, everyone. This is Johan Rempel from Georgia Tech. I'm going to be assisting with the logistics of this conference. Welcome to the 2024 virtual ADA conference for state and local governments. I'm going to spend a few minutes discussing housekeeping items.

Next slide.

So we are providing live captions today and there's two ways in which you can access the captions. One way is through the StreamText link that will be shared in the chat. That opens up a third party applications with a number of different options that you can leverage. And the second way to access captions is through the closed captioning button on the toolbar within Zoom.

Right now there's a bright red arrow pointing to the CC or the closed caption option within Zoom.

Next slide.

Spotlighting and pinning. So we have captioning and ASL interpreters. We have spotlighted the ASL interpreters. Only the host and cohost can spotlight someone. Whoever is spotlighted will appear in speaker view. Pinning, any participant can pin and that only impacts that participant's display. You hover over the participant you want to pin, you select the ellipsis and then choose pin.

We are also making available the Q&A option on the Zoom toolbar. If you have any questions, enter them in the Q&A. There will be a combination of answers in real-time and there will be time left at the end for our presenters to respond to Q&A.

All sessions will be recorded throughout the conference. I'm going to go ahead and do that now.

Johan Rempel: So these will be archived all of the presentations, including the PowerPoints will be made into accessible PDFs. The recording will be an MP4 video and the transcripts will be made available as well.

With that I'm going to pass it on to Barbara Tucker she is the administrative services coordinator with the State ADA Coordinator's Office.

Barbara Tucker: I serve as the ADA administrative services coordinator. Welcome to ADA legal updates 2023 in review. Your presenters for today are Mr. Barry Taylor and Ms. Rachel Weisberg. Currently Mr. Taylor is an adjunct professor at the Chicago law school where he teaches disability right laws. From 1996 to 2003 Barry Taylor was the VIP RR at equipped for equality where he oversaw many individuals in discrimination cases, including successful ADA suits. Ms. Rachel Weisberg joined disability rights advocates in 2023. This is a nonprofit legal organization dedicated to championing people with disabilities. Prior to DRA, she spent 12 years with advocacy agency. You can find their complete bio in the registration materials. Welcome Barry Taylor and Rachel Weisberg. Rachel Weisberg: Thank you so much for that introduction. We're going to turn off our videos now to ensure that folks who would like to look at the interpreters are able to do so.

Okay. It is such a pleasure to be here today. To be here to celebrate the Americans with Disabilities Act and to talk about so many important court cases and settlement agreements. Our plan is to highlight cases from 2023. Because we're in June, we were able to throw in a few more recent cases and settlements from 2024 as well.

Here's our plan today. I'm going to start talking about Title I the employment provisions of the ADA. At that point I will turn the presentation over to Barry to start a conversation about cases and settlements under Title II which applies to public entities. We did include a handful of Title lll cases as well and those are ones that will have some sort of impact on Title II entities. So Barry will talk about effective communication and education and then I will talk about transportation and healthcare and then Barry will wrap up talking about criminal legal system and Olmstead. Then we will have time for Q&A. Please put questions in the Q&A box and we will handle as many as we can at the end.

So let's get started with Title I of the ADA.

Any sort of ADA presentation about anything but especially Title I you always hear the phrase individual inquiry or something that is case specific. The Hine case is a great example of an illustration of why we do this and why it's so important. So, the Hine case the plaintiff is a deaf individual who prefers sign language but he does have a cochlear implant. He worked as a volunteer fire fighter and started this career at the age of 10. He was a junior fire fighter. In all of these past roles there was no dispute. He did his job well and performed all of the essential functions.

Why are we here today? Well he applied for a volunteer fire fighting position with prince George's county. He made it through the initial part of the application and was eventually sent for physical examination. He was evaluated to see if he met the standards of the national fire protection association 1582. These are voluntary standards that the county used as eligibility criteria. These standards did require a certain level of hearing. Well, Mr. Hine did not meet those. So prince George's county said you are disqualified from this position but you can do an administrative role. He didn't want that. He wanted to be a volunteer fire fighter. He filed a lute under Title I, Title II, section 504 and Maryland law. When both parties say to the judge there's no disputes of fact here this is purely a legal issue you can make this decision was filed.

The court said I'm not going to completely make a decision about this case but I will make important findings to understand the law moving forward. One of them was that the court said it is undisputed that the public entity here did not comply with the ADA's requirement to do an individualized inquiry. Instead they relied solely on the professional standards as a blanket eligibility criteria. No discretion or individualized inquiries.

An argument pris George county made was Mr. Hine posed a direct threat. What do you think the court said there? The court said you can't have a direct threat as a matter of law when there's so individualized inquiry. That's something that's really a fact specific thing. So here that's not going to be enough to have a court holding for the county. So the court said that the case can move forward to a jury. So we'll see what happens next. The status is it has been referred to a settlement conference. So it is possible this case will be resolved through a settlement.

