



# Enforcing the ADA:

## Looking Back on a Decade of Progress

### A Special Tenth Anniversary Status Report from the Department of Justice



**July 2000**

This is a special edition commemorating the tenth anniversary of the enactment of the ADA. This report, previous status reports, and a wide range of other ADA information are available through the Department's ADA Home Page on the World Wide Web (see page 38).



## A Message from the Attorney General

On July 26, 2000, the Americans with Disabilities Act celebrates its 10th anniversary. And there is so much to celebrate!

Look around. Over the past decade so much has changed. It is no longer unusual to see people with disabilities dining out at restaurants, working in the office, participating in town hall meetings, shopping at the malls, watching a movie or cheering at a stadium. That's because the ADA is making the dream of access a reality.

As Attorney General, I have made enforcement of the ADA one of my top priorities. At the Justice Department we have engaged in extensive educational outreach, and entered into hundreds of agreements ensuring greater access to thousands of businesses and governments. We have also increased the number of attorneys who enforce the law, and stepped up funding for ADA-related programs across the country. And under the leadership of Acting Assistant Attorney General for Civil rights Bill Lann Lee, and our United States Attorneys across the country, we will continue to build on this past decade of access.

As this Report illustrates, the ADA has made a difference in the lives of so many. But there are many others who still face barriers -- barriers that man-made structures create and barriers stemming from people's attitudes. Those barriers took generations to create. It will take continued vigilance and dedication to remove them. But if the past 10 years is any indication, Americans with disabilities are well on their way to experiencing all society has to offer.

A handwritten signature in black ink that reads "Janet Reno". The signature is written in a cursive, flowing style.

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# I. Enforcement Highlights

## A. Participating in Everyday Civic Life

**The ADA protects the right of people with disabilities to have equal access to the basic institutions of State and local government. The Department has sought to eliminate physical, communication, and policy barriers in law enforcement, town halls, jails, courtrooms, and legislative chambers.**

### 1. Affirming the Right to Citizen Participation

**Wisconsin City Makes City Hall Accessible** -- In resolving a complaint by a Waukesha City alderman who uses a wheelchair, the City agreed to make its city hall accessible. It agreed to hold its closed deliberations in the accessible room in which it holds general meetings, renovate the first floor bathrooms, install automatic door openers at the building's entrance, and provide a van accessible parking space.

**Small Montana Town Provides Access to Civic Functions** -- Manhattan, Montana, agreed to make its town programs accessible by making a few renovations and taking alternative nonstructural measures. It agreed to install a ramp at the town hall entrance, make the route to the entrance accessible, create one van-accessible parking space, and make the water fountain and bathroom on the first floor accessible. Also, town council meetings would be moved to the first floor when necessary.

**Public Address System Boosts Communication** -- A small New York community agreed to purchase a public address system to resolve a complaint from a hard of hearing citizen who wanted to listen to town board meetings.

**Toledo To Be More Accessible to People with Disabilities** -- Toledo, Ohio, agreed to make significant changes to its policies and facilities to provide greater access for persons with disabilities. The agreement resolves allegations that Toledo violated title II by failing to take the steps necessary to ensure that its programs are accessible to persons with disabilities. The city agreed to --

- Modify its facilities to ensure access to city programs, including the municipal courthouse, district and neighborhood police stations, a market-outlet complex, fire stations, parking garages, museums, community and social service centers, the health department, and other city administrative buildings. Modifications include providing accessible parking and accessible restroom facilities, installing ramps, widening doors, providing accessible public telephones, and lowering information counters;
- Adopt policies and procedures to improve accessibility at city programs, which could include moving programs to accessible locations, if necessary;
- Take steps to ensure that effective communication is available to persons with disabilities, including those with hearing, speech, and vision impairments, at city activities such as court proceedings and public meetings;

- Submit a plan to the Department that will ensure that parks, pools, ice rinks, and arts programs will become more accessible to persons with disabilities by December 2000;
- Train employees on the city's responsibilities under the ADA; and
- Publicize its new nondiscrimination policies on the city's web site and in a local newspaper.

### **North Dakota Town Provides Program Accessibility**

-- Dickinson, North Dakota entered into an agreement with the Department of Justice to resolve allegations that the Dickinson City Hall was inaccessible to individuals who use wheelchairs.

Specifically, the complaint alleged that both the upper and lower levels of the city hall were inaccessible and, therefore, that city activities on these levels, including city commission meetings, municipal court proceedings, voting, and other city hall programs and services, were inaccessible to individuals who use wheelchairs. Until it completed construction of a new city hall,

Dickinson agreed to relocate municipal court proceedings to the Stark County Courthouse. The city also relocated city commission meetings and other public meetings to the National Armory Building in Dickinson, which is fully accessible. The city also agreed to provide the services of its administrative offices in the front foyer of the existing city hall and installed an accessible counter there to enable individuals who have mobility impairments to transact business. Finally,



**ADA Celebration  
at the Dickinson City Hall**

Dickinson agreed to train all of its employees on how to respond to requests for accommodations under the ADA.

**“Martin can drive his electric scooter around town because of curb cuts. Cassandra can continue to attend junior high due to widened doors and elevators. And no one complains about ‘universal access’ -- it’s the most used entrance for all, be they disabled, elderly, parents with babies in strollers, or John or Jane Q Public.”**

-- Wally Itrich, Dickinson resident

### **City Removes Barriers at Town Buildings, Country Music Museum**

-- The City of Georgiana, Alabama, agreed to remove architectural barriers at the City Hall, the

Police Station, the Magistrate's Court and Council Chamber, and the Hank Williams, Sr., Museum -- the childhood home of the well-known country music singer-songwriter. The City will install entrance ramps, modify existing rest rooms, and alter sidewalks to provide access to the programs offered at the sites.

### **Appellate Court Finds Zoning Covered by ADA**

-- The U.S. Court of Appeals for the Second Circuit ruled in Innovative Health Systems, Inc. (IHS) v. City of White Plains

that the ADA covers all the activities of State and local government, including zoning practices. The U.S. Attorney for the Southern District of New York filed an amicus brief supporting plaintiffs' efforts to stop White Plains, New York, from preventing them from operating an alcohol and drug dependency treatment program in its downtown area. The Court also ruled that Innovative Health Systems, Inc., the organization that operates the treatment center, has standing to challenge the City's action under the ADA, and that IHS was entitled to a preliminary injunction.

**Oregon State Lottery Commission to Ensure Accessible Outlets** -- Oregon agreed to make its State lottery accessible to persons with mobility impairments under a negotiated agreement with the Department. The State will require more than 3,000 retail outlets participating in the lottery program to ensure equal access to their lottery-related services by installing accessibility features, removing barriers through structural modifications, and, in some cases, using alternative methods of providing access to the services. Effective July 1, 1997, all new retailer locations and all locations sold to new owners had to be wheelchair accessible; existing retail outlets had an additional year to make their lottery-related facilities accessible. The agreement also created a procedure for dealing with complaints about inaccessible lottery retailers.

**New Hampshire Sweepstakes Commission Agrees to Access Plan** -- The New Hampshire Sweepstakes Commission signed an agreement with the Department of Justice to ensure program accessibility in the State's lottery program. The agreement resolved a complaint charging that establishments that sell lottery tickets were inaccessible to persons with mobility impairments. New Hampshire agreed to evaluate the accessibility of lottery sales in the 1300 retail establishments participating in the lottery program, the geographical dispersal of accessible facilities, the ratio of accessible to inaccessible sites in each town and county, and the rate of use of each retailer. It also agreed to develop and implement a plan to ensure that the lottery program as a whole is accessible to people with mobility impairments. Because of the large number of facilities participating in the lottery program, the settlement should substantially increase the overall accessibility of public accommodations and State facilities throughout New Hampshire.

**Donald Galloway was excited to be called for jury duty in the District of Columbia and eager to fulfill his civic responsibility. At the courthouse, though, he was told that because he is blind he could have saved himself the trip -- he would not be allowed to serve.**

## 2. Achieving Access to Courts

**Utah State Courts Provide Interpreters for Deaf Jurors** -- The Utah State Administrative Office of the Courts committed its courts to provide appropriate auxiliary aids and services, including qualified interpreters, when necessary to provide an individual with a disability an opportunity to serve as a juror. The agency agreed to establish a policy on providing interpreters for individuals serving on jury duty, notify the public about the policy, and instruct district court officials to adhere to the policy.

**Rejected Blind Juror Receives D.C. Damages Award** -- Donald Galloway sued the District of Columbia Superior Court alleging that it violated the law by categorically excluding blind persons from jury service. The federal court agreed, and awarded Galloway \$30,000 in damages. The Justice Department argued in support of Galloway that compensatory damages can be obtained under both the ADA and the Rehabilitation Act of 1973.

## 3. Receiving Fair Treatment in Law Enforcement

**Oakland Police Agree to Effective Communication in Arrests, Jails** -- The Oakland, California, Police Department agreed to take the necessary steps to ensure that members of the public who are deaf or hard of hearing can communicate effectively with police officers during law enforcement situations ranging from traffic stops to arrests

to criminal interrogations. The agreement resolved three complaints involving three separate incidents between 1994 and 1997 where the Oakland Police allegedly failed to provide appropriate auxiliary aids and services to arrestees with hearing impairments. In one instance, an individual was denied pencil and paper with which to communicate with jail staff. In another, a deaf individual who had borrowed an automobile from a friend was unable to make a telephone call for approximately seven hours (because no operable TTY or text telephone was available) to clear up charges that he had stolen the automobile. Under the agreement, the police department will adopt policies for providing effective communication and publish and publicize them as official operating procedures. It also agreed to purchase an additional TTY, train jail personnel on how to operate TTY's, and initiate a testing program to ensure the TTY's are functioning properly. The Oakland Police will also ensure that one of the jail cells that provides a television set has closed captioning capability. All of the approximately 700 officers who deal with the public will receive extensive ADA training on how to implement the ADA's effective communication requirements in typical police situations. This instruction will be provided during annual police academy training that all officers are required to attend.

**Supreme Court Says ADA Clearly Protects Prison Inmates** -- In a unanimous opinion the Supreme Court ruled in Pennsylvania Department of Corrections v. Yeskey that a motivational boot camp operated for selected inmates by the Pennsylvania State prison system was subject to the requirements of the ADA. Prisoners who successfully complete the boot camp program were entitled to a significant reduction in their sentence. The Court agreed with the Department of Justice in ruling that the broad language of the ADA clearly covered prisons and provided no basis for distinguishing programs, services, or activities of prisons from those provided by other public entities. It rejected the State's arguments that

the law was ambiguous and that prisoners cannot be "qualified individuals with disabilities" because they are not in prison voluntarily.

**DOJ Document -- "Commonly Asked Questions About the ADA and Law Enforcement" addresses the ADA obligations of police departments in interacting with the public, including effective communication, program accessibility, and reasonable modifications in policies, practices, and procedures.**

**Houston Police, Courts, and Jail to Improve Communication with Deaf Individuals** -- The City of Houston agreed to significantly improve the way its municipal courts system, police department, and jail communicate with people who are deaf or hard of hearing. Under the settlement, the Houston police, courts, and jails would each appoint an ADA coordinator, purchase TTY devices that will enable the agencies to communicate effectively by telephone with deaf TTY users, and train staff in how to operate the devices.

The Houston Police Department will --

- Adopt a new "General Order" instructing police officers on how to interact with witnesses, victims, and suspected criminals who are deaf or hard of hearing;
- Require that a qualified interpreter be called in any time a person who is deaf and needs an interpreter is involved in a major accident, is suspected of a felony, is under arrest, is being given a test measuring alcohol consumption, or is giving a statement in a case; and
- Provide training about the new procedures for every officer at the rank of sergeant and above, and ensure that the new General Order is discussed with every officer during roll call.

The city jail will --

- Inform all people under arrest, who are deaf or hard of hearing, that they have a right to auxiliary aids and services at every step of the criminal justice process;
- Maintain a list of qualified interpreters, who generally will be available within one hour of a request; and,
- Ensure that there is effective communication between persons who are deaf or hard of hearing and the medical staff at the jail health clinic.

