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Precedent-Setting Decision On Emergency Evacuations for People With Disabilities Issued In Maryland

For the first time, a court has declared that the Americans with Disabilities Act (the ADA) requires places of public accommodation to consider the needs of people with disabilities in developing emergency evacuation plans. This groundbreaking decision - issued on December 28, 2004 by Judge John W. Debelius III of the Circuit Court for Montgomery County, Maryland - means that shopping malls, stores, restaurants, movie theaters, museums, and other private entities subject to the ADA throughout the country, whether landlords or tenants, must now seek to accommodate people with disabilities in the development and modification of emergency evacuation procedures.

"This is a significant decision that should greatly enhance the safety of persons with disabilities in the post-September 11th world," said Elaine Gardner, Director of the Disability Rights Project at the Washington Lawyers' Committee for Civil Rights and Urban Affairs. "The ADA always has been understood to help get people with disabilities into places of public accommodation. Now, for the first time, it also has been found to require that public places try to get those same people out in the event of a fire, terrorist attack, or other emergency."

The court's significant decision arises out of a lawsuit that was filed in Spring 2003 by Katie Savage, a Washington, D.C. resident who became trapped during an emergency evacuation in a local shopping mall that had no accessible exits for persons with disabilities. Ms. Savage, who uses a wheelchair, was shopping at a Marshalls store in Silver Spring, Maryland's City Place Mall on September 3, 2002, when the store and the Mall were evacuated. After Marshalls required her to exit into an area of the Mall that is below ground level, Ms. Savage found that she was trapped there and unable to evacuate, because the elevators were shut down and all the exits had stairs. Abandoned by store employees and trapped, Ms. Savage resolved to use her terrifying ordeal as a vehicle for ensuring that fellow citizens with disabilities would not be similarly victimized in emergency evacuation situations. Ms. Savage joined the Disability Rights Council of Greater Washington (the DRC) in filing a lawsuit against Marshalls and City Place Mall that alleged violations of the ADA in both the Mall's emergency evacuation plan and Marshalls' corporate-wide evacuation policies.

In briefs filed with the court last Fall, Marshalls took the position that the ADA does not require places of public accommodation to modify evacuation plans in order to accommodate the needs of people with disabilities. The court, however, rejected Marshalls' view and held that "a store's nationwide evacuation

procedures would certainly constitute a public accommodation's 'policies.'" Therefore, the court wrote, "it is certain that Title III of the ADA does apply to this situation."

"I am delighted by the court's decision and hope that it has a lasting impact on improving safety for people with disabilities," said Ms. Savage. "Regrettably, Marshalls and other major retailers have seen fit to evacuate non-disabled persons, while leaving people with disabilities to fend for themselves in an emergency. That is not only a poor business decision. It is also now against the law."

One of Ms. Savage's attorneys, Steve Hollman, agreed. "We've all heard stories about people with disabilities being trapped and left to die on September 11th and in other emergency situations," said Mr. Hollman, a partner with Hogan & Hartson L.L.P. in Washington, D.C. "Hopefully, this decision will serve as a wake-up call to public accommodations across the country that they must start considering the needs of people with disabilities in their evacuation plans."

The Opinion of the Court also was significant for refusing to allow a tenant to abdicate its responsibility to patrons with disabilities by merely placing them outside a store's entrance in an emergency evacuation situation and leaving actual evacuation to a shopping mall's owners. Additionally, the Opinion recognized Ms. Savage's standing to bring her ADA claims against Marshalls. Despite the fact that Ms. Savage had not visited the Marshalls fitting room at City Place Mall, she was found to be able to seek barrier removal there, as "a Plaintiff need not encounter every barrier in a store to bring a claim for all the store's ADA violations." Moreover, the Court found that Ms. Savage had standing to remedy Marshalls' corporate-wide emergency evacuation policy - which is in effect at more than 672 Marshalls stores - because "where the harm alleged is directly traceable to a written policy . . . there is an implicit likelihood of its repetition in the immediate future." The Disability Rights Council of Greater Washington also was found to have standing to proceed. As a result, the case will now proceed to trial to determine whether Marshalls and City Place Mall are in violation of the requirements of the ADA. The trial date will be set at a hearing on January 14.

Ms. Savage is represented by the law firm of Hogan & Hartson L.L.P. and the Washington Lawyers' Committee for Civil Rights and Urban Affairs. An important Amicus Curiae brief was submitted to the Court by the law firm of Howrey, Simon, Arnold & White, on behalf of the American Association of People with Disabilities and several other organizations of people with disabilities.