The next case we want to tell you about addresses a hot topic: Do employers need to accommodate an employee related to commutes to work.

We had an employee who had cataracts. He worked at a call center. He had difficulty driving at night. Because of where he lived and the location of his employer, there weren't options for public transit. He was assigned to a shift that ended at 9 p.m. He asked to modify my shift time so I can work earlier according to the ADA. First the employer said okay. After about 30 days the employer said no. This is something that's not required under the ADA. They argued that there's no obligation to accommodate an employee's commute. First the case went to the district court. The district court said the employer is never has a duty to accommodate a commute. While that blanket statement strikes people as the blanket statement we don't like under the ADA. We like to have more nuance and individualized assessment. That's exactly what was recognized when this case was appealed to the 7th circuit. They disagreed with the district court and remanded the case back to the district court. The 7th circuit said let's look at where the law is about accommodating commutes. There's different cases that have different holdings. We're going to reconcile all of them and come up with a general stance.

If an employee's disability interferes with their ability to get to work, the employee may be entitled to a work schedule accommodation. So applying that standard to this case. The employee has a disability related barrier. It had been conceded that working in person was an essential function. So in this case it could be a reasonable accommodation. The court did make some additional observation like employers are not required to provide the transportation but they are not going to consider the reasonable accommodation process just because something applies to a commute. So commute related accommodations should be evaluated like any other type of request. Following this 7th circuit decision the case did resolve in a settlement.

The parties conceded that physical presence in the work place was an essential function but the court highlighted that that was the fact pattern before the COVID 19 pandemic. COVID did change the work pattern for many employees.

Moving on to the Hopman case. This is a case that looks at the question of the scope of reasonable accommodations. So remember that reasonable accommodations generally fall within a couple different categories. We have accommodations for the application process, accommodations that enable someone to perform the essential functions of their job or gives equal access to the benefits and privileges.

We have an employee who worked as a conductor. He had a service animal. He had PTSD and migraines from military service. He asked for permission to have his service animal with him as an accommodation.

Interesting enough this case went to a jury and the jury found for the employee. But despite that jury verdict the district court found for the defendant saying there wasn't legally sufficient evidence.

So in the 8th circuit let's look at these different types of accommodations. In this case the plaintiff said I'm not asking for an accommodation that will enable me to perform the essential functions of my job. He said the service animal gives me equal access to the benefits and privileges of employment. What are those benefits and privileges? The benefit and privilege of being able to do work without physical and emotional pain.

This is a concept that's been recognized in several other circuits. With a benefits and privilege is to work without this type of physical and emotional pain. The 8th circuit defined what that benefits and privilege is much more narrowly and said office parties or access to office cafeteria. It's not about being able to work without this type of pain.

While this case went to petition for the Supreme Court to take a look at it. The Supreme Court denied review but this issue is alive and well. Right now we have other circuits that have found that benefits and privilege do include physical and emotional pain. The 2nd circuit there's a case of tutor verses Whitehall center school district. Barry will put a link to the brief in the chat.

This is definitely something to watch. We don't usually share our own perspective on these. I think this case is wrong. I think it's one that's concerning because there's so many people with different types of disabilities that do need to be able to do they maybe can perform the essential functions of their job but they need an accommodation to do it in this type of safe way. People who have service animals or mental health conditions or working remotely. It's an interesting issue to watch.

Let's continue on the topic of important Title I cases. Another question is reassignment as a reasonable accommodation. Circuits across the country have had different stances on what does reassignment mean. Generally speaking reassignment is if someone can no longer perform the essential functions of their job because of a disability and there's a vacant position for which they are qualified. Reassignment might mean that employee has to be placed in that position. Other circuits say no no no reassignment means they have the same right as everybody else to apply for that vacant position. This is a situation where we have circuits going in different directions. So we have in this last year the 5th circuit added to the analysis and added their opinion. This is the EEOC verses methodist hospitals case. They challenges the employer's policies and practices that did not require this mandatory reassignment of employees with disabilities. The EEOC brought a case on behalf of a specific individual who had been working as a patient care technician, had injure D her back and desired an open scheduling job. The district court granted summary. The EEOC appealed and this went before the 5th circuit. They said well mandatory reassignment is not reasonable in the run of cases. So that's a different from a lot of other circuits are saying. Generally speaking mandatory reassignment is not reasonable.

They said there are circumstances that could make this mandatory reassignment reasonable in this case. And they remanded the case and had another important aspect of law saying she had broken down the interactive process because the employer offered another position. Practice pointer for employees and employers you never want to be the one that breaks down the interactive process. You always want to respond.

