

ARTICLES & ESSAYS: Washington Lawyer's Committee 50th Anniversary: Disability Rights Project

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INTRODUCTION

I. BACKGROUND OF THE COMMITTEE'S DISABILITY RIGHTS PROJECT

The Washington Lawyers' Committee has established itself as a major advocate for the rights of people with disabilities. With its Disability Rights Project, the Committee has been able to work with this community to establish important landmarks and critical victories by improving access to public accommodations and state and local government services for people with disabilities. This area of civil rights advocacy and litigation, although more recent, has achieved remarkable successes ¹ in the recent history of the Committee.

In 1990, Congress passed the landmark Americans with Disabilities Act ("ADA"). ² By securing for people with disabilities the same access to public accommodations and services that others take for granted, the ADA ensured that people with disabilities would no longer be denied their rights to choose where to shop, eat, and be entertained, among other critical facilities of daily living. ³ In the fall of 1992, after finding that the ADA aligned with its principles of fighting for disenfranchised persons, the Committee assisted in forming a new client organization, the Disability Rights Council of Greater Washington. The mission of the Disability Rights Council ("DRC") was to focus on a range of educational and advocacy programs covered by the ADA, as well as other statutory protections affecting

¹ The Committee has litigated many other extraordinarily important cases to remedy housing or employment discrimination against persons with disabilities. These are outlined in the articles discussing the Committee's Fair Housing and Employment projects.

² Americans with Disabilities Act, Pub. L. No., 101-336, **104 Stat. 327**, (1990) (codified as amended at [42 U.S.C. § 12101](#)).

³ See [42 U.S.C. § 12101\(a\)\(3\)](#) (finding that "discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services.").

people with disabilities. The Committee began its work with the DRC by providing it with general counsel and pro bono litigation support to advance the rights of people with disabilities. The early cases discussed below were instrumental in helping the DRC and the Committee formulate litigation strategies and set precedent for greater disability rights achievements in future matters. These strategies and precedent in turn improved access to government services, medical providers, and prisons, as well as important public accommodations such as stores, restaurants, hotels, and entertainment venues.

[*237] Several years later, in response to its growing disability rights caseload, the Committee established a dedicated Disability Rights Project to litigate the DRC and other disability rights cases. The 1996 formation of the Committee's Disability Rights Project marked the beginning of the Committee's growing emphasis on enforcing new rights established by the ADA. In 2005, the DRC merged with the Equal Rights Center ("ERC"), forming what many regarded as the premier civil rights investigative agency in the Washington, D.C. area.⁴ The ERC's core mission was - and to this day remains - to identify unlawful and unfair discrimination through civil rights testing.⁵ The ERC used focused investigations and testers to identify systemic denials of disability rights.⁶ Together, the Committee's Disability Rights Project and its client the DRC (later the ERC) have been able to substantially change the lives of people with disabilities in the D.C. metropolitan area and throughout the country.

The Committee credits much of its success over the years to its committed staff and volunteer attorneys known as cooperating counsel. Beyond simply dedicating their time, energy, and resources, these attorneys had the drive, willingness, and passion to challenge the status quo and materialize the ADA's promises for a multitude of people. The litigation model used by the Committee since early in its history proved especially useful in the relatively new and untested area of disability rights. The Committee staff working with the Project, along with their close colleagues at the DRC and ERC concentrated a great deal of issue expertise. The partnership between cooperating counsel and expert Committee staff permitted a high degree of leverage, spreading the Committee's limited staff resources across a wide array of actively investigated and/or litigated matters.

Elaine Gardner served as director of the Disability Rights Project from 1996 to 2013. In her role, Elaine brought both a broad background in disability rights laws and a warm relationship with the deaf community to the Committee. From 2014 to August 2018, Deepa Goraya, Associate Counsel at the Committee, continued this work, along with many Committee staff members and cooperating counsel, to enforce the rights of people with disabilities, focusing in particular on improving the accessibility of websites, mobile applications, touch **[*238]** screen kiosks, and other digital technology for individuals who, like her, are blind. The Committee's energetic and committed clients have also substantially enhanced the Project's ability to achieve its successes. Marc Fiedler, a prominent District of Columbia trial attorney who uses a wheelchair, has played a crucial leadership role as the Chairman of the Disability Rights Council of the ERC, and served as named plaintiff in many of the Committee's cases. The ERC innovated research and investigation techniques, which formed the basis for many of the Committee's fair housing and disability rights cases. The Committee's disability rights successes could not have been achieved without the contributions and commitment of these, and many other, individuals.

II. LEGAL LANDSCAPE: THE AMERICANS WITH DISABILITIES ACT

The ADA was "the nation's first comprehensive civil rights law addressing the needs of people with disabilities [by] prohibiting discrimination in employment, public services, public accommodations, and telecommunications."⁷

⁴ Equal Rights Center, About Us, <https://equalrightscenter.org/about-us/> (last visited Oct. 30, 2018).

⁵ Id.

⁶ Id.

⁷ Equal Employment Opportunity Commission, The American with Disabilities Act of 1990, The 1990s: New Laws, New Strategies, <https://www.eeoc.gov/eeoc/history/35th/1990s/ada.html> (last visited Oct. 30, 2018).

Prior to the ADA, there was widespread and systemic discrimination against people with disabilities. As Robert L. Burgdorf, Jr., regarded by the U.S. Supreme Court as the original drafter of the ADA, ⁸ wrote:

Children with disabilities were systematically excluded from American public schools

State residential treatment institutions for people with disabilities were generally abysmal. Large state facilities, typically located in rural areas with high walls and locked wards that isolated the residents from the rest of society, were primitive and often unsanitary, dangerous, overcrowded and inhumane

Most public transportation systems made few, if any, accommodations for persons with disabilities, resulting in a transportation infrastructure that was almost totally unusable by people with mobility or visual impairments--a situation that was mirrored in inaccessible private transportation services including taxis, ferries and private buses. Government buildings, public monuments and parks had generally been designed and built without taking into account the [*239] possibility that people with disabilities might want or need to use them. Flat or ramped entrances into stores and businesses were the exception rather than the rule. Curb cuts or ramps on sidewalks were extremely rare, often forcing people who used wheelchairs to make their way on streets, where they faced the peril of being hit by motor vehicles. ⁹

Nor were there many legal remedies for people who faced discrimination as a result of their disability before the passage of the ADA. The Rehabilitation Act of 1973 ¹⁰ provided some remedies, but only against entities that receive federal financial support. Similarly, the Fair Housing Act ¹¹ provided some relief, but only for certain cases of housing discrimination, i.e., the failure to provide a "reasonable accommodation" based on a renter's disability. The framers of the ADA recognized a need for comprehensive legislation to directly address the inequalities faced by people with disabilities, and to extend the protections provided by earlier laws. They therefore leveraged the most advantageous pieces of the existing civil rights statutes to provide broader protection for people with disabilities, resulting in the major provisions of the ADA as it exists today: Title I, which prohibits employment discrimination ¹²; Title II, which covers the activities and services of state and local governments ¹³; and Title III, which addresses the accessibility of places of public accommodation. ¹⁴ The cases discussed in this article were brought by the Committee and primarily litigated under these provisions of the ADA and its implementing regulations, as well as the Rehabilitation Act and the D.C. Human Rights Act. ¹⁵

⁸ [Sutton v. United Airlines, 527 U.S. 471, 484-85 \(1999\)](#).

⁹ Robert L. Burgdorf, Jr., Why I Wrote the Americans with Disabilities Act, Wash. Post: PostEverything (July 24, 2015), https://www.washingtonpost.com/posteverything/wp/2015/07/24/why-the-americans-with-disabilities-act-mattered/?noredirect=on&utm_term=.7af6665be8f9.

¹⁰ **29 U.S.C. § 794.**

¹¹ [42 U.S.C. §§3601-3619](#).

¹² [42 U.S.C. §§12111-12117](#). Title I prohibits discrimination against "a qualified individual with a disability" in application procedures, hiring, advancement and discharge, training, and in other terms and conditions of employment. **42 U.S.C. § 12112(a)**.

¹³ [42 U.S.C. §§12131-12165](#). Title II prohibits discrimination against a qualified individual with a disability in services, programs, or activities of a state or local government, or in the departments, agencies, or instrumentalities of a state or local government. [42 U.S.C. § 12132\(a\)](#).

¹⁴ [42 U.S.C. §§12181-12189](#). Title III prohibits discrimination on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases, or operates a place of public accommodation. [42 U.S.C. § 12182\(a\)](#).

¹⁵ D.C. Code § 2-1401 (prohibiting various acts of discrimination against people with disabilities).

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CASE DISCUSSIONS

I. PUBLIC ENTITIES: PRISONS & PUBLIC SERVICES

A. Prisons

The Committee has secured a number of legal victories that have significantly improved prison conditions for people with disabilities. With both a Disability Rights and a Prisoners' Rights Project, the Committee had broad expertise in both the disability and prisoner rights fields, and was uniquely situated to bring early litigation addressing these important issues. The Committee fought to obtain settlements requiring that a number of prisons install assistive technologies, such as videophones, for deaf and hard-of-hearing inmates. The Committee has also helped to ensure that more sign language interpreters are available in prisons, and that visual notifications and other auxiliary aids are available and used more frequently to improve communication among inmates and correctional officers. The following cases illustrate the important work of the Committee and cooperating counsel on behalf of prisoners with disabilities.