In addition, the municipal court system will --

- Adopt a new written policy guaranteeing appropriate auxiliary aids and services for participants in court proceedings, including parties, witnesses, jurors, and spectators;
- Provide information about the new policies on all official notices of court dates, including tickets, summonses, and other similar notices, and publish notices in legal periodicals that reach the city's legal community; and
- Provide training on the new policies for every judge and court administrator.

**Kevin Holmes served successfully for ten years as a police officer in Aurora, Illinois. But, because he had diabetes, he was excluded from the State's pension fund. He would not receive the retirement pension available to other officers, and if he was injured in the line-of-duty, he would not receive any disability benefits.**

## **B. Opening Up Jobs for Persons with Disabilities**

**The ADA is lowering barriers to educational and professional advancement faced by many people with disabilities. The Department has attacked discrimination in pension and retirement benefits and the failure to provide reasonable accommodations. It has enforced the right to testing accommodations, to accessible educational facilities, and to be free from undue requests by professional licensing authorities for personal and private information about physical or mental conditions.**

### **1. Ensuring Equal Employment Opportunity**

#### **Illinois Remedies Pension**

**Discrimination --** In response to a suit filed by the Department of Justice, Illinois enacted legislation to eliminate discriminatory provisions in its police and fire pension code. The Department had sued the board of trustees

of the Aurora police pension fund, the City of Aurora, and the State for excluding police officers and firefighters from the City's pension funds on the basis of disability. Under the challenged system, police officers and firefighters were required to undergo separate physical examinations after they were hired to determine eligibility for retirement and disability benefits.

Even though they were performing successfully on the job, police officers and firefighters could be denied disability and retirement benefits.

**Denver Police Must Pay Back Pay for Failure to Reassign** -- The U.S. District Court in Denver awarded Jack Davoll full back pay with interest in the amount of nearly \$150,000 and front pay of more than \$76,000 in United States v. City and County of Denver. Davoll is a former Denver police officer who sought reassignment after he suffered injuries in the line of duty to his back, neck, and shoulder and could no longer perform the essential functions of a police officer. The Department earlier won a jury award on his behalf of \$300,000 in damages for pain and suffering because of Denver's refusal to reassign him to a vacant job that he was qualified to perform -- such as criminal investigator or probation officer. The Court also granted full back pay relief in simultaneous private litigation to two other plaintiffs who were denied reassignment. Paul Escobedo was granted \$250,000 in back pay and nearly \$60,000 in front pay and Deborah Clair received \$250,000 in back pay and more than \$65,000 in front pay.

**“My hope from the start of the [Denver] case was that officers injured in the line of duty would be able to continue working to provide an income for their family. Thanks to the ADA ... this case has and will continue to help injured workers.”**

**--Jack Davoll**

**New York Plumbing Board Agrees to Test Accommodations** -- The Rockland County Board of Plumbing, Heating, and Cooling Examiners entered an agreement to resolve a complaint alleging that the Board violated title II by denying a plumber with



**Jack Davoll wanted to be reassigned to a vacant job after being injured in the line of duty.**

dyslexia a reader or oral test as an accommodation on the written portion of the County's master plumber licensing exam. The individual had been a plumber for 42 years, owned his own business until the County passed its licensing law in the late 1960's, and received numerous recommendations from former employers attesting to his quality work performance and experience as a plumber and heating mechanic. Despite his qualifications, the Board denied his requests for the testing accommodation for the past 23 years. Under the agreement, the Board was required to provide the plumber with a reader or an oral test during the written portion of the next licensing examination. The Board was also required to adopt a nondiscrimination policy on the basis of disability which was subject to Department of Justice approval. The settlement followed the issuance of a letter of findings holding that the Board had violated title II.

## **2. Opening Gateways to Opportunity**

**Bar Review Course Agrees to Auxiliary Aids, Damages** -- Under a consent decree, the company that runs Bar/Bri, the nation's largest review course for students taking the bar exam, agreed to provide qualified sign language interpreters, assistive listening devices, and Brailled materials to students with disabilities. The Department had alleged that the course failed to provide appropriate auxiliary aids to students with vision and hearing impairments. The company, Harcourt Brace, also agreed to pay \$28,000 in compensatory damages, pay \$25,000 in civil penalties to the United States, adopt a policy ensuring that auxiliary aids and services are provided, educate its staff about the needs of students with disabilities, and promote the availability of auxiliary aids and services in its advertising.

**Students with Disabilities Offered Additional SAT Test Dates --** The Educational Testing Service and the College Entrance Examination Board agreed to schedule more dates in 1994 for more than 20,000 students with disabilities wishing to take the new version of the Scholastic Assessment Test. Under the original testing schedule, students with disabilities requiring accommodations were offered only one date to take the updated version, as opposed to their peers who had several opportunities to take the test. The agreement also allowed approximately 2,600 students with disabilities who took the old version of the test the chance to cancel their scores and retake the new exam.

**“The ADA gave me an equal chance to take the SAT. Because of that chance, I have graduated from Tufts University and have completed my first year of law school at American University’s Washington College of Law. It has made a huge difference in my life.”**  
**-- Jackie Okin**

**C.P.A. Review Course Provides Interpreters, Assistive Listening Devices --** In a 1994 settlement resolving the first lawsuit filed by the Justice Department under the ADA, Becker C.P.A. Review, which prepares over 10,000 students annually to take the national certified public accountant exam, agreed to amend its auxiliary aids policy. Where a need can be demonstrated, Becker will provide qualified sign language interpreters and assistive listening devices to students who are deaf or hard of hearing. Becker also agreed to appoint a national ADA coordinator, train its staff regarding the policy



**Jackie Okin is now in law school studying to be a civil rights attorney.**

revision, pay \$20,000 in damages to be distributed to deaf and hearing impaired students, and establish a \$25,000 scholarship fund for accounting students at California State University who have hearing impairments.

**“The ADA gave me empowerment. Knowing that I had the ADA on my side made me more assertive in standing up for my rights which made me a better person and allowed my talents and skills to come through. The ADA also gave me peers .... Before the Becker CPA Review case, there were very few deaf CPAs. Now, there are many more deaf CPAs.... Thank you ADA!”**  
**-- Rod Jex**

**Social Work Board Agrees to Qualified Readers for Blind Test Takers --** In 1999, two national standardized testing agencies, the American Association of State Social Work Boards and Assessment Systems, Inc., agreed to provide qualified readers for test takers with vision impairments and to pay \$3,000 to a complainant who was not allowed to use his own reader for the social work license examination. Instead, he was allegedly required to use a college student who had been hired to work at the registration table and had never read for a person with a vision impairment. During the exam, the reader allegedly stumbled over technical terms and made mistakes in marking and recording the answers. AASSWB and ASI agreed to adopt written policies to ensure that readers are proficient in reading for people with vision impairments, that they are familiar with the examination, and that they work with the test-taker prior to the examination to allow the reader to adapt to the test-taker’s style of receiving information. The agreement also makes clear that the testing entities may also simply choose to allow test-takers with vision impairments to supply their own reader.

### **Justice Sues for Law Admission Test**

**Accommodations --** In 1999, the Department filed suit against the Law School Admission Council (LSAC) for not making reasonable modifications in policy to allow individuals with physical disabilities in appropriate cases to have additional time to take the Law School Admission Test (LSAT). The suit, filed in the U.S. District Court for the Eastern District of Pennsylvania, alleged that LSAC violated the ADA when it denied four individuals with physical disabilities, including cerebral palsy and juvenile rheumatoid arthritis, additional time on the multiple choice portion of the LSAT, a standardized test administered to those seeking admission to law school. The complaint alleged that LSAC illegally followed a policy of requiring applicants with physical disabilities to submit a psychoeducational assessment as the basis for determining whether extra time is appropriate. Such assessments, which are typically used to diagnose whether individuals have learning disabilities, are not appropriate for determining whether extra time is needed for individuals with physical disabilities. The complaint also asserted that LSAC failed to individually assess requests for accommodations, provide adequate reasons for denying accommodations, and engage in an interactive process with individuals seeking testing accommodations. The lawsuit asked the court to order LSAC to change its policies, pay civil penalties, and award compensatory damages to the four named individuals.

**Duke Will Make Comprehensive Changes for Campus Accessibility --** Duke University in Durham, North Carolina, agreed to make a broad range of programs and facilities more accessible to persons with disabilities including academics, dining and living facilities, and social aspects of campus life. Under the agreement, Duke will --

- Modify elevators, entrances, counters, food service lines, telephones, and bathrooms throughout campus so they are accessible to persons with disabilities;
- Create accessible circulation paths to, among, and within university buildings and other facilities by repairing sidewalks and modifying hallways, doors, and ramps;
- Ensure that all programs and classes in which individuals with physical disabilities are enrolled are located in accessible spaces;
- Modify shuttle bus route schedules to ensure that accessible buses run regularly and frequently on each route;
- Make dormitory rooms fully accessible upon enrollment of students with disabilities until two percent of all dormitory rooms on campus are accessible;
- Enlarge doorways in at least half of the rooms on floors with accessible rooms in 18 of 25 dormitories, so students using wheelchairs can visit friends;
- Provide accessible seating in the Cameron Indoor Stadium and other assembly areas, access to stages and backstage areas around campus, and assistive listening devices in assembly areas;
- Provide accessible parking throughout campus;
- Replace signs throughout campus so they can be read by people with vision impairment and so that people with mobility impairments are properly directed to accessible routes and spaces; and
- Pay \$25,000 in civil penalties to the United States and \$7,500 in compensatory damages to the complainant, a wheelchair user who graduated from Duke in 1997.

**Casey Martin May Use Golf Cart, Appellate Court Rules --** The U.S. Court of Appeals for the Ninth Circuit ruled in Martin v. PGA Tour, Inc. that Casey Martin, a professional golfer from Oregon with a rare disability, Klippel-Trenaunay Syndrome,

which substantially limits his ability to walk, has the right to a reasonable modification of the PGA Tour's ban on carts that would allow him to use a golf cart in tournament competition. The PGA argued that its rules governing tournament competition were not covered by title III because the area of the golf course that is restricted to competitors is not open to the general public and is not a "place of public accommodation." It also argued that allowing Martin to use a cart would "fundamentally alter" the competition. The Department filed an amicus brief arguing that the no-carts rule could be challenged under title III and that waiving the rule in this case would be a reasonable modification required by the ADA. The court of appeals agreed with the Department and ruled that the PGA's tournament rules are covered by title III because the playing areas are part of a place of public accommodation. It also concluded that permitting Martin to use a cart would not fundamentally alter the competition because, in Martin's particular case, it would not give him an unfair advantage. The court found that the purpose of the rule was to inject fatigue into the game, but that Martin experiences more fatigue than the other golfers, even if he uses a cart, and would not gain a competitive advantage.

**"All I ever wanted was the chance to play and to see how good I could be. Without the ADA I never would have been able to pursue my dream of playing golf professionally."**

**-- Casey Martin**



**Casey Martin uses his golf cart during golf tournaments.**

### **NCAA to Revise Eligibility Requirements to Accommodate Student-Athletes with Learning Disabilities --** The National Collegiate Athletic Association agreed to

modify policies that each year prevented hundreds of students with dyslexia and other learning disabilities from playing college sports and receiving athletic scholarships. The 1998 agreement in United States v. National Collegiate Athletic Association, which was filed in the U.S. District Court for the District of Columbia, stemmed from a series of complaints lodged with the Department by student athletes alleging that the NCAA's initial-eligibility academic requirements discriminate against student-athletes with learning disabilities. The agreement requires the NCAA to modify its policies while at the same time enabling it

to maintain its academic standards. The NCAA agreed to --

- Revise its rules so that classes designed for students with learning disabilities can be certified as core courses if the classes provide students with the same types of knowledge and skills as other college-bound students;
- Allow students with learning disabilities who are unable to meet the initial eligibility rules when they graduate from high school to earn a fourth year of athletic eligibility if they complete a substantial percentage of their degree work and maintain good grades;
- Direct its committees that evaluate applications filed by students who do not meet the requirements but are seeking a waiver to consider a broad range of factors in reviewing the student's high school preparation and performance when deciding whether to grant a waiver and not to use a

minimum qualifying test score on the SAT or ACT; and

- Include experts on learning disabilities on the committees that evaluate waiver applications.