The Orozco verses Garland case is about employment and assistive technology. We have a blind employee who worked for the FBI. He brought a claim under Section 508 of the Rehabilitation Act because he had been trying to use software at his place of employment but that software was not accessible to him as a blind employee. You might think why are we talking about Section 508? What is Section 508? This is part of the Rehabilitation Act and it's a law that requires federal agencies to buy and procure and have accessible information technologies. Generally a lot of folks who have brought 508 complaints are not employees. They are people who are trying to access federal websites or technology from the public. So here was a question of can an employee take advantage of Section 508? The court said absolutely. 508 provides a private right of action not for monitory relief but declaratory and injunctive relief including a federal employee. The only prerequisite is the person must file an administrative complaint. This is still pending. This is about federal employees. It is just so important to remember how important it is to have accessible information technology both for our employees and for the public and making sure that we are procuring accessible technology.

Let's look at a couple DOJ consent decrees about medical examinations.

The rule under the ADA is that employers cannot conduct disability related inquiries or medical examinations before making an offer of employment.

Some questions are well what does that mean to have a conditional offer of employment. This first link the United States verses city of Miami beach helps us understand that. The city was asking police applicants to take medical and psychological exams early in the process. Before agility tests and review of experience.

If someone was disqualified it was unclear why that was. The reason the ADA is requires medical examines after a conditional job offer is made is to isolate the reason why they are not able to move forward. This case was not based on a complaint but the DOJ had found out information about this policy and done an investigation and there was a consent decree where the city of Miami updated policy to isolate physical tests to the end of the hiring process. If somebody's conditional job offer is provocable they will be able to find out why. So we know if someone's disability truly prevented a person to do their job.

There's a link about the city of blain Minnesota.

Here we have an employee who had disclosed his condition voluntarily when asked to undergo treatment. Despite the employer's policy which paid for this treatment, this individual was permitted to go on leave but for 4 years had to do stringent requirements and had to pay for that. So there's a consent decree and you can read about that on the link.

Title I of ADA cases there's Purvenas Hayes verses Saltz case out of Pennsylvania. There was an employee who worked as a paralegal. She had to provide information about her vaccine status. Ultimately she ended up filing a totally separate lawsuit about their failure to pay her over time. Her employer told a newspaper she left because she did not wish to get the COVID 19 vaccine. She filed another lawsuit saying that's my private information and you breached the ADA confidentiality.

One of the requirements to bring a claim for this is an employer must obtain information through a medical inquiry. The employer said this information was given to me in generally about questions to do their job. The court said that's much too narrow of a way to look at this. When we look at what the ADA requires in terms of confidentiality. What type of information is protected? An employer can make all sorts of inquiries about an employee's ability to do their job. If they share medical information then the ADA confidentiality will still apply. This is pending and in discovery.

The last 2 slides we have whenever we do these years in review there's always so many interesting and important EEOC settlements or cases. These are the EEOC round up slide. We're going to rapid fire and tell you about a few different cases or consent degrees.

This first slide all of the cases are on behalf of deaf applicants and employees. This is a priority for the EEOC. This is an area we see so much ADA violations on behalf of the deaf community.

In the voyant case we have a deaf employee who was fired on her first day based on fears that she couldn't work safely as a production worker. The case settled for $75,000, training and reporting. The tech Mahindra case we have a deaf applicant was in an interview for a job and during the interview the employer realized the applicant was using an interpreter. Ended the interview and sent an e mail saying thank you for your time, you have the perfect skill set for this role but it would be a challenge having an interpreter on site. Don't do that. As a result of that that's a clear ADA violation. There was a consent decree for $255,000, policy changes, training and ADA coordinator review quest for reasonable accommodation.

Next is the McLane case. A jury awarded a deaf applicant over $1 million. And then Werner enterprises the jury awarded $36 million. Other cases that are similar are pending.

For both of those very large jury verdicts they will be reduced based on the ADA cap.

EEOC round up part 2. I wanted to highlight other interesting EEOC resolutions. First is EEOC verses Pete's car smart. Here we have an employee who was a longtime employee. She took a brief leave for heart surgery. Days before her return the owner made disparaging comments. This is an interlaced between age and disability. Claims were made between the age and ADA for $145,000.

The EEOC verses papa John's pizza is one out of Georgia. There was an employee who used a service animal to assist with their commute. There was a determination that once working they did not need to have their service animal there. They were not permitted to work because this accommodation was denied and they said his employee could not even start working. There was a descent degree for $175,000, training, policy review and EEOC monitoring.

The Salvation Army case was about an individual who had a job coach during a probationary period. Worked successfully for several months and then there's a new store manager that started and started harassing this individual about his disability. Refused to allow job coaching and then fired him. There was a consent decree for $25,000.