Minnis v. Virginia Department of Corrections,¹⁶ was a landmark case filed by the Committee and cooperating counsel as a putative class action on behalf of deaf inmates at the Powhatan Correctional Center in State Farm, Virginia ("Powhatan"). As a result of this settlement, Virginia's was the first major prison system in the United States to install videophones, along with providing other forms of substantial relief. This action continues to serve as a model for correctional facilities throughout the country.

The litigation arose out of the Virginia Department of Correction's ("VDOC") failure to provide inmates who were deaf or hard-of-hearing with adequate means to communicate with individuals outside of the prison. The VDOC provided only outdated text telephone devices, known as teletypewriters or "TTY" machines, which were no longer in use by the general deaf community, and which could not provide the deaf inmates with meaningful access to telephone services. The VDOC also failed to provide adequate access to qualified American Sign Language ("ASL") interpreters at Powhatan for medical appointments, educational and mental health programs, and religious [*241] programs in violation of the ADA. The VDOC's policy was to provide one sign language interpreter at Powhatan on only one day a week for six hours, despite having 15-20 deaf individuals in VDOC custody at any given time. Therefore, each of the deaf individuals on average, had only 25 minutes per week during which they could clearly communicate with and understand Powhatan staff, counselors, and medical personnel. The VDOC also refused to provide deaf individuals in its custody with adequate visual notification of daily events and safety announcements. The VDOC compounded these discriminatory practices by concentrating the deaf men in its custody at the medium-security Powhatan facility - even though, in accordance with VDOC guidelines, similarly situated hearing individuals were assigned to lower security facilities, where they were able to enjoy greater freedom.

The settlement, which was finalized in 2010, was a landmark victory that significantly improved the conditions of deaf inmates at Powhatan.¹⁷ As a result of the settlement, the prison became the first major correctional facility in the United States to have a videophone so that deaf inmates could communicate with family and others outside the prison using ASL, which for many deaf people can be their only language. The settlement provided damages to all of the deaf inmates as well as attorney's fees. The settlement also provided the inmates with ASL interpreters two full days a week, sign-language interpretation of rules, disciplinary and release proceedings, medical appointments, and educational and vocational instruction. The settlement also made Video Remote Interpreting ("VRI") services available 24 hours a day for emergency communications, and provided for visual notifications for meals and events.

¹⁶ *Minnis v. Johnson*, No. 1:10-CV-00096 (E.D.Va. filed Jan 29, 2010). This case is commonly referred to as *Minnis v. Virginia Department of Corrections*.

¹⁷ Wash. Law. Comm., 4th Quarter 2010 Q. Rep. at 15.

In *Jarboe v. Maryland Department of Public Safety & Correctional Services*,¹⁸ the Committee, working closely with the National Association of the Deaf, similarly expanded access to services for deaf and hard-of-hearing inmates in Maryland. In 2012, after nearly ten years of complaints to Maryland Department of Public Safety & Correctional Services ("DPSCS") officials and to the U.S. Department of Justice ("DOJ") without success, a group of current and former deaf and hard-of-hearing inmates at DPSCS facilities filed a putative class action lawsuit in federal court in Baltimore, alleging violations of the [*242] ADA as well as other federal and constitutional claims. DPSCS facilities had provided inadequate services to the deaf and hard-of-hearing for years, making it impossible for the prisoners to fully participate in the prison system. DPSCS was not providing videophones or updated communication technology to allow deaf and hard-of-hearing inmates to communicate with their loved ones. Deaf and hard-of-hearing inmates were also not provided with appropriate auxiliary services or aids to hear announcements or other alarms, such as meal time alerts, alarms or notifications of other prison activities. Additionally, deaf and hard-of-hearing inmates were unable to participate in prison programs and/or educational courses that could potentially assist in parole hearings, and provide them with job skills that could be transferable to employment outside of prison. This lack of services also impacted the inmates' ability to advocate for themselves in disciplinary proceedings and in the administration of healthcare. For instance, the failure to provide auxiliary aids or ASL interpreters meant that deaf and hard-of-hearing inmates could not understand charges against them in disciplinary proceedings or effectively communicate with healthcare professionals.

Procedurally, this case is noteworthy for the precedent it set regarding the doctrine of vicarious exhaustion. DPSCS and its co-defendants filed motions to dismiss that were denied on March 13, 2013. The decision was a significant one because it was the first in the 4th Circuit and among only a few cases nationwide to apply the doctrine of vicarious exhaustion in the context of prisoner litigation. The court ruled that not every named plaintiff needed to exhaust their claims administratively for every alleged grievance as long as some plaintiffs met the exhaustion requirement under the applicable statute - in this case, the Prison Litigation Reform Act of 1996. Following the decision on the motions to dismiss and some limited discovery, the parties engaged in court-ordered mediation. In 2015, the Committee, cooperating counsel and the National Association of the Deaf, successfully mediated the issues, resulting in a monetary settlement of \$ 142,500.00 to cover attorney's fees, costs, and damages stipends to the named plaintiffs.¹⁹ A detailed settlement agreement provided for: the installment of videophones and in-cell visual displays for announcements and other alerts; full utilization of pagers and close captioned devices; the provision of ASL interpreters and other auxiliary aids and services, [*243] prompt repair of hearing aids; quarterly meetings with deaf and hard-of-hearing inmates; and appropriate training for staff and prison guards. *Jarboe* was a painstakingly-fought case and one whose outcome was able to benefit not only deaf and hard-of-hearing inmates within the Maryland DPSPS system, but also all incarcerated plaintiffs in the Fourth Circuit.

The Project achieved another significant victory for deaf and hard-of-hearing inmates in *Berke v. Federal Bureau of Prisons*.²⁰ The Committee and cooperating counsel brought an action against the Federal Bureau of Prisons ("BOP") on behalf of Larry Berke, a deaf individual who was scheduled to serve time at a federal prison that lacked accommodations for deaf inmates. Mr. Berke asserted that the BOP discriminated against him by depriving him of qualified ASL interpreters and other aids, such as videophone technology, that were necessary for him to communicate upon his future placement into the BOP's custody. Mr. Berke alleged that the BOP violated the Rehabilitation Act and his rights to due process, free speech, and freedom from cruel and unusual punishment. Mr. Berke argued that he would be unable to communicate with medical staff, healthcare providers, educational instructors, correctional officers, and other members of the institution's staff because the prison did not have adequate auxiliary aids to allow for effective communication of deaf inmates. He would also be unable to communicate with his deaf family members without the videophone technology. The BOP agreed to transfer Mr. Berke to a different prison within the system and provide a number of accommodations he requested, such as visual alarms, closed-caption televisions, and other accommodations. The court ordered that Mr. Berke be provided

¹⁸ *Jarboe v. Maryland Dep't of Pub. Safety & Corr. Servs.*, No. 1:12-cv-00572 (D. Md. filed Feb. 23, 2012).

¹⁹ Wash. Law. Comm., 3rd Quarter 2015 Q. Rep. at 21.

²⁰ *Berke v. Fed. Bureau of Prisons*, No 1:12-cv-01347-ESH (D.D.C. filed Aug. 14, 2012).

access to sign language interpreter services during orientation, medical, disciplinary, and educational activities. Importantly, the court also ordered the BOP to perform a formal analysis to determine whether videophones could reasonably be installed for Mr. Berke's use without raising security issues. Finally, the court awarded Mr. Berke's attorney's fees and costs.²¹

B. Government Services and Programs

The Committee played an important role in securing increased access to public information and public programs for District of Columbia [*244] residents with disabilities. The Committee has fought to make public activities such as voting, receiving information from online sources, accessing D.C. buildings and services, and even participating in the D.C. Lottery, more accessible to people with disabilities.

In one of the first cases in the nation concerning accessible voting machines and polling places, the Committee and cooperating counsel obtained a settlement of alleged ADA violations in *American Ass'n of People with Disabilities v. District of Columbia Board of Elections and Ethics*.²² The suit sought to require that D.C. offer accessible voting machines so that voters with visual and manual impairments²³ could vote independently. The suit also sought to guarantee that all polling places in D.C. were accessible to voters with mobility impairments. For example, for many years, D.C. did not make its polling places accessible to people who could not access stairs. The settlement required that D.C. provide voting machines that were accessible to voters who are blind or have manual disabilities at every polling place. It also ensured greater access to D.C.'s polling places for people with mobility impairments. The case marked one of the first victories for voters with disabilities, who until this time had often had to rely upon the indignities and inequities of assistance inside the voting booth, or absentee or curbside balloting, in order to cast their votes. It also demonstrated the effectiveness of close collaboration between the Committee and advocacy groups; in this case, the American Association of People with Disabilities ("AAPD").

The Committee also took up the cause of voting accessibility in a case against the State of Florida. In *American Ass'n of People With Disabilities v. Harris*,²⁴ the Committee and cooperating counsel filed a similar action, again on behalf of the AAPD and a putative class of voters with manual and visual impairments in Duval County, Florida, alleging that the County's installation of optical scanner voting machines violated the ADA, as well as the Rehabilitation Act and the Florida Constitution. These individuals with disabilities required assistance in casting their votes, which required them to disclose their votes to third parties upon whom they had to rely to mark their votes [*245] accurately. This process rendered their votes neither "secret" nor "direct" as required by the Florida Constitution. Following a bench trial, Plaintiffs won a declaratory judgment, including injunctive relief requiring the installation of compliant voting equipment. Unfortunately, however, the Committee's victory was overturned by the Eleventh Circuit, which ultimately held that under the ADA's implementing regulations voting machines were not "facilities."²⁵

Miller v. District of Columbia,²⁶ was another early and formative Committee case brought to make the District ensure accessibility to essential government services, in this case, accessibility by callers who are deaf to the city's 911 system. This case was successfully resolved through a 1997 consent order. The order not only assured that D.C. residents who are deaf would have access to critical 911 services, but also served to introduce the

²¹ Wash. Law. Comm., 3rd Quarter 2013 Q. Rep. at 19-20.