In addition, the agreement required the NCAA to undertake efforts designed to prevent further violations of the ADA, including designating one or more employees as an ADA compliance coordinator to serve as a resource to NCAA staff and as a liaison with students with learning disabilities; providing training to its staff regarding the new policies; and publicizing the terms of the agreement to high schools, students, parents, and member colleges and universities. The NCAA also agreed to pay a total of \$35,000 in damages to four student-athletes.

### 3. Providing Freedom from Unnecessary Inquiries into Disability

**Professional Licensing Reform Proceeds Nationwide** -- By challenging overly broad mental health inquiries by State licensing officials of applicants for professional licenses (law and medicine), the Department has spurred reform efforts nationwide. In briefs filed in New Jersey, Florida, and Virginia, the Department argued that broad questions about an individual's history of treatment or counseling for mental, emotional, or nervous conditions that do not focus on current impairment of an applicant's fitness to practice in a given profession violate the ADA. In one case challenging an unnecessarily broad inquiry into past mental health treatment, the Federal court ordered the Virginia Board of Bar Examiners to stop asking bar applicants whether they had received

counseling within the past five years.

**“I was thrilled ... The ADA and this case helped to reduce discrimination in professional licensing. I enjoy citing it in my work as a disability rights lawyer.”**

-- Ellen Saideman, who successfully challenged Florida's mental health questions for new lawyers.

## C. Enjoying the American Way of Life

**A primary goal of the ADA is to bring people with disabilities into the mainstream of the American economy. The Department has achieved greater accessibility in a wide variety of private-sector settings, including shopping, dining, recreation, and business and leisure travel.**

### 1. Becoming Part of the Economic Mainstream

**Venture Department Stores Modifies Check Cashing Policy** -- The Department entered into a consent decree resolving its lawsuit against Venture Stores, Inc., a St.

Louis company with more than 90 discount department stores in eight States. Venture agreed to modify its policy of permitting only customers with drivers' licenses to pay with a personal check, and will now permit individuals who do not drive because of a disability to pay by check if they have a non-driver State ID card. It also agreed to compensate the complainants.

**Joan Abbati has epilepsy and is unable to get a driver's license. When making purchases by check, she shows the cashier an ID card issued by the State of Illinois. A Venture discount department store in Chicago refused to honor the card, preventing her from paying by check.**

**Discount Department Store Chain Removes Barriers --** By consent decree, the Department resolved a case against Gibson's Discount Center, the operator of 30 discount department stores in eight Midwest and Rocky Mountain States. The Department investigated complaints against several Gibson's department stores alleging that Gibson's had failed to remove architectural barriers to access and that it had made alterations that did not comply with the ADA's Standards for Accessible Design. Gibson's agreed to bring all its stores into full compliance with the Standards; provide at least one accessible fitting room and entrance at each store; and offer accessible parking, check-out aisles, and restrooms. Gibson's also agreed to pay \$30,000 in civil penalties and \$15,000 in compensatory damages.

**Smith Barney to Provide Large Print Account Statements --** Under a formal settlement, Smith Barney, a nationwide financial planning services company, agreed in 1994 to provide, upon request, financial statements and correspondence in large print to its customers with vision impairments. (Smith Barney already provided documents in Braille.) Smith Barney also agreed to pay \$1,500 to the complainant and notify its customers of the new service.

**Friendly's Agrees to Chainwide Barrier Removal Program Under Title III --** The U.S. Attorney for the District of Massachusetts and the Massachusetts-based Friendly Ice Cream Corporation entered into a consent decree under which Friendly's agreed to

**In some Kansas communities, Gibson's Discount Center is the only place in town to shop for clothing, hardware, electronics, and sporting goods. But for Richard Knight, who uses a wheelchair, it was often impossible to shop at his hometown store because of insufficient accessible parking and inaccessible restrooms.**

engage in an aggressive barrier-removal program to increase accessibility throughout its chain of 704 restaurants in 15 States. The 1997 consent order required Friendly's to come into substantial compliance within six years. In the first year, Friendly's agreed to complete barrier removal at 117 locations, including altering the entrances (removing steps, widening doorways, and redesigning vestibules) at those 93 restaurants that currently have inaccessible entrances. Other alterations required by the consent order include redesigning dining areas to accommodate wheelchair users; striping parking areas to include accessible spaces; and altering bathrooms by widening doorways, increasing unobstructed floor space, and installing grab bars and accessible door hardware. In addition, the consent order required the company to pay a civil penalty of \$50,000.

**Waiting Lines will be Accessible at Wendy's Restaurants --** Nearly 1,700 Wendy's restaurants will become more accessible to their customers with disabilities under a 1998 agreement reached with the Department of Justice and nine State attorneys general. The out-of-court agreement stems from a joint nationwide investigation of the restaurant chain by the Department of Justice and nine States -- the first time the Department has teamed up with States to launch an investigation under the ADA. Wendy's International, Inc. agreed to either widen the queues in which customers wait to order food, or remove the railings or other dividers marking the queues to accommodate customers who use wheelchairs. Prior to the agreement, customers who use wheelchairs had to cut to the front of the line or stand outside the customer queue and wait to be recognized by a restaurant employee because

the queues were too narrow. The agreement resolved a two-year investigation into access issues at Wendy's restaurants by the Department of Justice and State attorneys general from Arizona, California, Florida, Illinois, Kansas, Massachusetts, Minnesota, Pennsylvania, and West Virginia. The joint task force visited newly constructed and older Wendy's restaurants in 12 States, which include the nine States, as well as Louisiana, Ohio, and Washington.

Under the agreement, the Ohio-based chain agreed to --

- Either remove or widen the customer queues at all of its nearly 1,700 corporate-owned or leased restaurants in 39 States;
- Modify its prototype architectural plans for future restaurants, both corporate-owned and franchised, to incorporate accessible customer queue designs;
- Notify all franchisees of the agreement and their obligations under the ADA, and provide them with technical assistance;
- Allow the task force to conduct spot checks of restaurants covered by the agreement to ensure that customer queues have been removed or widened;
- Remove various other barriers found at the 17 newly constructed restaurants visited by members of the joint task force;
- Pay the joint task force \$50,000; and
- Pay a total of \$12,000 in damages to five individuals or entities who filed complaints with the Department of Justice or State attorney generals' offices, regarding accessibility at Wendy's.

**Florida Convenience Store Chain Agrees to Access Modifications --** The owners of Swifty Mart Convenience Stores agreed to remedy access violations at 53 stores. Swifty Mart will provide accessible parking spaces with appropriate signage; curb ramps where an accessible route crosses a curb; refueling assistance to any person with a disability who specifically requests refueling assistance when more than one employee is on duty and no security risk will result; and ADA training for employees. It also agreed to pay a civil penalty of \$5,000 and to ensure that any stores that it purchases or leases in the future will meet the requirements of the ADA Standards for Accessible Design.

**Commercial Real Estate Firm Pays \$560,000 in Damages, Penalties for Discrimination in Leasing --** Under an agreement with the Department of Justice, TrizecHahn Corporation, a commercial real estate corporation that refused to lease space to a nonprofit organization that serves persons with disabilities will no longer discriminate against people with disabilities and will take corrective action to ensure that it does not happen in the future. TrizecHahn owns, manages, and develops retail and office properties throughout the United States, including a facility in Rosslyn, Virginia. The ENDependence Center, based in Arlington, Virginia, attempted to lease office space in TrizecHahn's Rosslyn, Virginia, building, but the leasing agent refused to enter into any negotiations with the center and refused to lease the space to the center because the center serves persons with disabilities. TrizecHahn agreed to no longer discriminate against individuals with disabilities when leasing commercial real estate; pay \$550,000 to the center and \$10,000 in civil penalties to the United States; and train employees in the Washington, D.C. area on the requirements of the ADA that pertain to the leasing of commercial real estate.

**Safeway Settlement has Nationwide Impact** -- Safeway Stores, Inc., entered an agreement with the Department of Justice requiring it to create at least one 32-inch opening between the security bollards or cart corrals used at the entrances to many of its stores so that customers who use wheelchairs can have greater access. Safeway will also launch a nationwide compliance plan where it will survey all of its 835 stores, determine the areas throughout the stores that do not meet ADA requirements, and take steps to ensure compliance. The agreement resolved a complaint filed with the Department regarding a Safeway store in Washington, D.C. Other parties to the agreement include two individuals with disabilities and the Disability Rights Council of Washington, D.C., which sued the chain under the ADA, as well as the Disability Rights Education and Defense Fund, which had received several complaints about Safeway's California stores.

## 2. Increasing Access to Recreational Activities

**Empire State Building Removes Barriers to Observation Decks** -- The Justice Department alleged that the owners of the Empire State Building failed to remove architectural barriers where it was readily achievable to do so. An agreement mandated changes to the lobby, entrance, observation decks, restrooms and telephones, but does not cover any privately leased office space in the building.



An accessible observation area atop the Empire State Building

**South Dakota County Fair Made Accessible** -- Minnehaha County agreed to a wide range of measures to ensure accessibility at the Sioux Empire Fair. The South Dakota county agreed to renovate several bathrooms, install two TTY's at pay phones, create an accessible path of travel through areas of the Fairgrounds, upgrade accessible parking, make the vending and ticketing counters and booths accessible, provide materials to Fair volunteers and patrons regarding the accommodations available for people with disabilities, and adopt a policy that allows patrons with mobility impairments to buy the same number of companion tickets to Fair concerts that other patrons are able to buy.

**Disney Agrees to Interpreters, Captioning, Assistive Listening Systems** -- The Department and Walt Disney World reached a comprehensive agreement resolving complaints that Disney had failed to provide auxiliary aids for effective communication for persons who are deaf or hard of hearing. Disney agreed to --

- Provide oral and sign language interpreters at numerous specified attractions at Walt Disney World in Florida and at Disneyland in California, upon notice two weeks in advance of an individual's planned visit;
- Make captioning systems available without reservation at the entrance to specified rides or shows, at both Disney resorts;
- Provide transcripts to persons who are deaf or hard of hearing at attractions and allow these individuals an opportunity to ride an attraction promptly a second time in order to better understand the written text;
- Schedule interpreters at specified shows, performances, and rides on a rotating basis so that guests can attend all interpreted

attractions in one day at one of the three parks at Walt Disney World in Florida and Disneyland in California;

- Provide closed captioning on video monitors in queues for attractions and other arcades throughout the parks;
- Make interpreter schedules available from Walt Disney World and Disneyland Guest Services;



Sign language interpreters at Walt Disney World.

- Provide assistive listening systems and written transcripts for most attractions for hard of hearing guests who desire them;
- Train employees to improve services for guests who are deaf or hard of hearing; and
- Advertise its services for guests who are deaf or hard of hearing.

**“The interpreters were out of this world! They couldn’t have been better. Our experience was wonderful.”**

**-- Shirley Krueger, who returned with her family to Disneyworld and was able to fully enjoy the visit.**

**MGM Grand Hotel, Casino, and Theme Park to Become Fully Accessible to People with Disabilities** -- Under an agreement reached with the Department of Justice, people with disabilities will be able to fully enjoy the entertainment and attractions at the MGM Grand Hotel, Casino and Theme Park in Las Vegas, Nevada, the world’s largest hotel and casino complex. MGM Grand will--

- Increase the number of accessible guest rooms for individuals with disabilities by adding 36 rooms during the course of

renovations, including rooms with roll-in showers, bringing the total number of fully accessible guest rooms to 112;

- Increase the number of accessible guest rooms for individuals with hearing impairments by adding 15 rooms with visual alarms during the course of renovations, bringing the total number of fully accessible rooms for individuals with hearing impairments to 46, and making available 15 additional kits containing visual notification devices, TTY’s, and door knockers;

- Make restrooms throughout the facility fully accessible to persons with disabilities by adding stalls for people who use crutches or walkers, adding grab bars, and relocating doors;
- Ensure that the casinos are fully accessible to persons with disabilities by adding more lowered gaming tables and accessible service counters and improving access to the high roller gaming areas;
- Install visual alarms throughout the facility for individuals who are deaf or hard of hearing;
- Improve access in the Grand and Hollywood Theaters and in the MGM Grand Garden, which host major sporting events and concerts, by adding accessible wheelchair and companion seating locations, lowering ticket and box office counters, and providing assistive listening devices for people who are hard-of-hearing;
- Provide full access for people with disabilities at restaurants and retail establishments within the facility by adding handrails in entrances, lowering cashier counters, and providing accessible dressing rooms and adequate knee space in dining booths;

- Make pool and spa areas fully accessible to people with disabilities; and
- Pay \$165,000 in compensation to the three complainants.