Then Dollar General we have the EEOC sued on behalf of 500 applicants who were required to pass preemployment medical exams. A there was a consent decree of a million dollars.

Now I will pass the mic to Barry to talk about Title II.

 Barry Taylor: Thank you. I'm going to be talking about two aspects: Effective communication is first. One thing that will come to mind is how people communicate through websites and apps. That's how we get a lot of information today. We want to highlight cases and what's going on with the Department of Justice. The first settlement is from Oklahoma. This particular entity had a mobile app that allowed people to provide digitalized versions of their driver’s license but it's not accessible to people who use screen readers. They did an investigation and did a preliminary decision that there was discrimination. There's a requirement to make sure the mobile app conforms to website content accessibility guidelines level AA. That's WCAG level AA. That's the standard that we recommend people use.

They have to develop a process to solicit feedback and request and complaints and retain an ADA coordinator and training and report to DOJ.

Disability rights advocates and their partners did a sockmen and golden one center the online ticketing was not accessible to folks using screen readers and the only way to do tickets was in person. That was not equal access. There's a fix to the problem. There's a link to the agreement they made. They are also providing audio description.

More importantly we really wanted to highlight that there's been some real changes with Department of Justice. For years there's questions about the regulations on website accessibility and mobile apps. Even though the Department of Justice says the ADA applies. The DOJ did put out guidance. Then they went another step and said we're going to make a regulation with respect to access under Title II. We have the link of the proposed rulemaking. Since then many of you know the DOJ has issued their new rule on this and we're going to put a link in the chat.

There's time for public entities to comply with this rule depending on the size of the entity. If a public entities has 50,000 or more it has to have compliance in 2 years. If it's less than 50,000 you have another year. The DOJ does adopt WCAG 2.1 level AA as the standard. I encourage you to look at the fact sheet from DOJ. It explains the process for doing this and some exceptions on when you do and do not have to do it. I would encourage you to reach out to your southeast ADA center for technical assistance.

Even though public entities were required to make their website accessible before now there are more specific guidelines.

All right. Another major area that public entities are responsible for is voting. The fundamental right of access to voting. With COVID vote by mail expanded. The problem was that a lot of voting systems weren't accessible to people who used screen readers. Therefore, that would not allow people to vote by mail privately and independently. All of us want to vote privately and independently. So we have seen a lot of action since COVID started. We want to highlight a couple situations.

First is a case out Indiana. Disability rights advocates in Indiana brought that case to make sure people in Indiana who had print disabilities could vote privately and independently. It means you can receive your ballot electronically, you can mark it and then return it. It's the independent return that has been something that a lot of people haven't had the ability to do so. They have had to print their vote ballot and mail it back and if you are blind you will have to have someone do that for you. There was a settlement reached with Indiana where they agree to provide remote marking and return. A lot of states have a process in place for overseas military and it's about expanding that option to people who can't access these ballots without having it made accessible for them.

Then the Johnson case is out of Texas. So they had to modify their mail system so people could vote privately and independently.

Another issue is the accessibility of kiosks. They are great and a way for people to input their information say if they are going to the doctor and checking in. A lot of these kiosks are not accessible. This comes up in the Title lll context and also applicable to Title II.

The Davis case out of California is an example of that. What was going on in this case is it's not over yet but whether they can bring this as a class action or not. So anybody trying to access the kiosks for laboratory corporation of America holdings. The court said this should be something that all people who are having these problems should be able to participate in this case. The defendant is saying they are able to get served even if it's not at the kiosk. The fact that they can get served eventually is not equal access. So now they can participate in this class action and we'll see how that plays out.

The other kiosk case out of California Vargas verses quest diagnostics is trickier. They had a self-service kiosk to check in and before they started to implement these kiosks they had been given the option to make it accessible for people who are blind but they didn't adopt that accessibility. So people encountered a lot of barriers. So they said swipe your fingers and that will alert us that you need help. They would rather have something that worked with screen readers. It would be more similar to what others encounter. The court said we think it's a violation that these kiosks is not accessible. What the plaintiffs are asking for we think is too much. It would be an alteration and not a reasonable modification. So we think that what Quest has done does violate the ADA. The plaintiffs want more extensive accessibility. Quest says we shouldn't have been found libel. So we have a cross appeal here for the 9th circuit. There's a briefing going on and we should have a decision by the next year.

Another case DHATS really important is when you have people with disabilities that have communication issues. A lot of folks with developmental disabilities are not getting services they are entitled to. This is a case brought by disability rights California. They demonstrated that California was not providing accessibility for people who are deaf and hard of hearing. You have a link there that addresses the issue.