C-MIST FRAMEWORK

C - Communication: limitations which interfere with receipt of and/or effective response to information. **Develop plans to facilitate 2-way communication.**

- ◆ Hearing, speech, cognitive/ intellectual disabilities
- ◆ Limited English language skills
- ◆ May not be able to see, hear or understand announcements, instructions, directional signage, etc.
- ◆ Provide information, announcements, etc. in appropriate simply worded declarative statements
- ◆ Large print voice recordings, text messages, VoIP (voice over internet protocols), etc.
- ◆ Know where to obtain interpreter services

M - Maintaining Health: managing health conditions where ongoing treatment and/or observation by licensed medical personnel is required. **Develop plans to manage health conditions that includes back-up resources and supply chains in case usual methods are unavailable.**

- ◆ Infusions
- ◆ Wound care
- ◆ Dialysis
- ◆ Oxygen/Suction
- ◆ Having a disability does not automatically mean medical assistance or intervention is required.

I - Independence: providing services and supplies to help individuals maintain function and independence. **Develop plans to ensure function and independence can be maintained.**

- ◆ Durable medical equipment & adaptive devices
- ◆ Consumable medical supplies
- ◆ Replacing essential medications
- ◆ Personal assistance services (for activities like feeding, grooming, toileting, etc.
- ◆ Service animal supplies
- ◆ Reconnecting individuals with pre-disaster support & resources.
- ◆ Programmatic access such as bringing individuals who have difficulty standing in lines to the head of the line or bringing services to them.

C-MIST FRAMEWORK

S - Safety, Support, Self-Determination:

Assisting individuals who may need extra help or whose usual guidance resources may be unavailable to support coping skills, decision making, and/or maintaining a safe environment. and/or where medical conditions, cognitive/intellectual, behavioral/mental health, or other disabilities may impact their usual level of function, coping skills, and/or decision- making capabilities.

Develop plans that lessen the possibility of destabilizing condition, assist individuals to retain skills needed for self-determination, and helps ensure maintenance of a safe environment.

- ◆ Cognitive/ Intellectual disabilities
- ◆ Mental & Behavioral health conditions
 - Level of function may destabilize because of the disaster
 - May have limited ability to comprehend situation or understand directions/information
 - May need “quiet zone “to reduce impact of loud noise, crowds, flashing lights, etc.
 - Keep individuals with usual supervisory or caregiver resources whenever possible
 - Develop partnerships with mental health professionals and community based organizations who are familiar with managing needs
- ◆ Homeless
- ◆ Pregnant & nursing women
- ◆ Infants & children

T - Transportation: assisting individuals without independent transportation resources. **Develop plans that identify alternate means of transportation if usual resources are not available.**

- ◆ Public & para-transport users
- ◆ Commuter and Amtrak riders
- ◆ Uber/Lyft subscribers
- ◆ Bicyclists
- ◆ Walk to work
- ◆ Regular transit authority para-transport service may be overcommitted or unavailable
 - ADA requires an accessible component when transportation is provided to individuals without disabilities.
 - Work with private bus companies, non-emergency medical transporters, airport/limousine services, hotels who have accessible vehicles

Assisting People with Disabilities

FOR ALL INDIVIDUALS WITH DISABILITIES

- Identify yourself, inform the individual why you are there, and if you are there in an official capacity.
- Ask before you help -- *"How can I best assist you?"* -- wait for the individual to instruct you. Respect an individual's right to refuse help unless the situation is inherently dangerous.
- Speak directly to the individual with a disability, not to a companion, aide, or interpreter.
- Treat individuals with disabilities as independent people, do not assume they need help simply because they have a disability.
- Do not touch an individual or any assistive device, service animal etc., without permission. Grabbing an arm or other assistance could disrupt balance especially if they are unaware or not ready for contact.

WHEELCHAIR USERS/ MOBILITY DISABILITIES

- If an individual is using an assistive device like a cane, walker, appears to have difficulty standing, etc. ask if the person would prefer to sit if a place is available. Try to assist the individual immediately if a chair or place to sit is unavailable.
- Put yourself at eye level when conversing with anyone using a wheelchair or other assistive device like a cane, walker, etc.
- Avoid leaning on a wheelchair or assistive device. This is part of an individual's body space.
- Do not assume an individual wants help or a wheelchair user wants to be pushed. Offer assistance, wait for acceptance. Do not move or push without express permission.
- Offer assistance before opening a door even if an individual appears to be having difficulty.
- Move out of the way of an individual with a mobility disability instead of expecting someone to move around you.
- Keep accessible entrances and pathways clear of obstacles.
- Keep assistive devices with their users whenever possible. Encourage individuals to label their equipment in advance of an emergency. If you abandon a wheelchair or assistive device, the individual's mobility and independence can be significantly compromised.
- Taking individuals down stairs while in wheelchairs is not recommended and can place both wheelchair users and responders in danger.