**Major Racing Facility Agrees to Comprehensive Barrier Removal --** Under a consent decree, Dover Downs, a 100,000-seat horse and auto racing facility located in Dover, Delaware, agreed to bring the new and altered portions of the facility into compliance with the ADA Standards for Accessible Design and to remove architectural barriers to access in the existing portions of the facility. The facility, which features the Dover Downs International Speedway, will make the grandstands accessible by providing more than 300 accessible wheelchair seating locations with companion seating and accessible routes and ramps to these seating areas. It will provide designated accessible parking areas adjacent to grandstand entrances and develop a policy for the transportation of people with disabilities between the accessible parking areas and the gates serving the Speedway's grandstand seating. Restrooms will be made accessible, service counters and betting windows will be lowered, and other steps will be taken to make the Dover Downs Slots facility fully accessible. Dover Downs also agreed to provide annual employee training regarding nondiscriminatory service to individuals with disabilities and to pay \$20,000 in compensatory damages to the complainant.

**Radio City Installs Accessible Seating --** The U.S. Attorney for the Southern District of New York filed, and resolved by consent decree, a lawsuit against the owners and operators of Radio City Music Hall, a historic theater dating from the 1930's. The theater has nearly 6,000 seats, with over 3,400 on the orchestra level, and the remainder on three mezzanine levels. Radio City agreed to install 59 wheelchair and companion seating locations and 60 aisle seats with removable armrests. It will also modify its ticketing policies to reserve accessible seats for persons

with disabilities until all other seats are sold. To compensate for the lack of wheelchair seating on upper levels, Radio City agreed to discount a portion of the orchestra wheelchair seating so that persons with disabilities will be able to purchase tickets at a range of prices comparable to the general public. Radio City also agreed to remove barriers affecting exterior and interior routes, doors, and elevators; service areas such as restrooms, telephones, drinking fountains, concession areas, and a ticket window; dressing rooms and adjacent shower/toilet rooms; and tour routes. Radio City will make available 240 assistive listening devices and install visual alarms that comply with the ADA. It will also provide signage throughout the public areas directing patrons with disabilities to accessible routes and service areas.

**Yankee Stadium Increases Accessible Seating --** A consent decree entered into by the U.S. Attorney for the Southern District of New York, the New York Yankees, and the City of New York will vastly increase the number of accessible wheelchair seating locations at Yankee Stadium. In the past, a total of only 44 pairs of wheelchair and companion seating locations were available at the stadium, 12 of which were sold at the highest ticket price level and none of which were sold at any of the lowest three ticket price levels. Under the agreement, the Yankees and the city agreed to increase the number of wheelchair and companion seating locations to up to 400 pairs of seating locations and disperse those seating locations throughout the lower levels of the stadium. These areas include infield and outfield seating on the field level, in the main level boxes, the main reserve section, the bleachers, the loge, and in two entirely new seating sections to be constructed in an area near Monument Park in left field and in an area behind right center field. The consent decree also requires the defendants to provide at least 300 designated aisle transfer seats in the stadium. In addition, the defendants agreed to sell tickets to both regular season and post-season games for all but 18 of the wheelchair

seating locations at the three lowest ticket price levels (there are eight ticket price levels for the 2000 season), provide persons with disabilities the opportunity to purchase regular season and postseason tickets through all of the same methods afforded to persons without disabilities, and make components within Yankee Stadium, such as exterior and interior routes, signs, restrooms, telephones, drinking fountains, concession areas, elevators, ticket windows, restaurants, luxury suites, and press areas accessible to persons with disabilities. The Yankees also agreed to pay a \$25,000 civil penalty and to make \$10,000 in charitable contributions.

#### **Renaissance Fair Removes Barriers --**

The Department entered into an agreement with Mid-America Festivals, operator of the Minnesota Renaissance Festival in Shakopee, Minnesota, the largest renaissance festival in the country. The agreement resolved a complaint filed by a wheelchair user who alleged that he was unable to visit many of the shops and booths at the festival because they were not accessible and because some shops had ramps that were dangerously steep. Mid-America agreed to provide an accessible ticket window, as well as remove all barriers to access at several food booths and shops. They also agreed to provide accessible portable restroom facilities and accessible telephones, and pay a civil penalty of \$4,000.

**Movie Theater Chain Agrees to Nationwide Settlement --** Cineplex Odeon Corporation, one of the nation's largest operators of motion picture theaters, agreed to increase significantly the number of receivers it provided for assistive listening systems in its more than 800 motion picture theater auditoriums throughout the United States. Prior to the 1996 agreement, Cineplex provided four receivers for each auditorium, regardless of its size. The company will now provide receivers at the rate of two percent of seats in all auditoriums that opened prior to January 26, 1993. It will also provide receivers at a rate of four percent of seats in all auditoriums where audio-amplification systems have been re-

placed since January 26, 1992, in order to comply with ADA provisions governing alterations to existing places of public accommodation. (The company already provided receivers at the rate of four percent of seats in new theaters, in strict compliance with the ADA Standards for Accessible Design.) Cineplex Odeon also agreed to provide one neck loop per screen in theaters with six or fewer screens and one for every two screens in theaters with more than six screens. Neck loops facilitate the use of assistive listening systems by people who use hearing aids. Additionally, the company will monitor use of assistive listening systems at all theaters and purchase additional receivers where necessary to meet additional demand, even at theaters where receivers will be provided at the rate of four percent of seats.

#### **National Movie Theater Chain Agrees to Accessible Wheelchair Spaces, Companion Seats --**

The Department entered into a formal agreement and consent decree with United Artists Theatre Circuit, Inc. (UATC), one of the nation's largest exhibitors of motion pictures, that will ensure compliance with the ADA's barrier removal and new construction provisions at more than 400 theater locations with approximately 2,300 screens throughout the United States. The 1996 consent decree, which was filed simultaneously with the Department's intervention in Arnold v. United Artists Theatre Circuit, Inc., resolved that suit. The Arnold case was a private class action suit brought on behalf of California residents with mobility impairments who encountered barriers at UATC theaters. The agreement required UATC to take the following actions in almost all of its existing theaters throughout the country —

- Provide parking spaces that comply in design and number with the requirements of the ADA Standards for Accessible Design;
- Provide an accessible path of travel from parking spaces to an accessible theater entrance;

- Provide in each auditorium the number of wheelchair seating spaces required in comparably-sized, newly-constructed auditoriums, with companion seating;
- Ensure that one percent of the total number of seats is aisle seats with folding or removable aisle-side armrests;
- Provide at least two dispersed wheelchair seating locations at a distance of from one-third to two-thirds of the way back from the screen in auditoriums with more than 300 seats; and
- Modify existing restrooms to make them accessible or construct unisex accessible restrooms that comply with the Standards.

UATC was also required to bring all theaters constructed for first occupancy after January 26, 1993, into full compliance with the Standards by no later than June 30, 1997, and to ensure that future construction complies with the Standards.

### **3. Removing Obstacles to Business and Leisure Travel**

**Avis to Provide Hand Controls for Rental Cars** -- Under a formal settlement, Avis, Inc., the country's second largest car rental company, agreed in 1994 to provide rental cars with hand controls for persons with disabilities -- with as little as eight hours notice in most major airport locations. Avis also agreed to urge all existing licensees to adopt the same policy, require all new franchisees and those renewing their contracts to adopt the policy, train its staff at its corporate-owned rental locations, and allow persons who are unemployed due to a disability and who do not use credit cards, to substitute verifiable disability-related income in lieu of a verifiable employment history. Also, Avis agreed to allow persons who cannot drive due to a disability to rent cars in their own name and maintain financial responsibility for renting the car when accompanied by a licensed driver.

**Hawaii Resort Hotels Agree to Accessibility Changes** -- The Department sued Pleasant Travel Service, Inc., and its subsidiary, Hawaiian Hotels & Resorts, Inc., who own and operate several resort hotels in Hawaii and California. It alleged that the hotels failed to remove barriers to access and renovated the hotels in ways that did not comply with the ADA's standards. Under a consent decree, the Royal Lahaina Resort, the Royal Kona Resort, and the Kauai Coconut Beach Resort agreed to provide accessible parking; modify restrooms to make them accessible; provide access to restaurants, swimming pools and the luau areas; and offer between 12 and 14 accessible guest rooms at each hotel. Also, the defendants agreed to pay a total of \$25,000 in compensatory damages to two individuals who use wheelchairs and \$25,000 in civil penalties.

**Holiday Inn and Crowne Plaza Hotels will Improve Access and Modify Reservation Policies** -- The Department signed two settlement agreements in 1998 with Bass Hotels & Resorts (BHR) and 20 separate agreements with individual hotel franchise owners to resolve ADA violations throughout BHR's Holiday Inn and Crowne Plaza hotel chains. The agreement with BHR on reservations and rental policies required that each hotel in the two chains must --

- Guarantee reservations for accessible rooms as they guarantee other types of reservations;
- Hold all accessible rooms for persons with disabilities until 6 p.m., at which time they can release all but two (one in each of the two standard categories of single and double bed rooms), which must be held until all other rooms of that type are sold; and
- Compile a list of accessibility features to be kept at the hotel's front desk and made available to anyone who calls the hotel or the central reservations system.

The second agreement required BHR to make modifications in three hotels it currently owns or manages and to pay \$75,000 to the Key Bridge Foundation to establish a mediation program for ADA complaints. BHR also agreed to pay a total of approximately \$75,000 to the United States and the complainants to resolve all outstanding issues.

The Department also reached 20 agreements with Holiday Inn and Crown Plaza franchisees resolving accessibility complaints involving hotels in Alabama, Arizona, California, Colorado, Georgia, Illinois, Kansas, Louisiana, Massachusetts, Ohio, Tennessee, and Texas. The agreements require a wide range of modifications, including removal of barriers to access, provision of auxiliary aids, and staff training.

**Avis Rent A Car will Improve Access to Airport Shuttle Systems for People with Disabilities --** The nation's second largest rental car company agreed to provide accessible airport shuttle buses at all of its airport locations nationwide. The 1999 agreement between Avis Rent A Car, Inc., and the Department of Justice resolved a complaint filed by a traveler who uses a wheelchair alleging that Avis violated the ADA by not providing access to the shuttle system that operates between the terminal at the Detroit Metro Airport and its offsite rental car facilities. During negotiations, Avis agreed to expand the settlement to cover all of its airport shuttle systems nationwide. Avis agreed to ensure that --

- Each of the 36 shuttle systems at airport locations that it owns and operates will have at least one accessible vehicle by December 2000; some locations will have several accessible vehicles;

- All newly acquired large shuttle vehicles will be accessible;
- Accessible curbside service, under which rented vehicles are delivered directly to the terminal where the customer with a disability is waiting, will be provided at all locations; and
- Barriers to access will be identified and removed at each airport location.

When the Department began its investigation, Avis had only six lift-equipped vehicles out of 286 in its fleet. When Avis is in full compliance with the agreement, it will have at least 153 accessible vehicles.