Then the final effective communication case we have is Hernandez verses Enfield Board of Education. As Title II entities are diversifying they must be accessible. They brought in an autistic and deaf individual on to the board and they did not provide effective communication. So this case went to trial and they found that the person was not getting effective communication. They found that the board had violated the ADA and there's a pending motion to have injunctive relief which means they will not do this again in the future.

Now we're going to turn to public entities education. Are public universities covered by Title II and the answer is yes. Public universities are covered by Title II. They are public entities. Private universities are covered by Title lll.

You may have read about this one. This is a case in which a school failed to provide a deaf student with a qualified ASL interpreter. The deaf student said we have a complaint that you didn't file a special education law and we are entitled to money damages under the IDEA.

The school settled the special ed case. They said we are also entitled to money damages so for not having an interpreter for all these years. The school said you can't go into court with an ADA claim. You have to exhaust your requirements under the IDEA. The Supreme Court said you don't have exhaust the requirements as long as you are not [indistinct].

The next is about students with diabetes. This was brought by the disability rights advocates and the American diabetes.

There were concerns that the DOE for New York City didn't have accessibility in providing support and accommodations for all students who had diabetes. They weren't measuring their blood sugar or planning for emergencies. Often times students with disabilities weren't able to participate in field trips and things like that. A settlement agreement has been reached. There's a link to that.

We have seen over the last several years ADA cases against universities for failing to handle and provide support and nondiscrimination against students who experience a mental health crisis. You may remember cases against Brown and Princeton university. The latest was Yale university. This case was brought by a nonprofit called Elis for Rachel and a couple students at Yale who said they were forced to with drawl after showing some mental health systems. The good news is a settlement was reached and Yale will modify their policy. I would strongly recommend that any university take a look at this settlement. It is thoughtful and provides a lot of important guidance on how to support and not discriminate against students with mental health issues.

All right and then the last case that I'm going to talk about is one that you may have heard about that's been around a while. Over the years there's a lot of ADA litigation about accessible text books and resources for people with disabilities to give them an equal opportunity at universities. This case Payan got a lot of press. This is the most recent update. This was a case about blind students that had a lot of barriers. This case went tee a jury in 2023. The jury found that the Los Angeles community college district violated and awarded the plaintiffs.

We want to highlight this because the defendant said we don't need to pay this money. There was a recent Supreme Court case called comings that said you are not entitled to get emotional damages. The plaintiff said we don't know that cummings applies to Title II. You wave that argument so we should still get the money. Even if Cummings does apply the jury awarded for economic damages not emotional distress. The court did agree with the university system and said that Cummings does apply and reduced the award down to $1600. Appeals are expected and have been filed in March. We'll have to wait to see what the court says does Cummings apply to the ADA and Title II.

Now Rachel will talk about transportation. Rachel Weisberg: Thanks Barry. We have a few interesting transportation related cases. First is about how do we make sure that our pedestrian grid is accessible.

This case was brought as a class action on behalf of blind pedestrian alleging that Chicago has this robust pedestrian grid but has very view traffic signals that are accessible to blind pedestrian.

After this case was filed as a class action the DOJ intervened. So both the plaintiffs and the DOJ are prosecuting this case.

At the time of the summary judgment decision there were about 3,000 intersections that had traffic signals that directed the flow of traffic. At the time of the briefing only 1% had accessible pedestrian signals.

These are devices that communicate about the walk and don't walk intervals in a nonvisual format to pedestrian who are blind or have low vision.

So what happened in 2023 is both parties filed for summary judgment and the court granted summary judgment and made several different important comments. One is they looked at this threshold question of are intersections covered by Title II. The court said yes. They said this phrase program service or activity has sweeping breath. The city must make sure it operates his signal intersections and grid is readily accessible to for people with disabilities. From there it's a short leap to summary judgment to see the city violated the ADA and 504.

To highlight a few violations the plaintiff and the Department of Justice argued the city failed to provide program access. The court agreed. The city's current fillier of distribution signals. What's being provided by the city is not sufficient. The court also took issue with the fact that there had been several signals that had been newly installed at intersections that did not include APS.

And finally the court said this is a failure to provide effective communication.

The city argued that the ADA's effective communication rule doesn't apply to pedestrian signals. They said it's the type of information conveyed like communication in a courtroom or police officer. The court said this really didn't make sense. They said there was no reason for this false distinction. They said this is a failure to provide effective communication.

So the court said there was an ADA violation but what does the city need to do about it? That's pending. Both parties have submitted remedial plans. Stay tuned on that one.

We also wanted to highlight recent activity about paratransit. Folks, under Title II for paratransit we need to have comparable service to the main line. The concept of capacity constraints. It's clear that public entities that provide paratransit services can't have capacity constraints that will make things more difficult for people with disabilities. Examples of regulatory capacity constraints like untimely pick-ups or missed trips or excessive trip lanes.