- ◆ Many wheelchairs have removable arms, footrests, etc. which are not sturdy handholds.
- ◆ Most motorized wheelchairs and scooters are too heavy for users to remain in while evacuating.
- ◆ Transfer users to devices like stair-chairs or other means and have other assistants carry down assistive devices separately, reunite users and equipment as rapidly as possible.
- Be aware of a person's arm-reach limitations, try to keep needed items within easy reach.

BLIND / VISION DISABILITY

- Speak in a normal tone of voice, identify yourself as you approach, announce when you leave.
- Speak directly to the individual. If in a group, identify who you are addressing.
 - ◆ Be descriptive when giving directions, provide a verbal dialog of your surroundings.
 - ◆ Example: "There are 12 steps, this is the first ... this is the last."
- Don't try to avoid words like "look" or "see", there are no good substitutes.
- Provide written materials in large print of at least 18pt type, using an easy to read font, printed single-sided on a heavy enough paper stock to avoid "bleed through" to the reverse side of the sheet, and provide good contrast for persons with low vision.
- To guide - let the person take your arm so they can follow the motion of your body.
 - ◆ Do not grab the individual's arm first.
 - ◆ Most will take your arm at the elbow and are likely to walk behind and a little to the side.
 - ◆ To sit in a chair or get into a car, guide the individual's hand to the leading edge seat.
- Ensure doors completely open or fully closed, make the individual aware of any hazards like half-open filing cabinets, objects hanging or protruding from the wall, etc.
- Walk on the opposite side of a service animal. Don't pet or distract a service animal without the owner's express permission.
- Provide navigational clues a clock orientation. Example: When serving food, use clock positions to inform where food items are on a plate. Some individuals may ask for food to be cut and have garnishes or inedible food items removed from the plate.

DEAF / HEARING DISABILITY

- Gain attention before starting a conversation - wave your hand, flash the lights, etc.
- Always speak directly to the individual. If the individual uses an ASL interpreter, do not speak to the interpreter unless your question or comment is meant expressly for the interpreter.
- Face the individual directly. Maintain eye contact. Speak in a normal tone of voice unless asked to raise your voice.
- Keep your face in the light and out of shadow. Don't cover your face with your hands.
- Keep language and directions simple.
 - ◆ ALS language syntax differs from English which can influence comprehension. English may actually be a second language for individuals who speak ASL.
 - ◆ Try rephrasing if an individual has difficulty comprehending instructions.
- People who lip-read catch, at best, 75-80% of what is said.
 - ◆ Most lip readers have great difficulty when a responder has facial hair - mustache, beard.
 - ◆ Avoid obscuring your mouth while speaking.
 - ◆ Stressful situations like a disaster may also lower an individual's comprehension.
- Paper & pencil, cell phone/text devices for written exchanges or drawing pictures may help.

SPEECH DISABILITIES

- Give the individual your full attention. Be patient with delays whether from speech patterns or use of assistive communication devices. Take as much time as needed to ensure mutual comprehension without endangering either of you.
- Try to ask questions requiring short, concise responses. Do not speak for the individual or attempt to finish sentences.
- If you experience difficulty understanding, ask the individual to repeat for verification, confirm mutual understanding. Never pretend you understand.
- If difficulty continues, ask permission to augment communication with pen & paper, a talk board, or other means of facilitating communication.

COGNITIVE / INTELLECTUAL DISABILITIES

- Be patient, flexible and supportive. The nature of the disability may affect short-term memory, attention span, perception, balance, disorientation, ability to process instructions, etc.

- Treat adults as adults irrespective of comprehension level.
- Include adults in the decision making process even if they have a caregiver. Assume they can make their own legal decisions unless otherwise informed. Provide extra time to allow individuals to process information and make decisions.
- Speak clearly in a normal tone of voice using simple, direct language.
- Break down complex ideas or instructions, especially multi-step directions, into smaller parts.
- Use concrete examples and concepts. Individuals with cognitive/intellectual disabilities may have difficulty understanding abstract ideas.
- Take the time to verify you understand each other. Be prepared to repeat information.
- Do not insist on eye contact especially if maintaining eye contact adds to anxiety, upset, or is distracting for the person with whom you are communicating.
- Be aware tone of voice, body language, facial expressions may not reflect intended communication.
- Consider moving to a quiet or more private location if distractions impede communication. Large groups can be overwhelming or over-stimulating for some individuals.
- Offer assistance completing forms or understanding written instructions. Wait for the individual to accept an offer of assistance.

HIDDEN DISABILITIES

- These include medical conditions not readily apparent such as heart, respiratory or seizure conditions.
- Do not make an assumption an individual without a visible disability does not need an accommodation.
- If you see individuals without visible disabilities having difficulties, ask if they need assistance and make the appropriate accommodation needed.