²² *American Ass'n of People with Disabilities v. District of Columbia Bd. of Elections and Ethics*, No. 1:01-cv-01884 (D.D.C. filed Sept. 5, 2001).

²³ Manual impairments are limitations on hand function due to conditions such as paralysis, amputation, arthritis, broken bones, carpal tunnel, repetitive stress injury, or other serious injury.

²⁴ *Complaint, American Ass'n of People with Disabilities v. Harris*, No. 01-01275-CV-J- 25-HTS (M.D. Fla. filed Nov. 8, 2001).

²⁵ [*American Ass'n of People With Disabilities v. Harris*, 647 F.3d 1093, 1108 \(11th Cir. 2011\)](#).

²⁶ *Compl., Miller v. District of Columbia*, No. 1:96-cv-02833 (D.D.C. filed Dec. 23, 1996).

Committee's advocacy to D.C.'s deaf community, leading to further expansions of this community's access to D.C. programs and services.

For decades, D.C.'s Metropolitan Police Department ("MPD") failed to provide effective means of communication to deaf people living in D.C. while interacting with police officers. Fortunately, another early Committee case, *Shorter v. District of Columbia Metropolitan Police Department*,²⁷ successfully modified MPD policies. Plaintiff Vernon Shorter, who is deaf, was arrested and detained for over three days with no sign language interpreter services. Although Mr. Shorter suffered from a broken ankle during the arrest, he was unable to communicate his health needs to MPD, and he received no treatment while incarcerated. He was also unable to contact friends or family, as there were no accessible telephone services provided. The Committee and cooperating counsel achieved a settlement on behalf of Mr. Shorter requiring MPD to adopt policies and procedures to ensure that sign language interpreters were provided to individuals who are deaf. The settlement also resulted in the institution of a "Deaf and Hard of Hearing Unit" at MPD, as well as providing for the availability of TTY machines at MPD facilities to ensure that deaf individuals could communicate by telephone. The settlement transformed [*246] communications between the police and individuals who are deaf and compelled to interact with the police in D.C.²⁸

In 2007, building on the Shorter settlement, the Committee and cooperating counsel filed another case against the District government to provide deaf individuals with equal opportunities to access a wide variety of D.C.'s services and programs. In *Equal Rights Center v. District of Columbia*,²⁹ Plaintiffs' reached a settlement with D.C., groundbreaking by scope and breadth, ensuring that sign language interpreters and auxiliary services would be available for deaf and hard-of-hearing D.C. residents at all times throughout D.C. agencies. The settlement required that the District maintain an interpreter contract that provided for qualified sign language interpreters upon request for communications with all D.C. agencies. In no small part to enforce and expand the result achieved in Shorter, the settlement also required that the MPD ensure that qualified interpreters are available on a 24/7 basis; maintain its Deaf and Hard of Hearing Liaison Unit; maintain at least one videophone in each station and substation; and maintain a novel pilot program providing at least two mobile Video Remote Interpreting ("VRI") devices to allow for "in the field" interpreting services. Additionally, the agreement required that D.C. Public Schools obtain seven VRI devices to ensure that parents who are deaf can communicate effectively with schools in emergencies. It also required that the D.C. Department of Mental Health secure VRI for its emergency services and maintain a videophone at St. Elizabeth's hospital for patients and staff with hearing impairments. Furthermore, all D.C. agency personnel were required to undergo communication training, and D.C. was required to develop a public education program to educate residents of D.C. on the availability of the services. The District also compensated the Committee and two plaintiffs with payment monetary compensation for damages and attorney's fees.

The Committee continued to show that the law of disability discrimination must keep pace with current technological advances when it filed yet another case against the District of Columbia, this time to ensure that individuals with hearing loss would have access to information contained in public service videos posted online. In *Mitchiner* [*247] *v. District of Columbia*,³⁰ the Committee and cooperating counsel filed an action on behalf of plaintiff Jon Mitchiner for injunctive relief and damages under the ADA, the Rehabilitation Act, and the District of Columbia Human Rights Act. D.C. posts videos on its websites, as well as other websites like YouTube, that provide residents with information about D.C. The videos intend to communicate an array of information to D.C. residents, and have included information from the Department of Employment Services, the Department of Real Estate Services, and D.C. Public Schools. Because these videos were not captioned, Mr. Mitchiner and other deaf residents of D.C. did not have access to the information in the videos. To resolve the litigation, D.C. issued a Mayoral Order requiring that D.C. agencies properly caption all new videos. It also required that certain videos published online prior to the

²⁷ Compl., *Shorter v. District of Columbia Metro. Police Dep't*, No. 98-cv-2423 (D.D.C. filed June 24, 1998).

²⁸ Wash. Law. Comm., Annual Report, 2000, at 10-11.

²⁹ Complaint, *Equal Rights Ctr. v. District of Columbia*, No. 1:07-cv-01838 (D.D.C. filed Oct. 11, 2007).

³⁰ Compl., *Mitchiner v. District of Columbia*, No. 1:12-cv-00646 (D.D.C. filed Apr. 24, 2012).

Mayoral Order be retroactively captioned, or in some cases transcribed. This case was among the first of its kind, and its resolution serves as a model for other state and local governments.³¹

In 2014, the Committee brought a similar case against the federal government in *American Council of the Blind v. Tangherlini*.³² Representing the American Council of the Blind and a class of individual blind government contractors, the Committee and cooperating counsel filed a complaint against the General Services Administration (GSA) for failing to make its website, SAM.gov, accessible to users who are blind. This inaccessibility prevented federal contractors with visual impairments from registering or renewing their registration independently on the website. The parties reached a settlement that required GSA to make significant changes to SAM.gov, after which the website would undergo review by another independent accessibility expert.³³

The Committee was able to use the D.C. Government's authority over its D.C. Lottery agents to improve accessibility for people with mobility-related disabilities, not simply for the purchase of lottery tickets at neighborhood convenience stores, but more importantly for the groceries and other necessities sold at those locations. For years, D.C. residents with mobility-related disabilities complained that they **[*248]** were unable to access neighborhood convenience stores and other retailers that sell D.C. Lottery tickets. Rather than bringing suit against each of the inaccessible small retailers individually, the Committee and cooperating counsel filed an action against the District of Columbia Lottery Board for injunctive relief and damages under the ADA, the Rehabilitation Act, and the District of Columbia Human Rights Act.³⁴ On the face of the complaint, Plaintiffs challenged the Lottery Board's policy of licensing agents to sell D.C. Lottery tickets in stores that were not accessible to people with mobility impairments, and alleged that D.C. and the Lottery Board discriminated against them by denying them an equal opportunity to participate in the D.C. Lottery.

D.C. regulations required the Lottery Board to assess the accessibility of an applicant's place of business before granting a lottery license to that applicant. The Lottery Board, however, licensed and continued to license new sales agents located in places of business that were not accessible to persons with mobility-related disabilities. Plaintiffs alleged that they were unable to purchase lottery tickets at locations near their homes; indeed, one plaintiff was unable to purchase D.C. Lottery tickets at all because not one of the twenty D.C. Lottery sites closest to her home was accessible. Plaintiffs reached a settlement with the Lottery Board that ensured that the D.C. Lottery would be accessible to individuals with disabilities.³⁵ The settlement required that D.C. Lottery agents remove barriers to accessibility within eighteen months, participate in trainings on accessibility and disability rights, and advertise fully accessible D.C. Lottery locations on its website. In sum, the settlement ensured the accessibility of over 450 D.C. Lottery locations in D.C. to people with disabilities. This case is an example of the Committee's creativity: although it can be classified as a case of ensuring access to government services, i.e., lottery tickets, by compelling the Lottery Board to take action, spurring compliance by store owners who would necessarily comply rather than lose the significant revenue derived from selling D.C. Lottery tickets, the Committee was able to render these locations accessible for all purposes.

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C. Public Accommodation

1. Retail Stores

³¹ Wash. Law. Comm., Fall 2012 Update 6.

³² *Am. Council of the Blind v. Tangherlini*, No. 1:14-cv-00671 (D.D.C. filed Apr. 22, 2014).

³³ Wash. Law. Comm., Fall 2015 Update 6.

³⁴ *Compl., Equal Rights Ctr. v. District of Columbia Lottery Bd.*, No. 1:06-cv-01942 (D.D.C. filed Nov. 14, 2006).

³⁵ Wash. Law Comm., 4th Quarter 2015 Q. Rep. at 15.

One of the largest and most impactful ways that the Committee has worked toward increased accessibility is by obtaining settlements that require stores and shopping centers to abide by ADA requirements to provide accessibility to people with mobility impairments. From neighborhood stores to national chains, the Committee has continued to advocate for shoppers with disabilities.