A capacity constraint identified by the Department of Justice is the concept of having extremely long telephone wait times. We want to highlight a letter of findings that the Department of Justice issued against the Maryland transit administration. There were numerous complaints. The DOJ investigated and identified two different capacity constraints that limited the availability of the transit services. Untimely drop off and pick-ups and the lengthy waits on the telephone. People who were calling to schedule service had to wait longer than 3 minutes on the phone. They said that's not sufficient. This is an area we are seeing more and more action on. We have a link from the city of Honolulu. The length of telephone wait times for this case. And then there's a New York City transit authority case that was filed on this issue. I will put the citation in the chat in a moment about that as well.

Another issue that we see happening across the country is accessible sidewalks. There's lots of different cases and settlements making sure that sidewalks are accessible. So we wanted to highlight a case that was from Philadelphia brought by several different disability rights organizations and individuals. 30 years ago there was a court order that required the city of Philadelphia to install curb ramps. They did that successfully. Then they were only do it upon request. That led to this litigation. The litigation has reached a settlement. The city changed their policy back and there's different requirements from remediating the curb ramps, installing and maintaining the curb ramps. Having a curb ramp request system and posting progress reports. I'm sure that folks in the Title II world know we have the long awaited PROWAG.

I will wrap up with a couple of healthcare related cases and settlements.

Something that we saw frequently during the COVID pandemic were situations where healthcare providers were limiting and restricting visitors. There was valid reason to do so. There were some people with disabilities that required having a visitor with them. This case was brought by the Department of Justice challenging MedStar which is a large healthcare system in Maryland and DC saying that for several years MedStar did fail to modify these no visitor policies for people with disabilities having a support person with them. There were several situations where folks were not permitted to have their support people. The DOJ gave several different really compelling stories about folks with Alzheimer's or autism. I encourage you to check out this consent decree. There was some monetary provisions and several different policy changes.

And then the final two cases are about the interlace between healthcare and effective communication.

So the Bone case is one where we look at how do healthcare providers provide healthcare for blind patients. There's so many forms. In this case was brought by a couple different individuals who had different types of needs. For example one individual had requested to have all of his medical information provided in large print. Despite being a regular patient and requesting this gave testimony that for years always came back with at least one inaccessible document. So this case procedurally was interesting. They resolved the monitory portion first. Then they wanted a permanent injunction for alternative formats. The court held that the healthcare system failed to provide equally effective communication. Updating policies during the litigation patients were still failing to receive these documents. So they agreed with the plaintiffs and issued an injunction to provide to patients. The court did recognize that there's circumstances where it might be that it takes a little bit of time to get accessible documents. So the court did provide alternative methods of communication.

Then I wanted to wrap up on the spencer verses providence St. Joseph health case. This is a great example I encourage everyone to look at this case. It shows some really innovative provisions that show this organization is becoming an industry leader and how to provide accessible healthcare services. So this case was brought by on behalf of several deaf patients who use ASL as a primary form of communication. As soon as the case had been filed the parties started to work together and in February of this year reached a plan. I wanted to highlight a few of the unique aspects. One is that the hospital is going to retain a deaf access consultant. So someone who has personal knowledge in deaf culture to be at the table with the goal of making sure policy is not just legally compliant but also deaf friendly. There's a recognition that in person qualified sign language interpreters might be the most effective or only effective mode of communication.

There's also a requirement to evaluate the existing connections and hardware for VRI and have a VRI consultant. We hear stories about hospitals using VRI but it doesn't work effectively. So even when it's being used there's a requirement to make sure there's a consultant to make sure it's used effectively.

So I encourage folks to check this out. I will flag that we now have 504 regulations for HHS. They have been filed as of May 1. Long awaited and have a lot of exciting components and we'll put a link to that in the chat as well. Back to Barry.

Barry Taylor: Two more topics and then we'll open up for questions. First is the ADA and the criminal legal systems. What ADA rights do people have during arrests? The case here that we're highlighting from the last year is a case out of Ohio. A horrific circumstance. A driver who was a paraplegic who was pulled over. He didn't have his wheelchair with him. The officers pulled him out of the car. They hand cuffed him and he sustained injury. The DOJ found that the police failed to identify or modify their policies have his specific situation. It wasn't an emergency. They could have obtained a wheelchair. This wasn't a safety issue. And Dayton after that investigation said we should fix this. They enter into a settlement. You have a link here.

Another huge issue we're seeing and has been a real priority for the Department of Justice is people who are court involved with OUD. One involved a DOJ case where the Pennsylvania courts were required people who are going on parole to be clean and have no opioid medication even if it was prescribed by a doctor. The court said this is a disability. You need to change this policy. You have a link to the settlement agreement. They will address this issue.