**Guide Dogs Will No Longer Be Subject to Hawaii Quarantine --** Hawaii agreed to allow precertified, vaccinated guide dogs for persons with vision impairments immediate entrance to the State, no longer requiring them to stay in a 120-day quarantine. The agreement resolved Crowder v. Kitagawa, in which the Department of Justice intervened to challenge the quarantine under the ADA. The quarantine, established as a rabies prevention measure, required all dogs -- including guide dogs -- to stay at the State's quarantine facility. Although travelers with vision impairments could visit their dogs at specified times, they could not remove the dogs from the quarantine facility or otherwise use their dogs to travel in Hawaii during the quarantine period.



**Tourists who are blind can now enjoy Hawaii with their guide dogs.**

Under the agreement, Hawaii agreed to establish regulations to permit guide dogs with proper documentation and testing to enter the State immediately upon arrival. Under new regulations adopted by Hawaii, a guide dog owner is required to demonstrate that the dog is free of rabies through documentation of rabies vaccinations and serological testing. The owner must also have a certification of training from a recognized guide dog school.

**“Oh, I could have gone to Hawaii without my guide dog, but part of traveling for me, and feeling comfortable in a place, is having the independence my dog provides. The ADA has allowed me ... to feel included in society, rather than cared for by it. I have choices. Choice is not always as available to people with disabilities as to others in our society.”**

**-- Jenine Stanley**

**Greyhound to Improve Bus Service to Passengers with Disabilities** -- An agreement between the Department and Greyhound Lines Inc., will improve the availability and quality of accessible bus service for persons with disabilities. The 1999 agreement resolved a wide range of complaints including the denial of passage or boarding assistance to persons with mobility or vision impairments, injuries to passengers while being physically carried on and off buses, and verbal harassment. It required Greyhound to pay more than \$17,500 in damages, which included individual payments to 14 complainants ranging from \$500 to \$4,000. Current Department of Transportation (DOT) regulations permit carrying, but require Greyhound to provide lift-equipped bus service on 48 hours' notice beginning in October 2001. The agreement will minimize the need for carrying passengers with disabilities by phasing in accessible bus service in three stages, beginning two years before lift-equipped service is required by the DOT rules. Under the agreement, Greyhound will --

- (Through March 31, 2000 only) provide, with 48 hours' notice through its ADA

Hotline, a lift-equipped bus or assistive device on scheduled departures to and from locations where these buses are operated (generally along major routes serving a large proportion of Greyhound passengers) or where assistive devices can be made available to passengers who request such accommodations;

- On 48 hours' notice, make reasonable efforts to provide an accessible bus between any of the approximately 2,600 points served by Greyhound; and
- (Beginning no later than April 1, 2000) guarantee accessible buses between any points served by Greyhound, on 48 hours' notice, except in a limited set of "excusable circumstances" defined in the agreement.

The agreement also requires Greyhound to --

- Provide training to employees assisting any person with a disability;
- Establish an internal dispute resolution procedure for addressing complaints by persons with disabilities within 90 days;
- Inform individuals with disabilities of their rights under the ADA and the agreement;
- Convene a meeting of a specially created advisory committee of representatives from organizations advocating the rights of persons with disabilities to advise Greyhound on its training programs and policies by September 30, 1999; and
- Continue systematically removing barriers to access in Greyhound facilities.

Although Greyhound only fulfilled 44% of requests made in October 1999, Greyhound steadily improved, ultimately fulfilling 94% of passenger requests for lift-equipped buses by February 2000. In this period alone, up to 251 people were saved the humiliation and risk of being physically carried onto a bus.

**“Every half hour or so, I became overwhelmed with the full significance of what we have accomplished ... It was a great day for a magnificent, VICTORIOUS ride.”**

**-- Kathleen Kleinmann, a wheelchair user, who was able to board an accessible bus for the first time for a trip from Harrisburg to Pittsburgh, Pennsylvania.**

### **Airport Shuttle Service to Provide**

**Access to Service Animals --** The Arizona Shuttle Service, which operates a fixed-route shuttle service between Tucson and Phoenix International Airport, agreed to operate and maintain wheelchair-accessible vans and to permit all types of service animals, not only “seeing eye” dogs, to ride the vans. The agreement reached by the Disability Rights Section, the United States Attorney’s Office for the District of Arizona, two private plaintiffs, and Arizona Shuttle resolved two private lawsuits and two complaints filed with the Department of Justice. The two complaints investigated by the Department alleged that the Arizona Shuttle Service violated the ADA by refusing to transport an individual with her service animal because the animal was not a “seeing eye dog” and by purchasing two new vans that were not accessible to people with disabilities, including people who use wheelchairs. Just before entering the agreement, Arizona Shuttle purchased two accessible vans for its fleet. The agreement requires the company to maintain its accessible vans and to post and implement a service animal policy and a written reservations policy that meet the non-discrimination requirements of the ADA. The agreement required Arizona Shuttle to pay \$10,000 in compensatory damages to the individual who was denied access because of her service animal. Another wheelchair user and a disability group in Arizona who jointly

sued the company for having inaccessible buses and vans will each receive \$2,500 in damages. Arizona Shuttle will also pay \$5,000 in civil penalties to the United States.

**DOJ Document — “Commonly Asked Questions about Service Animals in Places of Business,” developed in cooperation with the National Association of Attorneys General, provides questions and answers on the rights of persons with disabilities who use service animals in places of public accommodation.**

### **South Carolina Motel Pays Damages, Penalties for Refusing Room --**

The Department resolved by consent decree a lawsuit challenging the outright exclusion of people with disabilities from a motel in South Carolina. The Ocean Plaza Motel in Myrtle Beach refused to rent a room to a group of two teenagers and their mothers because the two teenagers have cerebral palsy and use wheelchairs. Under the consent decree, the owner and operators agreed to implement and post a formal written policy that the motel will not deny persons



**A hotel refused to rent a room because the teenagers were wheelchair users with cerebral palsy.**

with disabilities the services, facilities and accommodations of the motel; will train its employees in the equal and dignified treatment of guests with disabilities; remove architectural barriers at the motel over a two-year period, where such removal is readily achievable; pay \$92,000 plus interest to the complainants over the two-year period; and pay civil penalties of \$5,000 to the U.S. Treasury.

## D. Ensuring an Accessible Future

To ensure that the future built environment is accessible to people with disabilities, the ADA requires all new construction and alterations to meet specific architectural design standards. The Department has taken a wide range of enforcement actions to ensure that owners, architects, and others involved in the design and construction process meet their ADA obligations.

### 1. Establishing Architect Liability

**Future Stadium Designs to Include Line of Sight Over Standing Spectators --** The Ellerbe Becket architectural firm agreed that all of the new sports stadiums and arenas that it designs in the future will be designed to provide wheelchair seating locations with a line of sight over standing spectators. The 1998 agreement specifically applies to any facility with more than four fixed seats and in which spectators can be expected to stand for all or any part of an event. The consent decree resolved the Department's lawsuit alleging that Ellerbe had violated the ADA by repeatedly designing new sports stadiums and arenas that violated the ADA new construction requirement for comparable lines of sight for wheelchair seating locations. Ellerbe argued that the court should dismiss the case because architects are not covered by the ADA and because lines of sight over standing spectators are not required. The court disagreed with both of these arguments.

**DOJ Document -- "Common Errors and Omissions in New Construction and Alterations,"** first distributed at a conference cosponsored by the American Institute of Architects, assists architects and the construction industry in designing and constructing buildings that comply with the ADA.

### 2. Making Newly Constructed Buildings Accessible

**Nationwide Restaurant Chain Agrees to Accessible New Construction --** Lone Star Steakhouse and Saloons, a nationwide restaurant chain operating 105 restaurants in 29 States, agreed to bring 97 new or altered facilities into full compliance with the ADA. This 1995 agreement was the first resulting from a compliance review, a process by which the Department reviews architectural plans to determine if new construction projects will comply with the ADA's standards. By reviewing the plans and visiting several sites, officials learned that Lone Star failed to provide accessible seating, restrooms, and parking, as well as accessible routes from parking areas. Lone Star also agreed to contribute a total of \$5,000 to four disability advocacy groups.

**New Olympic Stadiums Are Fully Accessible --** The Department entered into agreements to ensure full accessibility at five venues newly designed and constructed for the 1996 Olympic Games and Paralympic Games in Atlanta, Georgia. The agreements with the Atlanta Committee on the Olympic Games and the Metropolitan Atlanta Olympic Games Authority make the Olympic Stadium, the Aquatic Center, the Stone Mountain Tennis Center, and the field hockey stadiums at Morris Brown College and Clark Atlanta University models for accessible stadium design nationwide.

Under the agreements, the facilities --

- Provide accessible seating as an integral part of the seating plan;
- Have at least one percent of their total seating accessible for persons using wheelchairs;
- Disperse the accessible seating throughout the stadiums, including in specialty seating

areas, such as the suites and the club level of the Olympic Stadium;

- Provide a conventional seat next to each wheelchair space so that spectators with disabilities can sit next to family and friends;
- Ensure that virtually all wheelchair seats have a comparable “line of sight” so that wheelchair users can still see the playing surface even when spectators in front of them stand up during an event;
- Provide an accessible route from parking and transportation areas to the wheelchair seating locations that connects with all public areas of the stadiums; and
- Provide full accessibility at all concession stands, restrooms, parking areas (including parking for vans), automatic bank machines, locker rooms, portable toilets, and employee common-use areas.

After the conclusion of the Olympic and Paralympic Games, the five facilities were converted into smaller, permanent sports facilities. For example, the Olympic Stadium became the new home for the Atlanta Braves and the Aquatic Center became a swimming facility for the Georgia Institute of Technology. The agreements ensured that the post-Olympic configuration of the facilities will also be fully accessible.

**DOJ Document -- “Accessible Stadiums” highlights key ADA accessibility requirements, including the provision of wheelchair seats that have a comparable “line of sight” allowing wheelchair users to see the playing surface even when other spectators stand up in front of them.**

### **Three 1999 Lawsuits Challenge Stadium-style Theater Design --**

**United States v. AMC Entertainment, Inc.** -- The Department filed suit against AMC

Entertainment, Inc., and American Multi-Cinema, Inc., in the U.S. District Court for the Central District of California for violating the ADA in the design, construction, and operation of stadium-style movie theaters in the AMC chain. The two theaters named in the complaint are the Norwalk Theater in Norwalk, California, and the Promenade 16 Theater in Woodland Hills, California. The newly constructed AMC theaters have two types of seats -- stadium-style seats, which provide comfortable, unobstructed lines of sight to the screen, and traditional seating, which is located on the sloped floor at the front of the theater immediately in front of the screen. Although AMC marketed the theaters as providing stadium-style seating, it placed the wheelchair seating only in the less desirable traditional seating on sloped floors. Wheelchair users are therefore denied a movie viewing experience that is comparable to that afforded to other members of the general public. The complaint alleged other access violations including the failure to provide companion seating next to wheelchair seats; failure to provide handrails; inadequate space at wheelchair seating locations; and inaccessible concession counters, bathrooms, and telephones.

**United States v. Cinemark USA, Inc.** -- The Department filed suit against Cinemark USA, Inc., in the U.S. District Court for the Northern District of Ohio alleging that three of Cinemark’s Ohio theaters, as well as its stadium-style seating theaters across the country, violated the ADA by failing both to provide comparable lines of sight to wheelchair users and to make wheelchair seating locations an integral part of the stadium-style seating.

**Lonberg v. Sanborn Theaters, Inc.** -- The Department intervened in an ongoing lawsuit in the U.S. District Court for the Central District of California brought by two wheelchair users against the Market Place Cinema in Riverside California, a facility that offers stadium-style seating. The suit alleges that Sanborn violated title III because it does

not provide adequate numbers of wheelchair seating locations, fixed companion seats next to wheelchair seating locations, aisle seats with removable armrests, and wheelchair seating locations with lines of sight comparable to those for other members of the general public.