In 1993, shortly after the ADA was passed, the Committee, DRC, and co-plaintiff Marc Fiedler sued the Wiz music stores, alleging architectural barriers in two stores in D.C., one store in Maryland, and one store in Virginia.³⁶ Mr. Feidler, who uses a wheelchair, spearheaded the filing of the suit after first attempting to persuade the Wiz ownership to modify their Cleveland Park, D.C. store. In his complaint, Plaintiffs alleged that the Wiz was in violation of Title III of the ADA because its stores were inaccessible to persons with mobility impairments. The resulting settlement required that the Wiz undertake renovations to provide accessibility to people in wheelchairs. The Wiz, however, failed to comply with the settlement. With the help of cooperating counsel, the Committee moved to enforce settlement. In 1995, the Committee was able to reach a second and final settlement requiring that the Wiz remedy the remaining violations in nearly all of its D.C. stores and pay \$ 80,000 in attorney's fees and damages.³⁷ The Wiz also agreed to donate part of its income from compact disc and audiocassette sales to the DRC.

Another early case, which opposed the systemic use of physical barriers known as "bollards" serving as shopping cart carrels at ten Safeway grocery stores in D.C., is an example of local litigation that had a profound national implication. In *Fox v. Safeway*,³⁸ two individual plaintiffs and the DRC alleged that Safeway denied equally convenient access to persons with mobility impairments by having security bollards with "flag" gates that prevented persons who use wheelchairs from entering or exiting the stores, and by failing to provide adequate, designated accessible parking. The complaint further alleged that these deficiencies constituted unlawful discrimination against persons [*250] with disabilities under Title III of the ADA and District of Columbia Human Rights Act.

Although it was not a party to the suit, the DOJ conducted an investigation based on a complaint at one of the stores, and concluded that Safeway violated the ADA, because wheelchairs could not fit through the flag gate and customers in wheelchairs were required to wait for a Safeway employee to unlock the only accessible entrance. The ability of the Committee, to secure the involvement of the DOJ in its disability rights cases, often by facilitating a formal complaint by an aggrieved party as was the case in *Fox*, has contributed to successful outcomes.

The case was resolved with an agreement requiring that Safeway survey over 800 stores nationwide and bring them into compliance with the ADA within a five-year period.³⁹ Safeway's settlement provided for payment of \$ 95,000--at the time the largest ADA settlement on record--as compensation for damages and attorney's fees, and included a nationwide compliance program monitored by the DOJ. The Disability Rights Education and Defense Fund, a California-based disability rights group, was instrumental in the settlement negotiations.

Access to grocery stores continued to be a focus of the Committee and its Disability Rights Project, given the difficulties that shoppers with disabilities had at these stores during the early years of the ADA. Success in the Safeway case led to additional settlements and agreements with grocery chains. The Committee and cooperating counsel obtained a settlement mandating that Shoppers Food Warehouse remove barriers to entry at all of its stores nationwide.⁴⁰ This case helped end the practice of installing shopping cart gate corrals, which served not only to keep grocery carts from leaving the store, but also kept customers in wheelchairs from entering the stores. In addition, after the DRC reported accessibility issues at 163 Giant Food Stores ("Giant") supermarkets in the

³⁶ See Compl., *Feidler v. Wiz Distrib.*, No. 1:93-cv-1514 (D.D.C. filed July 23, 1993).

³⁷ Wash. Law. Comm., Winter 1995 Update 4.

³⁸ Compl., *Fox v. Safeway*, No. 94-0878 (D.D.C. filed Apr. 19, 1994).

³⁹ Wash. Law. Comm., Annual Report, 1995, at 11 (1995).

⁴⁰ Compl., *Disability Rights Council of Greater Washington v. Shoppers Food Warehouse Corp.*, No. 8:00-cv-2190 (D. Md. filed July 18, 2000).

Washington market area, the Committee's Disability Rights Project made this large chain of supermarkets more accessible to individuals in wheelchairs through a 1999 agreement with Giant, achieved without resort to litigation.

[*251] The Committee and cooperating counsel effectuated another groundbreaking settlement against May Department Stores, a corporation which included the Lord & Taylor and the Hecht Department store chains.⁴¹ The settlement addressed inaccessible display racks, paths of travel and other features in fifteen local stores, requiring that barriers to accessibility be removed. It also provided for extensive monitoring because, depending on the location of clothing racks and other features, most barriers to paths of travel were mutable, and could change from week to week. Assessing the accessibility of department stores and similar venues remains a complicated issue, and this settlement was particularly important because it helped to establish means of measuring accessibility in department stores. These measures continue to be used to this day.

Another important settlement was achieved in the Committee's litigation against a major discount chain in 2003. The Committee and cooperating counsel successfully negotiated a settlement agreement with Family Dollar Stores ("Family Dollar").⁴² This particular case was settled following a demand letter and settlement negotiations - thus, litigation was never formally filed. The settlement required that Family Dollar modify over 4,000 of its stores nationwide so that shoppers who are blind or use wheelchairs could access them. Additionally, Family Dollar was required to conduct an accessibility survey and remove exterior and structural barriers. The settlement required that Family Dollar implement changes in its site development procedures. It also required that the chain clear store aisles of clutter, hire an ADA administrator, train employees, regularly monitor aisles for accessibility issues, and establish a procedure to report complaints to the DRC. The settlement included the payment of damages and attorney's fees.

In *Disability Rights Council of Greater Washington v. National Wholesale Liquidators*,⁴³ the Committee and cooperating counsel brought a similar action against National Wholesale Liquidators of West Hempstead, Inc. under the ADA and the District of Columbia Human Rights Act. National Wholesale Liquidators, a retailer specializing in the sale of close-out merchandise, operated forty-five **[*252]** stores in six states and D.C. Individual plaintiffs who used wheelchairs encountered structural barriers that prevented them from accessing the store to make retail purchases. The structural barriers included shopping cart corrals with locked swing gates that blocked people in wheelchairs from accessing the store; merchandise aisles that were not wide enough to be ADA compliant or otherwise blocked by obstructions; and wheelchair inaccessible restrooms. The DRC documented that the problems were widespread. When the DRC surveyed thirty-two National Wholesale Liquidators stores in seven states, it found that over seventy percent of the stores had shopping cart corrals rendering entrances inaccessible to people in wheelchairs; over eighty percent of the stores had barriers in the merchandise aisles that blocked persons in wheelchairs from accessing the aisles; and sixty-nine percent of the stores had restrooms that were inaccessible to people in wheelchairs.

The settlement required that the stores modify existing access barriers, remove cart corrals at store entrances, and implement policies regarding accommodations for customers with disabilities.⁴⁴ The relief also mandated thirty-six inch pathways to restrooms, elevators, dressing rooms, checkout counters, exits, and aisles. National Wholesale Liquidators was further required to have at least one thirty-two-inch pathway to at least fifty percent of the merchandise on every fixture. The settlement also required the company to provide training on their employee's obligations to customers with disabilities and to appoint an ADA coordinator. Additionally, all new National Whole Liquidator stores were required to be fully ADA compliant, and were required to keep compliance reports that included all complaints about access.

⁴¹ Compl., *Equal Rights Ctr. v. May Dep't Stores Co.*, No. 1:01-cv-1076 (D.D.C. filed May 16, 2001).

⁴² Wash. Law. Comm., Spring 2003 Update 5.

⁴³ Compl., *Disability Rights Council of Greater Washington v. Nat'l Wholesale Liquidators*, No. 1:04-cv-00999 (D.D.C. filed June 18, 2004).

⁴⁴ Wash. Law. Comm., Spring 2005 Update 3, 11.

In *Disability Rights Council of Greater Washington v. Radio Shack*,⁴⁵ the Committee and cooperating counsel filed an action against RadioShack on behalf of a putative class of individuals with disabilities who reported discriminatory policies and barriers at the forty-nine RadioShack locations in the Washington Metropolitan area. The discriminatory barriers included entrances blocked by steps, which barred individuals in wheelchairs from accessing stores; narrow aisles obstructed by displays and merchandise, which blocked people in wheelchairs or scooters from accessing merchandise, and [*253] sales counters and interactive displays for electronic products that were inaccessible to people in wheelchairs or scooters.

This case was the first of its kind to address access to interactive electronic displays of products such as camcorders, wireless phones, and laptop computers. The case ultimately resulted in a settlement that applied to over five thousand RadioShack stores. The settlement ensured that individuals with disabilities were able to access the stores, and use RadioShack's displays and services on a nation-wide scale. RadioShack agreed to make substantial changes to its stores and procedures,⁴⁶ including: making in-store interactive displays accessible; requiring thirty-six inch wide aisles and keeping aisles clear of merchandise; surveying all forty-nine D.C. stores to ensure ADA compliance; having at least one accessible credit/debit card reader in each store; adopting a training program for managers and employees on how to assist customers with disabilities; having manager performance assessments involve whether ADA aisle-width requirements are followed; establishing a nationwide customer accessibility complaint system; reviewing plans for future stores and store renovations; retaining an ADA consultant; and providing the Committee with semi-annual reports on the progress of the modifications, copies of complaints, and the right to inspect stores regarding these modifications.

In one of the largest ADA settlements on record, the Committee and cooperating counsel filed and settled a putative class action against CVS Caremark Corporation ("CVS"), alleging that the drugstore chain's policies and practices resulted in stores that were inaccessible to individuals with disabilities.⁴⁷ Notably, the Committee had filed, litigated and settled a similar case against CVS Corporation in 2002 in U.S. District Court for the District of Columbia on behalf of the DRC. That earlier settlement required CVS Corporation to take steps to remedy the same accessibility issues (aisles would be unobstructed, counters would be accessible, and that parking was accessible) at stores in Maryland, the District of Columbia, and Virginia. When, the settlement term ended, however, the ERC began receiving complaints from people with disabilities who continued to experience [*254] difficulties when shopping at CVS stores throughout the United States.