Another scenario is people who are incarcerated in jail or prison and are not getting the medication and the treatment they need for their OUD. Some people come in and have treatment and are not able to continue it. And some who need that treatment and aren't able to get that treatment. An example is the settlement agreement in Allegheny county that requires their Police Department their incarcerated individuals to receive these treatments going forward. I encourage you to look at the DOJ fact sheet that's linked at the bottom of the slide. It explains the responsibilities for criminal legal systems and how they do this but also explains about the opioid use disorder.

All right. Another issue that's come up in recent years is the interplay of the ADA and people who are transgender. Especially in the context of the criminal legal system. The ADA excludes people with gender identity disorder that is not resulting from a physical impairment. Some courts are now recognizing gender dysphoria as an ADA disability. Gender dysphoria is in the DSM, the diagnostic manual for mental illness. There's evidence that supports that gender dysphoria would not be excluded as an ADA disability.

We have an example of a case in Washington where they were not providing treatment for transgender people with disabilities and mistreating them through unwanted strip searches. The settlement agreement is very comprehensive. There's a link on the slide that requires Washington to make major changes having a gender affirming medical specialist at each prison and giving resources so the department of corrections can accommodate patient's with disabilities.

So gender dysphoria is an evolving concept even though there was exclusion for gender identity disorder.

We talked about effective communication before but let's talk about effect VEN communication in the context of the criminal legal system. Just because you are incarcerated doesn't mean you lose your ADA rights. We have an example of that from the past year out of Arizona where a DOJ investigation found that Arizona was not modifying its policies or providing auxiliary aids or services to inmates with vision disabilities so they can effectively communicate while incarcerated. There weren't braille materials or screen reader software.

So Arizona agreed to a 3 year settlement agreement to have an expert to update and provide modifications going forward.

One thing that's helpful in this agreement is that Arizona has to give primary preference for the person with a disability.

We would like to update you on a long standing case. It has been around since 1994. It is Armstrong verses Newsom. This is a case. The most development in the case was an enforcement about accommodations for people who are blind, who had low vision and who are deaf in the California criminal justice system. This is for how these folks prepare for parole hearings. The hearings were not accessible. The decision here is that the California department of corrections has to translate into American sign language these procedures so deaf folks can prepare. Also have assistive technology so blind and low vision folks can read and write privately and independently. And also educating staff on how to use the assistive technology as well as attorneys who are represented people who are deaf and blind so they can accurately represent them.

It is important as an affirmative duty to identify accommodations rather than waiting for these folks to ask for them since they know they are blind or low vision or deaf.

All right. And our last topic is involving community integration. I would like to take a step back and say it's been 25 years since the Supreme Court said unjustified [indistinct]. That's the Olmstead case. It's hard to believe this has been 25 years. We want to talk about these cases is because the Olmstead case involved people in institutions. Over the years a lot of courts have said you don't have to be in an institution to have ADA rights. If you are at risk at an institutionalized institution you should get right before going into an institution.

The first is the United States verses Florida.

The question is the [indistinct] for the ADA for Florida's failure to provide services to kids with disabilities. This is for kids already in institutions and those at risk of going in. Florida was violating the ADA here. To provide community services for kids was an reasonable accommodation. Florida is ordered to take steps to address these issues to get kids out of institutions and prevent them from going in. Florida has filed a notice of appeal with the 11th circuit court. There was an argument in the case back in January. We're waiting for this decision to come down. One reason we wanted to highlight this today is that Florida and Georgia are both covered by the 11th circuit court of appeals. So what they say in this Florida case will also apply for you in Georgia.

And while all the cases until this past year have said that people who are risk of institution are covered by the ADA we had a little bit of a left turn here from Mississippi where they found differently. This was a case the DOJ brought saying Mississippi mental health system didn't provide sufficient health services. The district court agreed and said you need to change what you are doing for people with mental illness to keep them out of hospitals. Mississippi appealed it up to the 5th circuit. The 5th circuit said that's too much. This institution the ADA only applies to those in institutions. What you asked Mississippi to do is over broad. So this was a shock for a lot of folks because so many courts have agreed that broad systemic relief is necessary. So we wanted to highlight this because it is different from what the other courts have said. The 5th circuit covers Mississippi, Louisiana and Texas.

Are other courts going to jump on the bandwagon? The Fitzmorris case is an example of that. A class action of people at risk of institutionalization because of lack of community services. Not surprisingly the state of new Hampshire said look at this case of Mississippi and they are saying it's not appropriate because you have a lot of individuals and you have to look at every individual and not as a class action. And new Hampshire said we won't think this case was rightly decided. So one court so far has not followed Mississippi's leads and said people at risk of institution are covered by the ADA.