SERVICE ANIMALS

- Service animals are trained to assist individuals with a wide range of disabilities.
- Service animals allowed *wherever* their handler goes. Ensure handlers and service animals remain together *whenever* possible.
- Revised ADA statutes define a service animal as a dog. Local jurisdictions may have expanded definitions.
- An individual cannot be asked to provide proof of the animal's status via certification, documentation, demonstration of tasks, or by asking about the nature of the individual's disability. The only questions allowed by law are:

- ◆ Is the animal necessary due to a disability?
- ◆ What type of assistance or tasks is the animal trained to provide?
- Many breeds have been trained to perform a wide variety of assistance.
 - ◆ Small breeds like a Chihuahua or terriers may serve as hearing or seizure dogs
 - ◆ Large breeds like a Great Dane may assist an individual with balance problems or help a wheelchair user with mobility.
- The handler retains responsibility for the service animal's care and behavior of the at all times.
- Behavior may not be a reliable indicator of an animal's training as it may be scared or disoriented because of the disaster and not be behaving as usual. Ask the handler to assist in calming the animal.
- If an animal's behavior is threatening or harmful, the handler can be asked to remove the animal.
- A new separate provision covers miniature horses individually trained to work or perform tasks for individuals with disabilities. Entities covered by the ADA must modify their policies to permit miniature horses where reasonable
- Miniature horses generally range in height from 24 inches to 34 inches measured to the shoulders and weigh between 70 and 100 pounds.
- Assessment factors to assist in determining whether miniature horses can be accommodated:
 - ◆ The miniature horse must be housebroken.
 - ◆ The miniature horse must remain under the owner's control.
 - ◆ The facility is capable of accommodating the miniature horse's type, size, and weight.
 - ◆ Its presence will not compromise legitimate requirements necessary for safe operation of the facility.

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DAFN Key Messages

Personal assessment

- 1) Honest self-assessment based on a day when abilities are at their worst and the requirement for assistance is at its highest.
- 2) Identify assistance needed on a day to day basis and what resources are a regular part of meeting those needs.
- 3) Identify additional needs which may arise because of the disaster such as the need to recharge wheelchair batteries in an extended power outage.
- 4) Devise alternate means and resources to meet daily and disaster caused needs. Include them in personal disaster plan.

Personal support team

- 1) Develop a team wherever significant time is spent - home, work, school, volunteering, etc.
- 2) Ensure each team has at least 3 members who can easily respond to provide assistance even if roads are impassable and/or public transportation is not available. The recommendation is for all team members to be within walking distance.
- 3) Ensure team members have a way to gain entry to the residence such as having their own key, knowing the location of a key, having access codes if in a gated community, etc.
- 4) Involve team in all preparedness activities including the self-assessment, developing and revising personal plans, personal disaster drills, etc.
- 5) Team members know the location of disaster supply and go-kits. and any critical medications, etc. which needs be evacuated with the individual with a disability.
- 6) Understand how to operate any active daily living aides/equipment the individual with a disability uses and would need in an evacuation.

Personalize disaster supply kits to accommodate individual needs

- 1) Ensure non-perishable food conforms to medically necessary diet restrictions or allergies.
- 2) Store a minimum of 7 days of critical medications
- 3) Include regularly used medical supplies such as catheters, ostomy or wound care supplies, etc.
- 4) If possible keep extra equipment such as an extra white cane, eating utensils, grooming aids, speech aids, etc. When replacing equipment, place the older version into the kit if it is still usable.

Visual Disability Handout Guidelines

Handouts designed for individuals with visual disabilities should meet the following standards:

- Handout should be produced in Large Print - defined as a font/ typeface that is a minimum of 18 points in size or larger.

Example of 18pt type

Example of 22pt type

- Include adequate letter and word spacing. Letter spacing that is too close together blurs together making words unreadable.
 - Example of setting using expanded letter spacing
 - Example of setting using normal letter spacing.
 - Example of setting using condensed letter spacing.
- Fonts need to be clear, easy to read and without decoration. Acceptable fonts include:
 - Sans serif or modified serif font
 - APFont: APFont was developed for the non-profit American Printing House for the Blind and is available as a free download as long as intent is to benefit individuals with vision disabilities at <http://www.aph.org/products/aphont/>
 - Antique Olive
 - Arial
 - Helvetica
 - Tahoma
 - Verdana

- Print text with the best possible contrast. Light lettering, such as white or light yellow, on a dark background may be easier to read than black lettering on a white or light yellow background.
- Paper stock needs to be a heavy enough bond to prevent bleed-through of print on the reverse side of the sheet. Print single side only to reduce chance of bleed-through or text shadowing.
- Handouts/documents should preferably be text-only, with graphics removed, saved as a Rich Text File (.rtf), printed single-sided to reduce text shadowing, and to help facilitate easier usage with speech reading technology.
- If uploading a standard handout to a webpage, upload a graphics-free Rich Text File (.rtf) and embed a link to an .rtf version. Be sure to indicate the content is in .rtf format.