As a result, the ERC undertook an investigation of fifty CVS stores in the Washington Metropolitan area, as well as stores in Connecticut, Indiana, Louisiana, Massachusetts, Ohio, Pennsylvania, Texas, and West Virginia. The investigation revealed barriers to accessibility at every store the ERC investigated, including: merchandise aisles that were inaccessible due to barriers such as un-shelved merchandise, seasonal displays, and boxes that narrowed the aisles so that someone in a wheelchair could not pass; pharmacy counters that were too high for customers who use wheelchairs to reach or use; inadequate parking for persons with disabilities; inaccessible check-out counters; inaccessible employment application devices; and blood pressure monitoring stations that do not permit usage by individuals who use wheelchairs. These findings were incorporated into ERC's complaint.

The resulting settlement was a major victory for the ERC, impacting 7,100 CVS stores across the United States.⁴⁸ The settlement required that CVS survey and remove accessibility barriers at all remodeled or altered stores and remove barriers at MinuteClinic retail health clinics within eighteen months. CVS also agreed to adopt new and revised training procedures that would ensure that store aisles are kept clear and accessible, and that an independent third-party survey company would be solicited to monitor the accessibility of the aisles. The agreement

⁴⁵ Compl. at 1, *Rosen v. Radio Shack Co.*, No. 1:03-cv-2596 (D.D.C. filed Dec. 22, 2003).

⁴⁶ Wash. Law. Comm., Annual Report, 2005, at 6 (2005).

⁴⁷ See Compl., *Equal Rights Ctr. v. CVS Caremark Corp.*, No. 8:09-cv-03275 (D. Md. filed Dec. 9, 2009); Stipulation of Dismissal, *Equal Rights Ctr. v. CVS Caremark Corp.*, No. 8:09-cv-03275 (D. Md. filed Jan. 3, 2011).

⁴⁸ Wash. Law. Comm., Spring 2011 Update 17, 4.

also provided that within one year of the agreement, every CVS would have at least one wheelchair accessible checkout counter. CVS also agreed to hire an independent consultant to review and monitor its policies and procedures for design and remodeling to ensure that stores remain compliant with the ADA. Additionally, CVS was required to provide reports to the ERC on its progress and to consider the ERC's input on policies and training. The settlement also provided monetary damages and attorney's fees to the plaintiffs.

In November 2009, the Committee filed two public accommodation cases concurrently against prominent national retail clothing companies. The first case was filed against Abercrombie and Fitch Co. ("Abercrombie").⁴⁹ Plaintiffs alleged that two of Abercrombie's retail chains, Abercrombie and Hollister, failed to provide people with [*255] disabilities equal access to its goods and services, thus violating ADA Title III. Hollister stores were particularly inaccessible, as in lieu of a sign with the store name at their entries they instead generally relied on a signature inaccessible entrance porch featuring several steps up to the porch and down into the store. At the time that this suit was filed, the entrance to Hollister was typically accompanied by a side entrance for people with disabilities; however, few persons with disabilities used this entrance because accessibility signage for this door was often hidden or did not exist. When organizations of people with disabilities approached Abercrombie and asked them to remove the steps, the company refused. The lawsuit also alleged that the interiors of both the Abercrombie and Hollister stores were largely inaccessible. After similar litigation was filed in other states, Abercrombie settled in late 2015, agreeing to remove inaccessible entrances at nearly 100 of its Hollister stores.

The second case was filed on behalf of the ERC and two individuals, who both use wheelchairs, against retailer Filene's Basement, alleging that the retailer discriminated against people with mobility-related disabilities by failing to provide equal access to its stores in violation of both the ADA and the D.C. Human Rights Act.⁵⁰ After receiving complaints that three of Filene's Basement stores in D.C. failed to meet the accessibility requirements of the ADA and D.C. Human Rights Act, the ERC performed accessibility surveys at Filene's Basement stores in D.C. and five states. The surveys found numerous violations of the ADA, both in terms of architectural barriers and in terms of policy and practices. These architectural and structural barriers varied from store to store, but included an array of wheelchair-inaccessible merchandise departments, display counters, fitting rooms, restroom facilities, and elevators.

The barriers to accessibility also included operating policies, practices, and procedures in the stores which precluded people with disabilities from experiencing full and equal enjoyment of the goods and services. These policy violations included the pervasive failure to maintain accessible paths of travel, and the failure to maintain adequate aisle width between merchandise displays. Although the company filed for bankruptcy and subsequently sold or closed all of its [*256] retail stores, a settlement was successfully reached against the bankruptcy estate in 2011.

2. ATM Machines

Another important issue in the early days of the ADA was the inaccessibility of ATM machines. In 2000, the Committee brought a lawsuit against Chevy Chase Bank, alleging that blind customers could not access the bank's ATMs.⁵¹ This case was notable in that, prior to the settlement, no banks in D.C. offered ATMs that were accessible to blind people. On behalf of the National Federation of the Blind and several blind plaintiffs, the Committee and cooperating counsel alleged that Chevy Chase Bank violated the ADA because it did not have ATMs that were ADA compliant. The settlement set forth a schedule to upgrade ATMs with voice-guided technology. More than five hundred Chevy Chase Bank ATMs located throughout D.C., Virginia, and Maryland were modified as a result of this settlement.

⁴⁹ *Equal Rights Ctr. v. Abercrombie & Fitch Co.*, 767 F. Supp. 2d 510 (D. Md. 2010).

⁵⁰ Compl., *Equal Rights Ctr. v. Filene's Basement, Inc.*, No. 1:08-cv-2007 (D.D.C. filed Nov. 21, 2008); see also Wash. Law. Comm., Spring 2009 Update 15, 4.

⁵¹ *Disability Rights Council of Greater Washington v. Chevy Chase Bank*, No. 1:00-cv-1167 (D.D.C. filed May 24, 2000); see also Wash. Law. Comm., Annual Report, 2001, at 10 (2001).

The same year, the Committee and cooperating counsel worked with the National Federation of the Blind ("NFB") to achieve an important settlement with a major ATM manufacturer in the case of *NFB, Inc. v. Diebold, Inc.*⁵² Because it only addresses places of public accommodation, Title III of the ADA does not provide a cause of action against product manufacturers. Diebold, Inc. ("Diebold") is one of the major ATM manufacturers in the nation. Yet, when Diebold began to directly install and operate its own ATMs in Rite Aid drug stores nationwide, the Committee argued that Diebold's machines were places of public accommodation operated by Diebold, bringing the manufacturer into the purview of Title III of the ADA. The lawsuit alleged that the ATMs violated the ADA because they used screen text prompts that were not accessible to blind individuals, and sought that Diebold install voice guidance technology in their ATMs. The Diebold settlement resulted in over one million dollars in awards and fees.⁵³ The settlement required that Diebold partner with the NFB in developing new accessible ATMs. Diebold also committed to contributing one million dollars to construct NFB's National [*257] Research & Training Institute for the Blind, and to advertising the locations of ATMs with voice guidance technology on its website.

Notably, this result, which made accessible ATMs more available to banks nationwide, could not have been achieved through litigation. Because of this settlement, Diebold went on to develop and distribute many of the earliest accessible ATMs.

3. Emergency Evacuation

Although the ADA clearly ensured that people with disabilities should be able to enter a place of public accommodation, it was initially less certain whether the ADA successfully protected the right of a person with a disability to exit or evacuate a place of public accommodation in an emergency. In *Savage v. Marshalls, Inc.*,⁵⁴ the Committee and cooperating counsel brought the first case in the nation affirming that the ADA covers accessible emergency evacuations. The case was brought on behalf of plaintiff Katie Savage, who used a wheelchair. Ms. Savage had been stranded in a Marshalls store during a 2002 emergency evacuation, almost a year to the day after the traumatic events of September 11th, 2001. Ms. Savage was effectively imprisoned in the store during the evacuation because Marshalls had no provision for the safe evacuation of people with disabilities. No one from Marshalls or the mall in which it was housed offered to assist in evacuating customers with disabilities from the multi-story mall. Ms. Savage was stranded for nearly an hour until the mall re-opened, fearing for her life after hearing that the fire alarm was pulled because of rumors of a bomb.

The settlement in Ms. Savage's case resulted in major changes to Marshalls' evacuation policies.⁵⁵ The settlement required accessible emergency exits or areas of rescue assistance at Marshalls stores in all U.S. states and Puerto Rico. Furthermore, the settlement required national policies for evacuating people with disabilities and training staff and employees. It also required that Marshalls designate an ADA consultant to oversee the modifications through compliance reports. This settlement became the first in the nation to set forth emergency evacuation requirements under the ADA.

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4. Restaurants

The Committee also obtained a number of legal victories for people with disabilities when it advocated for their right to access popular restaurants. By advocating for the removal of physical barriers, such as lowering counters and

⁵² *NFB, Inc. v. Diebold, Inc.*, No. 1:00-cv-01168 (D.D.C. filed May 24, 2000); see also Wash. Law. Comm., Annual Report, 2000, at 11 (2000).

⁵³ Wash. Law. Comm., Annual Report, 2000 *supra* note 52.

⁵⁴ See generally [Savage v. Marshalls, Inc., 2004 WL 3045404](#) (Md. Cir. Ct. filed Feb. 26, 2003); see also Wash. Law. Comm., Spring 2005 Update 11, 3.