**Days Inns Will Promote Accessibility at New Hotels Nationwide** -- The world's largest hotel chain agreed to undertake a nationwide initiative designed to make hundreds of its new hotels across the country more accessible to persons with disabilities. The 1999 consent decree resolved five lawsuits filed by the Department of Justice. The suits alleged that franchiser Days Inns of America, Inc, and its parent company, Cendant Corporation (formerly HFS, Inc), because of their significant role in the design and construction of new Days Inns hotels, violated the ADA by allowing franchisees to construct hotels that failed to comply with the ADA Standards for Accessible Design. Under the agreement, Days Inns will --

- Require new hotels to certify that they are in compliance with the ADA Standards before they open for business as Days Inns;
- Pay for an independent survey program designed to identify ADA problems at newly constructed hotels;
- Establish a \$4.75 million revolving fund to provide interest-free loans to franchisees of newly constructed hotels to finance repairs and renovations required for ADA compliance; and
- Pay \$50,000 to the United States.

The agreement ended four years of litigation that followed an 18-month investigation of newly constructed Days Inn hotels across the country. The investigation revealed that similar accessibility problems existed throughout the chain, including, for example, insufficient accessible parking, inaccessible entrances and walkways at the

facilities; inadequate space for persons who use wheelchairs to maneuver in guestrooms and bathrooms; insufficient visual alarm systems for persons who are deaf or hard of hearing; inadequate signage for persons who are blind or have low vision; inaccessible routes throughout the hotels; and guestroom and bathroom doors that were not wide enough to allow wheelchairs to pass inside. Claims against the owners, construction contractors, and architects of the five hotels were resolved in other agreements.

**DOJ Documents -- "Common ADA Problems at Newly Constructed Lodging Facilities," the "ADA Checklist for New Lodging Facilities," and "Five Steps to Make New Lodging Facilities Comply with the ADA" assist hotel owners, franchisers, architects, and contractors on ADA requirements.**

## E. Gaining Equal Access to Health Care

**The ADA requires that people with disabilities have equal access to health care provided by both the public and private sectors and that the care be provided in the most integrated setting appropriate. The Department has acted forcefully to ensure compliance by 9-1-1 systems, dentists, doctors, hospitals, and State long-term care programs.**

### I. Receiving Emergency Services

**Nationwide Initiative Spurs 9-1-1 Accessibility** -- The Department undertook a nationwide initiative to ensure that 9-1-1 emergency services provide direct, equally effective access to TTY users, including people who are deaf, hard of hearing, or who have speech impairments. Compliance reviews were conducted in over 500 locations in all 50 States including Houston, Seattle, Miami, Washington, D.C., Chicago, Indianapolis and other major metropolitan

areas by U.S. Attorneys' Offices in consultation with the Civil Rights Division. Where problems were found, the U.S. Attorneys offered technical assistance and negotiated agreements to bring those 9-1-1 systems into compliance. Those agreements required 9-1-1 providers to --

- Install a text telephone, TTY, or computer with TTY capability at every single call taker's position, so that each call taker has immediate TTY access if a TTY call comes in;
- Instruct call takers to treat every "silent" call as a potential TTY call and send a TTY prompt;
- Develop and implement a public education program to promote the use of 9-1-1 by individuals who use TTY's;
- Conduct staff training and semiannual audits of the quality of service provided to TTY users.

**DOJ Document -- "ADA Access for 9-1-1 and Telephone Emergency Services" outlines ADA requirements for providing direct access to emergency services for persons using TTY's or text telephones, including individuals who are deaf, hard of hearing, or who have speech impairments.**

**Philadelphia Addresses HIV Discrimination --** The City of Philadelphia entered an agreement resolving a complaint alleging that emergency medical technicians (EMTs) of the Philadelphia Fire Department refused to assist an individual when they learned that he had HIV. The City agreed to conduct mandatory training of the Department's 2,300 EMTs and firefighters regarding universal precautions to prevent the transmission of HIV/AIDS, as well as to provide HIV/AIDS sensitivity training. The City also agreed to develop and publicize a written policy stating that individuals with disabilities will be given the opportunity to

benefit fully from its emergency medical services and to discipline any personnel who fail to follow the City's guidelines. In addition, the City agreed to pay \$10,000 in compensatory damages and provide a written apology to the individual denied services.

## 2. Securing Access to Health Care

**Maine Hospital Will Provide Auxiliary Aids for Deaf, Hard of Hearing --** The U.S. Attorney for the District of Maine, a private plaintiff, and the Maine Medical Center entered into a consent decree requiring the medical center to provide qualified sign language interpreters, assistive listening devices and TTY's, captioned televisions, and other similar aids and services to persons who are deaf or hard of hearing. Maine Medical Center, which is Maine's largest hospital, also agreed to publish and distribute a new written hospital policy directing its employees to offer an interpreter whenever staff has any reason to believe a patient is deaf or hard of hearing. The interpreter is to be made available by the medical center as soon as possible and no later than one hour after the receipt of a request for an interpreter. The hospital also agreed to provide the same services including interpreters to deaf family members, relatives, companions, and friends who visit or accompany a patient. The hospital will require all of its clinical directors and department heads, as well as its supervisors, nurses, and other patient-contact personnel, to participate in mandatory and comprehensive in-service training regarding the proper use and role of interpreters and other communication needs of persons who are deaf or hard of hearing. Maine Medical Center also agreed to produce an educational video and distribute materials to all physicians with hospital privileges regarding the ADA rights of persons who are deaf and hard of hearing and to pay a civil penalty of \$10,000 and \$25,000 in damages to the plaintiff.

**Connecticut Agreement Establishes Statewide Interpreter System** -- The Department intervened in Connecticut Association of the Deaf v. Middlesex Memorial Hospital, a lawsuit brought by the Office of Protection and Advocacy in Connecticut against 10 acute care hospitals for failing to provide sign language and oral interpreters for persons who are deaf or hard of hearing. In a consent decree joined by all of the parties and 22 other acute care hospitals, the hospitals agreed to --

- Set up a state-wide on-call system to provide interpreters 24 hours a day, seven days a week, for persons who are deaf or hard of hearing (the system will respond to most requests in urban areas within an hour, and in rural areas within one hour and fifteen minutes);
- Use sign language pictogram flash cards that will be developed by the Department of Justice to assist in communication when sign language interpreters are not available;
- Provide TTY's through-out the hospitals' public areas and in patient rooms, when requested;
- Install visual alarms where audible alarms are provided;
- Provide other auxiliary aids and services when necessary for effective communication, including computer assisted real-time transcription services, closed caption decoders for televisions,

captioning of hospital-generated videos, qualified notetakers, assistive listening devices and systems, and written materials; and

- Train employees and volunteers about issues relating to communication with persons who are deaf or hard of hearing, including special training for emergency department personnel, psychiatric personnel, social workers, and other key personnel; offer training to all affiliated physicians; and pay \$333,000 in compensation to the named plaintiffs and individuals who filed complaints with the Department of Justice.

**Supreme Court Rules Asymptomatic HIV-infected Patient is Person with a Disability** -- The Supreme Court decided in Bragdon v. Abbott that asymptomatic HIV-status is a disability under the ADA. Plaintiff, a dental patient in Bangor, Maine, infected with HIV, but who had no outward symptoms of the disease, was denied treatment by a dentist. The patient filed suit under the ADA, alleging that, as a result of the virus, she was "disabled" and therefore protected by the Act. The U.S. Court of Appeals for the First Circuit ruled that the patient's asymptomatic HIV status constituted a disability because it was a physical impairment that substantially limited the "major life activity" of reproduction. The Supreme Court agreed with the amicus brief filed by the Department of Justice and upheld the court of appeals in a 5-4 decision, finding that asymptomatic HIV status met all the requirements under the statutory definition of a disability -- it is a physical impairment (from the moment of infection), it impairs the major life activity of reproduction, and it "substantially limits" that

**For years, Rachel Spillane had to interpret for her family in many emergency medical situations. "... with the [Connecticut] consent decree I was relieved of this dilemma and was once again allowed to be a family member. I wish that each State had such a system in place so that the deaf community truly has equal access to the health care system."**

activity. The court also emphasized that its conclusion was consistent with the Department of Justice's views on this issue as expressed in its regulations and technical assistance manual.

**DOJ Document -- "Questions and Answers: The ADA and Persons with HIV/AIDS" explains the ADA's requirements for employers, State and local governments, businesses, and nonprofit agencies serving the public.**

**Hospital Center Pays Damages, Agrees to Nondiscriminatory Treatment of Patients with HIV --** The Department reached an agreement with The George Washington University, The George Washington University Medical Center, The George Washington University Hospital (GWUH), and District Hospital Partners, L.P., to resolve a complaint that cardiothoracic surgeons at GWUH violated the ADA by denying open heart surgery to a patient because he has HIV. The agreement required GWUH to pay \$125,000 to the complainant; to issue a hospital policy establishing that patients cannot be denied, or discouraged from seeking, surgery or other medical treatment because of infection with HIV or AIDS; to conduct annual training for staff on this new nondiscrimination policy; to amend its bylaws and regulations to provide for discipline of hospital staff who violate this nondiscrimination policy; to conduct a grand rounds symposium for local area cardiothoracic surgeons that addresses nondiscrimination against persons with HIV and AIDS who need open-heart surgery; to advise patients of GWUH's nondiscrimination policy; and to establish an internal mechanism for responding to patients' concerns that they have been denied treatment, or discouraged from seeking treatment, because of HIV, AIDS, or any other disability.

**"The ADA has heightened medical and dental professionals' awareness that discrimination is against the law ... and has given ... doctors the ability to persuade their colleagues not to discriminate."**

**-- Daniel Brunner, Whitman-Walker Clinic, Washington, D.C.**

**New Orleans Dentist Liable for Refusal to Treat Patient with HIV --** A Federal court in Louisiana ruled that a dentist violated the law by referring persons with HIV or AIDS to another dentist solely on the basis of the patient's HIV positive status. Under a consent order the dentist, Dr. Morvant, agreed to pay \$60,000 in damages to the family of one deceased patient, Ismael Pena, and \$60,000 to another patient, and to no longer discriminate against persons with HIV or AIDS. Morvant may refer such patients to another dentist only when the dental treatment being sought or provided is outside his area of expertise. The order also requires Morvant and his staff to undergo training on the treatment of persons with HIV or AIDS, infection control in the dental workplace, and the ethical duty to treat persons with HIV or AIDS.

**Mississippi Medical Center will Provide Interpreters for Child Birth Classes --** The U.S. Attorney's Office for the Southern District of Mississippi reached an agreement with Central Mississippi Medical Center resolving a complaint that the Center denied a request for an interpreter by a deaf individual wishing to attend child birth classes. The Center, located in Jackson, will institute a policy to ensure that individuals will receive the auxiliary aids and services needed for effective communication, including sign language interpreters. For courses or seminars offered by the Center, no more than 48 hours prior notice will be required to receive an interpreter. The Center will also provide ADA training to its employees and pay \$1,000 in damages to the complainant.

**Oregon Obstetrician Pays Damages in Interpreter Suit --** The Disability Rights Section and the U.S. Attorney for the District of Oregon intervened in and, at the same time, settled a lawsuit, Drew v. Merrill, challenging a Portland obstetrician's refusal to provide a sign language interpreter for medical consultations with a nondisabled, expectant mother and a deaf father. The suit was resolved through a consent decree reached through formal mediation under which Perinatal Associates agreed to institute a policy of providing sign language interpreters for deaf patients or their partners who are deaf to ensure effective communication; provide training for doctors and staff on the requirements of the ADA; and pay \$25,000 in damages to the plaintiffs.

### **3. Being Free from Unnecessary Institutionalization**

**Supreme Court Declares that Unjustified Isolation Is Discrimination --** In Olmstead v. L.C., the Supreme Court ruled that the ADA's "most integrated setting appropriate" mandate required States to avoid undue institutionalization of people with disabilities. As urged by the Department in its amicus brief, the Court upheld the ruling of the U.S. Court of Appeals for the Eleventh Circuit that Georgia may have violated the ADA by confining two individuals with mental disabilities in an institution rather than providing services through a community-based program as recommended by the State's treating professionals. In finding that unjustified isolation is a form of discrimination under the ADA, the Court pointed to the stigma of unworthiness, and the unequal access to family and social interaction, employment, education, and cultural enrichment that result from unnecessary institutionalization. According to the Court, an institutional placement is unjustified when the State's treatment professionals have determined that community placement is appropriate, the transfer is not opposed by the individual, and the placement can be accomplished without fundamentally

altering the State's program. In applying the fundamental alteration defense, courts are to consider not only the expense of providing community-based care to the plaintiffs in a particular case, but also the "need to maintain a range of facilities for the care and treatment of persons with diverse disabilities" and "the States' obligation to administer services with an even hand."