There's a link for a case out of California. A major contrast to the Mississippi case. We think the Mississippi case is an out liar. We think communication is both covered for those in institutions and at risk of institutionalization.

We have been answering some questions. Now we will go to the Q&A box. Rachel, do you have some initial ones you want to look at? Rachel Weisberg: I can get us started. There's a couple different questions about commute. So one is a question about somebody who is blind and their office was relocated. Before her office was relocated she was able to get transportation to work but now it's more difficult. It cost her a lot of money. The company or employer is requiring them to come in. It's unclear whether remote work is possible.

In the ADA Title I world everything is very fact specific and individualized. While we are not here to give legal advice we wouldn't even be able to give legal advice about this situation. Because there are so many circuits now out there saying employers do have an obligation to consider accommodations to address somebody's disability related commuting barriers the question is there an accommodation that would work. We don't just say we're not going to talk about this because the barrier is related to commute.

So go into questions of what are the person's essential job functions? Is physical presence in the work essential? Is it able to be accommodated, what's the benefits for working in person. Should the employer have paid for the transportation costs? The court cases that I have seen say generally speaking employers do not need to pay for somebody's commute. There's an exception to everything. Perhaps there are certain employers that provide some commuting benefits. Generally speaking employers don't need to affirmatively provide transportation for employers.

So hopefully that very lawyerly convoluted answer was helpful.

Barry Taylor: Somebody said I mentioned that Cummings case. They want to know what that case was about. It was involving someone who was seeking physical therapy services and they needed an ASL interpreter. The damages were emotional damages but because those two laws are formed under different part of the constitution called the spending clause it came under the commerce clause. Just to remind you what we're talking about in that case is emotional distress damages. It doesn't mean this person couldn't get the request they were seeking, which was an interpreter. You could get injunctive relief. Sometimes people think you can't do any kind of case. It means you can't get the emotional distress damages. There was a couple questions about I mentioned the cases involving people with mental health issues in universities and were getting expelled and not supported. The questions would that apply to people with intellectual and developmental disabilities. The answer is yes. It's possible that those settlement agreements I haven't looked at the Princeton or Brown recently may or may not mentioned explicitly people with developmental disability. You are not allowing them to continue and not providing them clear guidance on how to get back into school. So while that intellectual and developmental disability was not highlighted I think it might still apply. Rachel Weisberg: When I was talking about the Hopman case and having accommodations to benefits and privileges I mentioned the 5th circuit is a circuit that says we do have to accommodation folks with represent to benefits and privileges.

There's a case from 2013 called Fits [Unsure of spelling] verses state of 730F.3D450.

Barry Taylor: I talked about community integration and Olmstead integration. One question is the contention that institutionalization is bad or is there individualize determination of applicability.

The Supreme Court in Olmstead sited the ADA's findings when it was originally passed that even if it's a good institution well run and clean inherently it separates people from the rest of society and eliminates their ability to participate like everybody else. The Olmstead case is based not on conditions but saying everybody has a right to live in the community. Some people might decide to stay in an institution. It's not about forcing people out. The ADA and Olmstead decision says it has to be something somebody is not opposed to do. If people want to live in the community, they should have the opportunity to do so. You do have to have a healthcare professional who says you are appropriate for the community. That's not where the cases have turned. It's not about whether people are appropriate for the community. It's about whether the state is require today do more than they are already doing. Hopefully that provides context on those cases. Rachel Weisberg: There's a question about whether we're aware of ADA cases about bill boards. I'm not aware of any.

Barry Taylor: No. I think

Barbara Tucker: We have 3 minutes remaining. Rachel Weisberg: Thank you.

Barry Taylor: I'm not aware of billboard cases either. That would be an interesting scenario about effective communication. Rachel Weisberg: There was a question about the papa John's case about the employee with a service animal for their commute. The question was what should the employer have done? Where would the dog have gone? This is a great question. When you look at the EEOC both the settlement agreement and the original press release they don't give us that detail. In any sort of interactive process you have to have dialogue about it. It was implied that there had already been some initial conversation about the dog being able to be at the papa John's outside of where the customers and food prep were. So there was an initial conversation before that was ultimately denied.

So there's almost always a solution. So what could the employer have done to be best practice? Engage in a meaningful interactive process to see if there's a solution.

Barry Taylor: Great. Barbara I think we've used all of our time.

Barbara Tucker: Thank you so much. As always, what a wonderful presentation. It's always a pleasure to have you with us. Just a little housekeeping before we let you go. After each conference session, Zoom will log everyone out before the session and directly after the session. So once you come back in you will need to use your same link to log back in. We will leave now to take a break FWR lunch. We will return at 1 p.m. for building your ADA team and ADA action plan. Thank you. We will see you this afternoon at 1 p.m. Enjoy your lunch.