⁵⁵ Wash. Law. Comm., Spring 2005 Update 11, 3.

removing stairs, the Committee was able to give wheelchair users equal access to food options. With the support of cooperating counsel, the Committee has handled a series of high-impact cases addressing accommodations and accessibility throughout nationwide restaurant chains. The settlements stemming from these cases ensured that thousands of people with disabilities are able to access and enjoy a meal from a popular eatery with the same ease as their friends and family.

The first significant case regarding access to restaurants was filed in 1995, after Patricia Day's wheelchair got caught in the metal barrier used to form the queue line at a Burger King restaurant. The Committee and cooperating counsel sued the Burger King restaurant chain and alleged that the narrow metal queuing barriers posed a serious danger and barrier to persons in wheelchairs.⁵⁶ Burger King quickly became more accessible after settling in 1997, agreeing that future restaurants would provide full access for people with disabilities.⁵⁷ The corporation also agreed to survey all company-owned restaurants and resolve any access problems identified in the survey.

In 2007, the Committee and cooperating counsel brought an action against Potbelly Sandwich Works LLC ("Potbelly") under the ADA and the District of Columbia Human Rights Act in *Equal Rights Center v. Potbelly's Sandwich Works LLC*.⁵⁸ Potbelly's, a chain restaurant that operates in over 170 locations in eleven states, maintained significant barriers to wheelchair users and other people with mobility impairments. The plaintiff in this case alleged that she was unable to access Potbelly's goods and services due to architectural barriers, including impermissibly high service counters, self-service items placed out of reach of someone in a wheelchair, low tables and narrow seating areas, and narrow paths of travel that obstructed access to service counters.

[*259] The ERC surveyed Potbelly restaurants throughout D.C. to determine their accessibility. The ERC found that all of the restaurants surveyed had service counter heights that exceeded the maximum allowance under the ADA. The survey also revealed that all of the restaurants had seating area features that were impermissible under the ADA. The Committee and cooperating counsel filed a complaint in the U.S. District Court for the District of Columbia and ultimately negotiated a settlement. As a result of the settlement, Potbelly's committed to building ADA compliant ordering counters in all of their new restaurants nationwide.⁵⁹ Potbelly's also agreed to retrofit ordering stations in almost all existing restaurants to allow wheelchair users to access the counter; to ensure that at least five percent of seating in the restaurant would comply with the ADA; and to remove all barriers found by the ERC in its Washington, D.C. locations.

In *Equal Rights Center v. Subway Restaurants*,⁶⁰ the Committee and cooperating counsel brought an accessibility case against Subway Restaurants, one of the largest fast-food chains in the United States. The action arose from Subway's failure to make their restaurants accessible to people with physical disabilities. Subway Restaurants had significant barriers to people in wheelchairs, such as steps blocking access to restaurants, narrow doors, inaccessible bathrooms, and obstacles preventing wheelchair users from ordering or dining.

In the resulting settlement, Subway agreed to make some significant changes to eliminate barriers to wheelchair users at more than fifty restaurants in the D.C. area.⁶¹ Subway agreed to make modifications to comply with ADA requirements, including installing entrance ramps, making entrances wide enough for wheelchairs, and making

⁵⁶ Wash. Law. Comm., Annual Report, 1997, at 11 (1997).

⁵⁷ *Id.*

⁵⁸ Compl. at 1, *Equal Rights Ctr. v. Potbelly's Sandwich Works LLC*, No. 1:07-cv-283 (D.D.C. Feb. 7, 2007).

⁵⁹ Wash. Law. Comm., Fall 2008 Update 14, 10-11.

⁶⁰ *Equal Rights Ctr. v. Subway Rests.*, No. 1:06-cv-00725 (D.D.C. filed Apr. 21, 2006); see also Wash. Law. Comm., Spring 2006 Update 12, 3.

⁶¹ [Wash. Law. Comm., *supra*](#) note 60, at 11.

doors easy for people with disabilities to open. Subway also agreed to revise its policies and procedures to ensure that the process by which future restaurant sites are chosen is in compliance with ADA requirements.

A similar settlement was reached by the Committee and cooperating counsel in 2001 with Popeyes Restaurants ("Popeyes"), resulting from a demand letter without the need to file suit. Popeyes agreed to remove physical barriers to mobility-impaired individuals at all company-owned restaurants, and to adopt policies encouraging franchisees [*260] to remove such barriers. The settlement also awarded substantial damages to individual complainants.⁶²

In 2009, the Committee and cooperating counsel sued the national restaurant chain Cusi, Inc. ("Cusi") after an ERC member in a wheelchair was unable to enter a Cusi restaurant located in D.C.⁶³ An ERC survey of other Cusi restaurants identified significant accessibility issues throughout the chain. A year after the suit was filed, Cusi settled and agreed to survey its restaurants across the country.⁶⁴ By identifying accessibility issues and making necessary modifications to the restaurants, the survey was designed to ensure that Cusi restaurants complied with the ADA and state or local laws protecting the rights of people with disabilities. Cusi also implemented policies to improve accessibility, provided ADA training to staff, and made a monetary payment toward damages and attorney's fees.

During the same summer as the Cusi litigation, the Committee worked with cooperating counsel to sue the Johnny Rockets restaurant chain.⁶⁵ The design of Johnny Rockets restaurants rendered many of the sites inaccessible to those in wheelchairs, violating the ADA and the D.C. Human Rights Act. For example, when Johnny Rockets remodeled a location near Dupont Circle, it failed to replace a ramp that had previously made the location accessible to people who use wheelchairs. The restaurant responded to complaints by asserting that wheelchair users could be carried over the steps - a solution that many people who use wheelchairs find degrading and dangerous. A survey by the ERC and complaints from other regions confirmed that Johnny Rockets restaurants routinely presented access barriers.

A few months after the suit was filed, a settlement was announced. Under the agreement, Johnny Rockets made all necessary modifications to their policies, practices, and procedures to ensure that their restaurants across the nation comply with both the ADA and any state or local laws addressing the rights of people with disabilities.⁶⁶ Johnny Rockets also agreed to actively work with its franchises to ensure that all locations were in compliance with the law and honor [*261] the rights of people with disabilities when accessing its restaurants. The Dupont Circle location added a route into its restaurant that complies with the ADA.

Although the ERC's victories against national restaurant chains remedied discrimination against thousands of Americans, the Committee always believed that widespread discrimination begins when small scale discrimination is accepted. This belief prompted the Committee to file suits against local restaurants in the District of Columbia for continuous discrimination against people with disabilities. In 2008, the Committee filed suit against a restaurant in Dupont Circle ("Circa") for failing to provide people with disabilities equal access to its services, thus violating both the ADA and the D.C. Human Rights Act.⁶⁷ Despite the individual plaintiff's repeated attempts, the restaurant

⁶² Wash. Law. Comm., Annual Report, 2001, at 31 (2001).

⁶³ See Compl., Equal Rights Ctr. v. Cusi, Inc., No. 1:09-cv-01122 (D.D.C. June 18, 2009); see also Wash. Law. Comm., Spring 2010 Update 16, 4.

⁶⁴ Wash. Law. Comm., Spring 2010 Update 4.

⁶⁵ See Compl., Herman v. Johnny Rockets Group, Inc., No. 1:09-cv-01120 (D.D.C. filed June 18, 2009); see also Wash. Law. Comm., Fall 2009 Update 15, 7.

⁶⁶ Wash. Law. Comm., Fall 2009 Update 7.

⁶⁷ See Complaint for Injunctive Relief and for Compensatory and Punitive Damages at 1, Fiedler v. MHG Cafe Dupont, LLC, No. 1:08-cv-225 (D.D.C. filed Feb. 11, 2008).

failed to remove barriers and refused for over six months to reopen an at-level entrance, maintaining only an entrance with a step. The restaurant's tables, service and ordering counter, and outdoor eating area were also inaccessible to people in wheelchairs. Within a few months, Circa committed to fixing all of the ADA violations alleged in the complaint, permitted inspections of the restaurant, and proffered \$ 40,000 in fees and damages.⁶⁸ The offer of judgment was accepted, and the restaurant now has an accessible entrance, tables, counter, and outdoor eating area.

The Committee later filed a discrimination suit against Mr. Smith's, a restaurant and piano bar located in Georgetown.⁶⁹ One of the managers of the piano bar had ordered wheelchair user and Georgetown University student Taylor Price to leave the bar because his wheelchair was creating a "fire hazard." The suit alleged that Mr. Smith's violated the ADA and the D.C. Human Rights Act. According to former Committee staff familiar with the matter, a confidential settlement was negotiated to resolve the litigation, which included measures to ensure that such incidents would not reoccur.

In August 2009, the Committee and cooperating counsel filed suit against the local restaurant Hank's Oyster Bar ("Hank's").⁷⁰ Although the landlord and Hank's had renovated the space extensively, the restaurant remained inaccessible to persons with wheelchairs because [*262] of a step at the only entrance. Additionally, access to the restrooms was at times impeded and inaccessible to wheelchair users. The clear space of the restroom was used as storage, and the hallway to the restroom was lined with a silverware table, blocking wheelchair access. The tables at the restaurant were also inaccessible to wheelchair users. The ERC reached a settlement with Hank's providing for the removal of architectural barriers and modification of the restaurant's practices, policies, and procedures to comply with the ADA and the D.C. Human Rights Act.

5. Movie Theaters

Movie theaters and other entertainment venues pose special challenges for the deaf and hard-of-hearing community, in addition to the architectural barriers faced by people with mobility-related disabilities. Thus, the Committee has fought to require movie theaters to not only remove such architectural barriers, but to install technology such as assistive listening systems to ensure that people with these respective disabilities can equally enjoy the use of movie theaters.