## **F. Enjoying Equal Access to Child Care**

**The ADA protects children with disabilities from discrimination in admission to child care and guarantees reasonable modifications in policies, practices, and procedures to allow full participation in child care programs. The Department has pressed for an end to HIV discrimination and for reasonable efforts by child care providers to accommodate children with diabetes, asthma, food allergies, and other disabilities requiring monitoring, medication, or other assistance.**

**Child Care Chain Agrees to Glucose Testing --** The Department reached an agreement with KinderCare, the nation's largest proprietary child care provider, that will allow children with diabetes to enroll at any of KinderCare's 1100 centers nationwide. The 1996 agreement required KinderCare to perform finger-stick tests at the request of parents in order to monitor the blood sugar level of their children and to take appropriate action. It does not require that KinderCare administer insulin injections. KinderCare also agreed to engage in a three-year ADA training initiative for its employees and to appoint a disability services coordinator. The agreement resolved a Department of Justice investigation and a private lawsuit brought by the American Diabetes Association, its Ohio affiliate, and the next friend of Jesi Stuthard. Jesi had been denied the opportunity to attend a KinderCare Learning Center near Columbus, Ohio, because of his diabetes and KinderCare's refusal to perform glucose monitoring.

**California Law Accommodates Glucose Testing by Child Care Centers --** A 1997 California law exempts blood glucose testing from the category of “incidental medical procedures” that cannot be done outside the presence of a licensed health care professional. The legislation followed a finding by the Department of Justice that California was violating the ADA by maintaining a licensing program that made it illegal for child care providers to perform blood glucose finger-stick tests for children with diabetes in their care, unless the tests were done under the direct supervision of a licensed nurse or physician. Such tests are required under the ADA as a reasonable policy modification necessary to integrate children with diabetes into mainstream day care centers. This restriction came to the Department's attention after it reached a settlement agreement with KinderCare Learning Centers. KinderCare was told by the California Department of Social Services that if it complied with the agreement, its child care licenses would be revoked.

**Nationwide Child Care Agreement Accommodates Children with Food Allergies, Diabetes, other Disabilities --** The Department reached an agreement with La Petite Academy, Inc., the nation's second largest child care provider, protecting the rights of children with severe food allergies and other disabilities, including diabetes and cerebral palsy. La Petite Academy, Inc., which operates over 750 day care centers nationwide, has agreed to administer epinephrine, a form of adrenaline, to those children who experience life-threatening allergic reactions to certain foods, such as peanuts, or bee stings. If authorized by parents and a physician, La Petite staff will use a small pen-like device (sold as Epipen, Jr., or under other names) that carries a premeasured dose of epinephrine to alleviate a reaction. The staff person simply removes a safety cap and presses the pen against the thigh of the child, discharging the epinephrine. The 1997 agreement awards damages of \$55,000 to five children who were allegedly affected by La Petite's lack of

reasonable modifications for children with disabilities. Three were children whose food allergies prevented them from enrollment without the availability of the Epipen, Jr. Two were children with cerebral palsy, who were denied reasonable modifications in policies, practices, and procedures that would enable them to continue in child care. La Petite also adopted a policy for administering finger stick tests to measure the blood glucose levels of children with diabetes.

**DOJ Document — “Commonly Asked Questions About Child Care Centers and the ADA,” released in conjunction with the 1997 White House Conference on Child Care, provides a broad range of information about the ADA obligations of child care programs.**

**Wisconsin Child Care Center Will Assist with Leg Braces, Diapering --** The Department reached an agreement resolving a complaint filed by the mother of a child with cerebral palsy against the Sunshine Child Center in Gillette, Wisconsin. The complainant alleged that the center refused to put on and remove leg braces that her daughter needed to walk. The complaint also stated that the center, which provides separate services to children three years old and younger and children ages four through 12, intended to keep her child with the younger group of children even after her fourth birthday, because, due to her disability, she required diaper-changing at a later age than other children at the center. The agreement required the Sunshine Child Center to offer to readmit the girl, who was removed by her mother following the center's alleged discrimination. It also required the center to put on and remove the child's leg braces, if necessary, and to provide the same service to other children with the same need for assistance. In addition, the center agreed to provide diaper changing to children who require the service more frequently and/or at a later age than other children due to disabilities, without segregating them from

children in their age group; to publish a policy of nondiscrimination on the basis of disability at the center and in printed advertisements of its services; to remove certain barriers to access discovered during the Department's investigation; and to ensure that a newly-constructed facility built to house the center complied fully with the ADA Standards for Accessible Design.

### **After-School Program Reinstates Nine-year-old with Multiple Disabilities --**

The Department participated as amicus curiae in this suit against a major daycare provider challenging the exclusion of a nine-year old boy because of his disabilities. KinderCare had decided to terminate Jeremy Orr, a child who has developmental disabilities, low vision, and a mild seizure disorder, from its after-school program. He needed assistance in eating, walking, diapering, and interacting with other persons. After six months of serving Jeremy in its two-year-old room, KinderCare argued that it could not meet Jeremy's individualized needs in "a group care setting." KinderCare also refused to modify its procedures to accommodate an aide for Jeremy proposed by his parents. This aide would be provided by a third party with full State support. The Department argued that Jeremy's presence had not fundamentally altered KinderCare's program and that accommodating an aide for Jeremy in the future also would not fundamentally alter KinderCare's program. The court entered a preliminary injunction that ordered KinderCare to retain Jeremy pending trial. Under a consent decree resolving the lawsuit, KinderCare agreed to retain Jeremy Orr in its after-school program and allow him to be accompanied by an aide funded by the State.



**Jeremy at his after-school program**

He was also to be allowed to attend the program in an age-appropriate classroom when the aide was present, and the two-year olds' room when the aide was not present. KinderCare agreed to mandatory staff training and periodic conferences with Jeremy's parents regarding how best to include him in program activities. Without admitting liability, KinderCare agreed to pay damages and attorney's fees to the Orrs.

**"As a parent, the biggest benefit I received was in the day to day observation of his inclusion and acceptance by other children ... I know Jeremy has made an impact on the children in his community because when we go to the store or public events or when he is attending public school, some child will yell out "Hey Jeremy!**

**How are you?" I usually don't know or recognize the child, but it's enough for me to know that they know Jeremy."**

**-- Sherry Johnstone, Jeremy's mother.**

### **Three Wisconsin Centers Will Admit Children with HIV**

-- The U.S. Attorney for the Western District of Wisconsin entered into a consent decree resolving a lawsuit filed against ABC Nursery, Inc., in Beloit, Wisconsin, for allegedly refusing to admit a three-year-old boy because he had tested positive for HIV. Earlier, consent decrees were filed involving two other Beloit child care centers, resolving similar allegations of discrimination against the same child. All three centers agreed that a child with HIV infection is disabled under the ADA and that such a child cannot be refused admission to child care programs because of his or her HIV-positive status. The three centers agreed to sponsor, with the participation of the U.S. Attorney's Office, an informational meeting in Beloit for interested child care providers, parents, and staff to discuss the ADA and HIV.

**Child Care Center Ordered to Admit Child with Asthma** -- The U.S. District Court for the Northern District of California in Alvarez v. Fountainhead, Inc., ordered a California child care center to modify its “no medications” policy and enroll a child who has asthma and uses an inhaler. It also ordered the center to provide a one-hour training session for its staff on the nature of asthma and the supervision of children who use albuterol inhalers. Fountainhead Child Care Center prohibited teachers from assisting in the administration of any medication to children enrolled in its program and required parents to either come to the facility to administer any necessary medication, forgo medication while the child is at preschool, or not enroll the child.

Jeremy Alvarez, the four-year-old child in this case, was able to use the inhaler himself, but required monitoring for signs of wheezing and supervision while he used the inhaler. The Department argued in an amicus brief in support of the child that the minimal monitoring and supervision required in this case would be reasonable and not fundamentally different from the responsibilities that all child-care operators have for the safety and well-being of their students.

**“I was really happy that the ADA was there. It helped us and will prevent others like Jeremy from having to go through such an ordeal.”**

**-- Jeremy Alvarez’s mother, who worried that her son would not be able to go to the child care center because no one would take her complaint seriously.**



**Jeremy Alvarez is now free to use his inhaler at the child-care center.**

## G. Protecting the ADA and Making it Work

**The Department seeks every opportunity to maintain and expand the effectiveness of the ADA. The Department has fought nationwide to uphold the constitutionality of ADA suits against States. It has also actively pursued alternative dispute resolution to increase ADA compliance.**

### 1. Defending the ADA’s Constitutionality

**Supreme Court Will Review Constitutionality of ADA Damages Suits Against States** -- The Supreme Court will review the decision of the U.S. Court of Appeals for the Eleventh Circuit in Garrett v. University of Alabama at Birmingham, which upheld the constitutionality of lawsuits brought by individuals seeking damages awards from States. The Department intervened to defend the ADA in numerous suits nationwide, including Garrett. Most appellate courts have agreed with the Department and upheld the

ADA suits against States. Garrett is a consolidation of two employment suits against Alabama State agencies. One involves the alleged discriminatory demotion of an individual with breast cancer by the University of Alabama, and the other a claim that the Alabama Department of Youth Services failed to reasonably accommodate an individual with chronic asthma. States have argued that, because the ADA’s protections go beyond the equal protection rights guaranteed by the Fourteenth Amendment, Congress lacks authority to subject them to lawsuits under the ADA. The Department, however,

believes that the ADA is constitutionally appropriate legislation to remedy the history of pervasive discrimination against people with disabilities, and almost all of the appellate courts have agreed.

## 2. Building a Mediation Option

**Expanded Mediation Gets Results --** The Department's voluntary ADA Mediation Program provides an efficient, effective, voluntary alternative way to resolve complaints under the ADA. Increased funding has allowed the Department to refer over 1,000 complaints to mediation in virtually every rural and urban area of the country. Over 80% of the cases in which mediation has been completed were successfully resolved.

The ADA Mediation Program has resulted in the elimination of architectural, communication, and attitudinal barriers for hundreds of people with all types of disabilities throughout the country, while allowing the Department to achieve meaningful compliance with the law without the expense and delay frequently associated with formal investigation and litigation.

The ADA Mediation Program is focused on the local community where people live, work, and play. After determining a complaint is appropriate for mediation, the Department formally contacts both parties, offering the opportunity to resolve the complaint through mediation. Under a contract with the Key Bridge Foundation, the complaints are then referred for mediation locally by the more than 450 experienced professional mediators participating in the program, all of whom have been trained in the legal requirements of the ADA. Mediators are supervised by the Key Bridge Foundation in consultation with the Department of Justice to assure quality of service and compliance with the ADA.

**“I had been skeptical of using mediation. I am now convinced that it has great value. The mediator was a very capable person and played a major role in the successful conclusion.”**

**A person who is a wheelchair user**

Mediation places responsibility on the shoulders of both parties who control, with the assistance of the mediator, both the process and the outcome of the mediation. This cooperative approach requires parties to talk with each other and work cooperatively; gives an opportunity for both sides to begin to understand each other; and can preserve, rather than sever, the relationship between the parties. The very structure of mediation helps alter perceptions and change attitudes. Successful mediations produce win-win results.

**“This has been a very educational experience. I now have an insight on disabilities and want to do what I can to comply.”**

**A business owner**

The following are examples of results reached through mediation in the areas of barrier removal, provision of effective communication, and modification of policies, practices and procedures --

A wheelchair user complained that a Virginia condominium sales office did not have an accessible entrance. The condominium builder agreed to renovate the sales office entrance to make it accessible. The builder agreed to display a sign stating the policies they have created to comply with the ADA. The policies include providing auxiliary aids and services upon request as needed to ensure effective communication, making informational videos available upon request, and providing a method of requesting other accommodations. The builder agreed to donate \$2,500 to a disability rights organization and to pay the complainant \$1,000.

In Arkansas, wheelchair users complained that a restaurant did not have an accessible entrance. The owner agreed to install a ramp and to properly mark accessible parking spaces and the paths of travel. The owner also agreed to work with the complainants when planning any major renovations in the future and to provide disability awareness training for all employees.

A person who is deaf complained that a Nebraska dentist's office refused to provide effective communication during an office visit. The dentist agreed to institute a policy ensuring compliance with the ADA and to attend training on both the requirements of the ADA and disability awareness. She agreed to join with a disability rights lawyer in conducting four presentations for professional organizations on the ADA and dentists, wrote a letter of apology to the complainant, and agreed to pay the complainant \$100.

A person with a vision impairment complained that a Mississippi restaurant denied her access and service because she used a service animal. The owner agreed to display a sign in the establishment stating that service animals are welcome and agreed to instruct all his employees that people who use service animals are to be welcomed, seated, and served in the same manner as all customers.

In New York, a wheelchair user complained that the accessible door to the lobby housing a bank's ATM machine was locked after business hours, leaving only an inaccessible revolving door for access after business hours. The bank agreed to keep the accessible entrance door open 24 hours a day and to install directional signage.

## II. Certification Highlights

**The ADA specifically recognizes the importance of the built environment in enabling people with disabilities to participate in the mainstream of American life. The ADA requires new or altered places of public accommodation and commercial facilities to comply with the Department's ADA regulations, including the ADA Standards for Accessible Design. In many cases, these facilities are also subject to accessibility requirements established under State or local laws. To facilitate compliance with both Federal and local laws, the ADA authorizes the Justice Department, upon request of State or local officials, to certify that State or local accessibility laws meet or exceed the requirements of the ADA.**

Eleven States have now requested code certification. The Department has certified the accessibility codes of Washington, Texas, Maine, and Florida. Requests from California, Indiana, Minnesota, New Jersey, New Mexico, North Carolina, and Maryland are under review.

Certification has several advantages, including --

- Facilitating compliance by putting the Federal and local requirements in a single, readily available document. Rather than searching both local codes and the Federal regulations for the requirements for each element of a building, designers and builders need only refer to a single certified code;
- Ensuring that accessible design is part of each plan — not an afterthought. This enables designers and builders to provide accessibility in the most cost-efficient manner. The cost of compliance in the early

stages of design and construction is minimal. However, the cost of problems discovered after construction is completed can be significant;

- Shifting the burden of reconciling differences between local and Federal requirements from the builders and designers to the Department of Justice and the responsible local building authority. By resolving conflicts between State and Federal laws, certification lets builders and designers focus on building, rather than on deciding what to do when the Federal and local requirements conflict; and
- In an enforcement proceeding, compliance with a certified code will constitute rebuttable evidence of compliance with the ADA.

In implementing its authority to certify codes, the Department works closely with State and local officials, providing extensive technical assistance to enable them to make their codes equivalent to the ADA. In addition, the Department responds to requests for review of model codes and provides informal guidance to assist private entities that develop model accessibility standards to make those standards equivalent to the ADA.

## III. Technical Assistance Highlights

**The ADA mandated the establishment of an unprecedented technical assistance program to educate businesses, government agencies, and people with disabilities about their rights and responsibilities under the Act. Educating entities covered by the Act about their obligations and educating people with disabilities about their rights have been top priorities for the Department of Justice.**

In the past ten years, the Department --

- Established the toll-free ADA Information Line in 1994 that averages 110,000 calls each year from the public;
- Established the ADA Home Page in 1996 that received over 6 million visits last year;
- Published more than 40 technical assistance publications, and disseminated several million copies, including technical assistance manuals, an *ADA Guide for Small Businesses*, an *ADA Guide for Small Towns*, *A Guide to Disability Rights Laws*, and a series of question-and-answer publications on a wide variety of issues;
- Developed public service announcements about the ADA featuring President Clinton and Attorney General Reno and disseminated them to TV and radio stations across the country;
- Provided \$12 million to trade associations, disability rights groups, and other organizations to develop and disseminate 130 guides and fact sheets and 20 educational videotapes aimed at educating hotels and motels, grocery stores, restaurants, retail stores, dry cleaners, travel agents, medical professionals, child care providers, small businesses and other service providers, builders and contractors, town and city officials, courts, law enforcement, emergency response centers, people with disabilities, and other groups that are affected by the ADA;
- Developed *My Country*, a documentary on people with disabilities' struggle for equality that aired on public television stations across the country in 1997 and 1998;
- Placed a collection of 94 ADA publications developed by the Department, its grantees, and other federal agencies in 15,000 local public libraries, and sent a selection of 33 publications to 6,000 Chambers of Commerce around the country;
- Each year for the past seven years, notified six million businesses through IRS mailings of their ADA responsibilities and how to obtain information about specific ADA concerns or issues;
- Translated and reproduced ADA publications in Spanish, Cambodian, Chinese, Hmong, Japanese, Korean, Laotian, Tagalog, and Vietnamese for language-minority communities;



**A sampling of ADA technical assistance publications**

- Conducted training seminars, answered questions, disseminated information, and promoted awareness of the ADA nationwide at over 1000 meetings of minority, disability, and professional organizations, and trade organizations representing business and government; and
- Reviewed hundreds of ADA publications, scripts, and videos developed by other agencies, grantees, and Disability and Business Technical Assistance Centers to ensure their legal and technical accuracy.

## ADA Home Page

An ADA home page is operated by the Department on the Internet's World Wide Web ([www.usdoj.gov/crt/ada/adahom1.htm](http://www.usdoj.gov/crt/ada/adahom1.htm)). The home page provides information about:

- the toll-free ADA Information Line;
- the Department's ADA enforcement activities;
- the ADA technical assistance program;
- certification of State and local building codes;
- proposed changes in ADA regulations and requirements; and
- the ADA mediation program.

The home page also provides direct access to:

- ADA regulations, the ADA Standards for Accessible Design, and technical assistance materials (which may be viewed online or downloaded for later use);
- Freedom of Information Act (FOIA) ADA materials; and
- Links to the Department's press releases, and Internet home pages of other Federal agencies that contain ADA information.

## ADA Information Line

The Department of Justice operates a toll-free ADA Information Line to provide information and publications to the public about the requirements of the ADA. Automated service, which allows callers to order publications, is available 24 hours a day, seven days a week. ADA specialists are available on Monday, Tuesday, Wednesday, and Friday from 10:00 a.m. until 6:00 p.m. and on Thursday from 1:00 p.m. until 6:00 p.m. (Eastern Time). Spanish language service is also available.

To obtain general ADA information, get answers to technical questions, order free ADA materials, or ask about filing a complaint, call:

800-514-0301 (voice)  
800-514-0383 (TTY)

**A State university administrator did not know how to accommodate a student who uses a wheelchair -- so he called the ADA hotline. An ADA specialist suggested moving courses to accessible sites as well as setting up meetings with students and staff to identify possible obstacles that limit campus access. Two weeks later, the administrator called back to say that the first meeting was a success, not only for the students, but for the school because it dispelled the myth that providing program access would be too costly.**

## ADA Fax On Demand

The ADA Information Line Fax Delivery Service allows the public to obtain free ADA information by fax 24 hours a day, seven days a week. By calling the number for the ADA Information Line and following the directions, callers can select from among 32 different ADA technical assistance publications and receive the information, usually within minutes, directly on their fax machines or computer fax/modems. A list of available documents and their code numbers may also be ordered through the ADA Information Line.

Currently, the FOI/PA Branch maintains more than 10,000 pages of ADA material. The records are available at a cost of \$0.10 per page (first 100 pages free). Please make your requests as specific as possible in order to minimize your costs.

The FOI/PA Branch also provides access to ADA materials on the World Wide Web at [www.usdoj.gov/crt/foia/records.htm](http://www.usdoj.gov/crt/foia/records.htm). A link to search or visit this website is provided from the ADA Home Page.

## Publications and Documents

Copies of the Department's ADA regulations, ADA Standards for Accessible Design, and technical assistance publications, including the Technical Assistance Manuals for titles II and III, can be obtained by calling the ADA Information Line, visiting the ADA Home Page, or writing to the address listed below. All materials are available in standard print as well as large print, Braille, audiotape, or computer disk for persons with disabilities.

Disability Rights Section  
Civil Rights Division  
U.S. Department of Justice  
P. O. Box 66738  
Washington, D.C. 20035-6738

Copies of the legal documents and settlement agreements mentioned in this publication can be obtained by writing to:

Freedom of Information/  
Privacy Act Branch  
Administrative Management Section  
Civil Rights Division  
U.S. Department of Justice  
P.O. Box 65310  
Washington, D.C. 20035-5310  
Fax: 202-514-6195

## IV. Other Sources of ADA Information

The **Equal Employment Opportunity Commission** offers technical assistance to the public concerning the employment provisions of title I of the ADA.

ADA documents  
800-669-3362 (voice)  
800-800-3302 (TTY)

ADA questions  
800-669-4000 (voice)  
800-669-6820 (TTY)

[www.eeoc.gov](http://www.eeoc.gov)

The **Federal Communications Commission** offers technical assistance to the public concerning the communication provisions of title IV of the ADA.

ADA documents and questions  
888-225-5322 (voice)  
888-835-5322 (TTY)

[www.fcc.gov/cib/dro](http://www.fcc.gov/cib/dro)

The **U.S. Department of Transportation** through the **Federal Transit Administration** offers technical assistance concerning the transportation provisions of title II and title III of the ADA.

ADA Assistance Line for  
information or complaints  
888-446-4511 (voice/relay)

[www.fta.dot.gov/office/civ.htm](http://www.fta.dot.gov/office/civ.htm)

The **U.S. Architectural and Transportation Barriers Compliance Board**, or **Access Board**, offers technical assistance to the public on the ADA Accessibility Guidelines.

ADA documents and questions  
800-872-2253 (voice)  
800-993-2822 (TTY)

[www.access-board.gov](http://www.access-board.gov)

The **Disability Rights Education and Defense Fund ADA Hotline** is funded by the Department of Justice to provide technical assistance to the public on all titles of the ADA.

ADA technical assistance  
800-466-4232 (voice & TTY)

[www.dredf.org](http://www.dredf.org)

The **Disability and Business Technical Assistance Centers** are funded by the U.S. Department of Education through the National Institute on Disability and Rehabilitation Research (NIDRR) in ten regions of the country to provide resources and technical assistance on the ADA.

ADA technical assistance  
800-949-4232 (voice & TTY)

[www.adata.org](http://www.adata.org)

**Project ACTION** is funded by the U.S. Department of Transportation to provide ADA information and publications on making transportation accessible.

Information on accessible transportation  
 800-659-6428 (voice/relay)  
 202-347-3066 (voice)  
 202-347-7385 (TTY)

[www.projectaction.org](http://www.projectaction.org)

The **Job Accommodation Network (JAN)** is a free telephone consulting service funded by the President's Committee on Employment of People with Disabilities. It provides information and advice to employers and people with disabilities on reasonable accommodation in the workplace.

Information on workplace accommodation  
 800-526-7234 (voice & TTY)

<http://janweb.icdi.wvu.edu/english>

## V. How to File Complaints

### Title I

Complaints about violations of title I (employment) by units of State and local government or by private employers should be filed with the Equal Employment Opportunity Commission. Call 800-669-4000 (voice) or 800-669-6820 (TTY) to reach the field office in your area.

### Titles II and III

Complaints about violations of title II by units of State and local government or violations of title III by public accommodations and commercial facilities should be filed with --

Disability Rights Section  
 Civil Rights Division  
 U.S. Department of Justice  
 Post Office Box 66738  
 Washington, D.C. 20035-6738

If you wish the complaint to be resolved through the Department's ADA Mediation Program, please mark "Attention: Mediation" on the outside of the envelope.