In 1994, the Committee and cooperating counsel brought an important case against Cineplex Odeon Corporation, one of the largest movie theater chains dominating the D.C. area. In *Isbell v. Cineplex Odeon Corp.*, putative class plaintiffs alleged that Cineplex Odeon was in violation of the ADA for its failure to install assistive listening systems in their theaters.⁷¹ The litigation resulted in a settlement whereby Cineplex Odeon theaters was required to provide assistive listening systems for hard-of-hearing patrons at all of its locations in the D.C. Metropolitan area.⁷² The DOJ later expanded the consent order in *Isbell* to cover the entire United States. The consent order also required Cineplex Odeon to pay \$ 60,000 in attorney's fees and required the appointment of a special master to oversee compliance for a three-year period. The consent order was the first to require a special master under the ADA.

In 1997, the Committee brought another suit against Cineplex Odeon and Plitt Theaters, Inc. after finding that significant architectural and structural barriers existed in the theaters.⁷³ The suit alleged that individuals with

⁶⁸ Wash. Law. Comm., Fall 2009 Update 14, 13.

⁶⁹ Compl. at 1-3, *Price v. Kimberly, Inc.*, No. 1:09-cv-01709 (D.D.C. filed Sept. 9, 2009).

⁷⁰ Wash. Law Comm., Fall 2009 Update 7.

⁷¹ Wash. Law. Comm., Fall 1994 Update 7.

⁷² Wash. Law. Comm., Annual Report, 1994, at 43 (1994).

⁷³ See Compl., *Disability Rights Council v. Cineplex Odeon Corp.*, No. 1:97-cv-03023 (D.D.C. filed Oct. 12, 1999).

wheelchairs were unable to access Odeon theaters **[*263]** in the D.C. area because the theaters failed to provide accessible restrooms, an adequate amount of wheelchair seating, and removable armrests on movie theater seats. As a result of the litigation, Cineplex Odeon agreed to provide the correct number of wheelchair accessible spaces and seats at all auditoriums and make restrooms accessible to movie-goers using wheelchairs. ⁷⁴

6. Hotels

The Committee also understood the importance of hotel accessibility, especially in D.C.--a city that welcomes millions of tourists annually. Hotel litigation under the ADA has posed particular issues, in that individuals from out of town with accessibility concerns often cannot prove that they will re-visit the site, and therefore may face challenges to their standing to bring suit. In 2010, the Committee and cooperating counsel overcame these challenges and achieved a settlement ensuring that three Hilton hotels in the District would take major steps to remediate accessibility barriers throughout the hotels, as well as advertise the accessibility of their businesses and retain policies to ensure that the hotels maintained accessibility. ⁷⁵ The Committee also achieved settlements with other District hotels to remediate accessibility barriers at those hotels, thereby broadening the hospitality choices for tourists and business travelers with disabilities. ⁷⁶

7. Healthcare

Health care providers have a significant history of discriminating against people with disabilities. In fact, discrimination by the health care industry extends beyond the insult to the dignity of the plaintiff. This potentially endangers the health and well-being of the plaintiff or their loved ones.

A prevalent form of discrimination in health care settings occurs when a patient's disability impedes communication with their health practitioners, and the practitioners do not adequately provide auxiliary aids to enable effective communication. As a result, information provided by the plaintiff, as well as the consent granted by patients with disabilities when undergoing procedures, can be misunderstood.

[*264] The Committee began its work on this issue early. In *Alexander v. Howard University Hospital*, ⁷⁷ the Committee and cooperating counsel represented a deaf individual who had twice been a patient at Howard University Hospital. The patient received no sign language interpreter services during critical procedures and treatment. Similar complaints had been lodged against this hospital by other deaf patients in the past. The complaint sought relief under the ADA and the D.C. Human Rights Act. The settlement in this case ensured that the hospital would adopt policies and procedures to provide sign language interpreters for deaf patients and other deaf individuals.

The Committee and cooperating counsel filed a similar action to ensure that health care centers that rely on Video Remote Interpreting ("VRI") services for deaf patients were required to provide effective communication, including adequate VRI services and in-person interpreting services when needed. In *Gillespie v. Dimensions Health Corp.*, ⁷⁸ seven deaf individuals, who sought treatment at Laurel Hospital, alleged that Laurel Hospital relied on a slow and blurry VRI. When the VRI was unavailable--either because it was difficult to view, insufficiently mobile, or for any other number of reasons--hospital staff resorted to exchanging cryptic notes or simply failed to communicate at all with patients regarding their care. Despite specific and repeated requests, Plaintiffs were denied in-person sign language interpreter services. Due to the groundbreaking nature of the VRI issues in this case, the DOJ intervened.

⁷⁴ Wash. Law. Comm., Annual Report, 1999, at 11 (1999).

⁷⁵ Wash. Law. Comm., Fall 2010 Update 6.

⁷⁶ See Order Dismissing Case, *Equal Rights Ctr. v. Trentuno Ltd. P'ship*, No. 1:05-cv-02227 (D.D.C. Sept. 11, 2006); see also *Compl., Disability Rights Council of Greater Wash. v. Capital Hotels*, No. 1:03-cv-01876 (D.D.C. filed Sept. 8, 2003).

⁷⁷ *Compl., Alexander v. Howard Univ. Hosp.*, No. 1:01-cv-01167 (D.D.C. filed May 29, 2001).

⁷⁸ See generally [Gillespie v. Dimensions Health Corp.](#), 369 F. Supp. 2d 636 (D. Md. 2005).

The consent decree negotiated in this case provided comprehensive injunctive relief for hearing-impaired patients or companions of patients.⁷⁹ It established minimum quality standards for VRI equipment used in the future and required that Laurel Hospital both acquire more VRI equipment and store the equipment in easily accessible places. Laurel Hospital was also responsible for ensuring that personnel were all trained to use the auxiliary equipment.

Importantly, through this consent decree, the hospital agreed that VRI would not always provide effective communication and set standards for the provision of in-person interpreter services. These standards have served as a model in many subsequent cases and as a guideline for the DOJ. Additionally, Laurel Hospital agreed to acquire [*265] one text telephone per every four available public telephones. Due to the groundbreaking nature of the VRI issues in this case, the DOJ agreed to monitor the hospital's compliance with the terms of the Decree.

In the case of medical emergencies, a lapse in communication is often emotionally traumatic to the deaf family members of a patient. This was the case for Maribel and Stephen Heisley when their son was born with serious heart defects requiring emergency neonatal open-heart surgery. Throughout the emergency, these deaf parents were not provided with sign language interpreter services at critical points in their baby's treatment, including the explanation of his condition, the pre-surgical meeting with the doctors, the communication of medical risks when consenting to surgery, and importation communications during the baby's extensive post-surgical recovery. Rather, the parents were left almost completely in the dark to agonize over the survival and well-being of their child.

Thus, the Committee, cooperating counsel, attorneys from the National Association of the Deaf, and the DOJ sued the hospital for violation of Title III of the ADA and Section 504 of the Rehabilitation Act.⁸⁰ The hospital eventually settled. Under the settlement, Inova Health System agreed to provide qualified sign language interpreters, VRI; an agreed-upon schedule of appropriate auxiliary aids; and services to patients and their companions who are deaf or hearing-impaired. The hospital also agreed to pay a monetary sum for damages and attorney's fees.

The Committee has not limited its work in healthcare to ensuring effective communication. As in most public areas, many health care centers are not physically accessible to those with mobility impairments. A significant settlement with the Washington Hospital Center, the largest private hospital in D.C., greatly improved access to facilities and medical equipment for patients with mobility impairments, thereby significantly enhancing the health care these patient populations received.⁸¹ The Committee and cooperating counsel filed the action on behalf of the DRC and four former hospital patients, and was one of the first in the country to address access to hospital facilities and medical equipment. The complaint alleged that patients with disabilities were unable to obtain standard medical treatment due to [*266] the hospital's inaccessible patient rooms, bathrooms, and exam tables. Inaccessible exam tables and other medical equipment made it difficult for the plaintiffs to receive appropriate treatment. Inadequacies in policies and procedures did not ensure that patients with spinal cord injuries received the assistance they needed to eat, drink, and care for themselves. Under the terms of the settlement, the Washington Hospital Center agreed to implement substantial changes in facilities, equipment, policies, and procedures to ensure improved accessibility for inpatients and outpatients with disabilities. Changes included major architectural enhancements, resulting in many more accessible rooms; removal of barriers throughout the hospital; and procuring of accessible exam tables, chairs, and equipment for every department. Due to the significance of the issues and the comprehensive nature of the settlement, the DOJ again intervened to monitor compliance with the settlement terms.

With assistance from the DOJ, the hospital also reviewed and revised its policies to ensure equal access and benefits for patients with disabilities. To ensure that all persons with disabilities were appropriately accommodated in the future, the Hospital appointed an ADA officer, initiated a patient complaint process, and retained an ADA consultant, equipment expert, and architectural expert. The hospital also posted the rights of patients with disabilities and its complaint procedures, and provided disability training to hospital staff.

⁷⁹ Wash. Law. Comm., Fall 2006 Update 19.

⁸⁰ Order, *Heisley v. Inova Health Sys.* No. 1:10-cv-714 (E.D. Va. Aug. 26, 2010).

⁸¹ Settlement Agreement, *Disability Rights Council v. Wash. Hosp. Ctr.*, No. 1:03-cv-2434 (D.D.C. 2005).

The Committee and cooperating counsel obtained an outstanding settlement against the Howard University Hospital Family Health Center ("Center") after several complaints regarding access issues in the Center.⁸² The ERC alleged various access violations, including barriers at the Center's entrance, lack of accessible medical equipment, and other architectural barriers throughout the Center. The suit was swiftly settled in six months, ensuring access to health care services by people with mobility-related disabilities at this clinic.⁸³

In *Equal Rights Center v. Hour Eyes*, the Committee and cooperating counsel obtained a national consent decree with Eye Care Centers of America, Inc. ("ECC"), one of the largest optometric retailers in the nation.⁸⁴ After receiving complaints that individuals were refused service at an optometry retailer because their wheelchair prevented [*267] them from sitting in the optometric examination chair, the ERC discovered that the facilities had no examination rooms that allowed a patron to remain seated in a wheelchair during an eye examination. Ultimately, the parties settled under the terms of a consent decree to ensure access for patients with mobility impairments.⁸⁵

At the time, there were few if any consent decrees or settlements involving the accessibility of optometric retailers, so this decree has provided substantial guidance to this day. Notably, the Hour Eyes consent decree covered over five hundred ECC stores and required that all stores would be accessible to people with disabilities. The consent decree also mandated accessible eye examination equipment, testing rooms, and store service areas. The decree also ensured that physical barriers to stores would be removed, and required training for ECC staff to properly interact with customers with disabilities. More than twenty eye care centers in the Washington Metropolitan area alone were covered by the consent decree. Additionally, the Committee and cooperating counsel reached an agreement with ECC to compensate the plaintiffs with damages and attorney's fees.

D. Employment

When most people think of employment discrimination, they consider the blatant scenario in which an employer refuses to hire a prospective employee because of their disability.⁸⁶ Equally insidious, however, is the discrimination that occurs against an employee who has already been hired. A resonant example is that of *Hubbard v. United States Postal Service*,⁸⁷ in which the Committee received a serious complaint from deaf postal workers at the main U.S. Postal Service ("USPS") facility in the District of Columbia, which in 2003 experienced a catastrophic anthrax contamination, leading to the deaths of two postal workers and a long-term closure of the facility. The USPS hires many individuals who are deaf, and the facility impacted had a large number of such employees. Nonetheless, deaf USPS employees, some of whom were working in close proximity to postal workers who had died of anthrax, were profoundly frustrated in [*268] their attempt to communicate with postal management and medical professionals. Because adequate sign language interpreter services were not provided at critical meetings, investigations, and medical consultations during and immediately following this event, the deaf workers were kept virtually in the dark about the effect of the anthrax crisis on their health and their jobs. Postal workers who were deaf also felt compelled to sign statements that they could not read nor understand. Furthermore, these workers were unsure why they were given medications, including Cipro, to take prophylactically to ensure they would not develop anthrax; as a result, some did not take the medication. In addition, the employees who were deaf did not understand the details of the facility closure and where they would be reassigned. In this

⁸² See *Equal Rights Ctr. v. Howard Univ.*, No. 1:09-cv-01833 (D.D.C. dismissed Mar. 16, 2010).

⁸³ Wash. Law. Comm., Spring 2010 Update 4.

⁸⁴ [Wash. Law. Comm., supra](#) note 49 at 1.

⁸⁵ *Id.*

⁸⁶ See the article on the Committee's Employment Project for a discussion of cases involving employment discrimination against employees with disabilities. David Cynamon and John Freedman, *A Survey of the Lawyers' Committee Work on Private and Public Employment Discrimination Cases: 1984-Present*, 62 How. L.J. (forthcoming Fall 2018).

⁸⁷ Wash. Law. Comm., Fall 2013 Update 5.

case, sign language interpreters were the only way to ensure effective communication with the employees who were deaf.

Upon receiving the complaints and in conjunction with filing litigation, the Committee wrote an urgent demand to the U.S. Postal Service for an immediate informational meeting in order to explain both the medical and operational implications of the emergency to the deaf postal workers. Ultimately, a three-hour meeting was held for almost forty postal workers in the D.C. region who were deaf. In addition to two certified interpreters, the meeting was also attended by two physicians from the Centers for Disease Control, a postal physician, two postal safety officers, postal management, and attorneys to answer the employees' many medical and job-related questions.

The class action suit brought pursuant to this incident sought a permanent improvement in communications with deaf postal employees nationwide. In 2013, the Committee reached a precedent-setting settlement with the U.S. Postal Service, establishing state-of-the-art reforms in the procedures and technology delivering interpreter services to a nationwide class of 6,000 current and former USPS employees who were deaf or hard-of-hearing.⁸⁸ The reforms implemented by the U.S. Postal Service greatly expanded the deployment and timely availability of qualified ASL interpreters to communicate safety and workplace information to deaf Postal Service employees throughout the country. In addition, the settlement provided for approximately \$ 3 million in compensatory damages, to be divided among the class of deaf and hearing-impaired employees, and \$ 1.5 million in attorney's **[*269]** fees.⁸⁹ Over the ten-year span of the litigation, Covington's lead co-counsel, Tom Williamson, vigorously litigated this class action, and then engaged in intensive mediation efforts with the U.S. Postal Service, resulting in this comprehensive and innovative settlement.⁹⁰ The resolution was also facilitated by the creative and skillful efforts of Kenneth Feinberg, who served as mediator at the request of the parties.⁹¹

E. Transportation

Persons whose disability limits their mobility have their daily activities severely impaired when public or private transportation services discriminate against them. The Committee has always recognized this challenge and brought major litigation to ensure access to transportation services.

The Committee and cooperating counsel secured a significant victory in its class action against MetroAccess, the curb-to-curb paratransit service provided by Washington Metropolitan Area Transit Authority ("WMATA") to people whose disabilities preclude them from using regular Metrorail and Metrobus service. Plaintiffs charged that MetroAccess's paratransit service was so substandard that it illegally discriminated against people with disabilities and violated the ADA's mandate that WMATA provide comparable transportation to people whose disabilities preclude them from using the regular fixed route system. Plaintiffs complained that MetroAccess buses often arrived extremely late or not at all, forcing riders with disabilities to miss appointments, jeopardize their employment, and wait outdoors in inclement weather. They also alleged excessively long trips, poor customer service, malfunctioning equipment, and reservation system inadequacies.⁹²

In compliance with the terms of the \$ 14 million settlement agreement, WMATA hired expert consultants to assist in its ongoing oversight of MetroAccess performance. WMATA further implemented contract changes to enhance service by increasing the paratransit budget by \$ 4 million a year over a three-year period. In addition, every registered MetroAccess patron received 10 free rides; each of the 14 customers named in the class action suit received \$ 5,000; **[*270]** WMATA riders, who provided sworn testimony, received \$ 1,000; the ERC received \$

⁸⁸ Id.

⁸⁹ Id.

⁹⁰ Id.

⁹¹ Id.

⁹² [*Equal Rights Ctr. v. Wash. Metro. Area Transit Auth.*, 573 F. Supp. 2d 205, 208 \(2008\).](#)

65,000; and the Committee and cooperating counsel received their fees. The Equal Rights Center also received over \$ 300,000 to monitor WMATA's compliance with the agreement.

Even discrimination regarding transportation-related services may undercut the mobility of a person with disabilities. For example, in *Equal Rights Center v. District of Columbia*,⁹³ the Committee and cooperating counsel alleged on behalf of the plaintiffs that the D.C. parking program discriminated against people with disabilities. The complaint cited inaccessible parking meters, illegally intrusive disability placard application forms, failure to recognize disability placards from other states, and unreasonably burdensome placard application process as violations of federal and district law. Most immediately, the lawsuit sought to replace D.C.'s discriminatory parking policies prior to the anticipated arrival of thousands of veterans and others with disabilities for the May 2004 opening ceremonies for the World War II Memorial at the Washington Mall.⁹⁴

After the suit was filed, the D.C. Council passed emergency legislation to allow drivers with disabilities with a valid permit, license plate, or placard from other jurisdictions to park in time-limited spaces for free and for double the allotted time during the extended Memorial Day weekend.⁹⁵ Although the special rules addressed the short-term need, the lawsuit continued in order to achieve a permanent solution to inaccessible parking in D.C. In the summer of 2006, the parties reached a major settlement, which ensured that D.C. would provide designated meters of an accessible height on every block and paths of travel on each block with meters.⁹⁶ It also provided for curb cuts to the sidewalks on those blocks, reciprocity to other states' parking placards, and changes to placard application form. This important result in the first case of its kind has had a lasting impact throughout the country.

A novel lawsuit brought by the Committee and cooperating counsel against Zipcar⁹⁷ alleged that Zipcar violated both the ADA and D.C. Human Rights Act by failing to provide the full and equal enjoyment [*271] of their car-sharing services to people with disabilities.⁹⁸ Specifically, the company did not provide vehicles equipped with hand controls. Hand controls are relatively inexpensive and easily installed devices that enable people with disabilities to drive vehicles without preventing other drivers from using the gas and brake pedals to operate the vehicle. Moreover, company policies restricted the transportation of assistance animals in their vehicles, and restricted people with disabilities from using aides to drive their vehicles.

Zipcar settled in September 2008, bringing the car-sharing industry into line with what has been required of car rental companies for years.⁹⁹ The settlement required that Zipcar provide hand control vehicles in the D.C. area as a pilot program and ensured that hand control vehicles would be available nationwide upon request. The settlement also allowed for assistance animals to travel in vehicles un-caged, and for D.C. members with disabilities to include up to two additional drivers for no additional fees. The defendant paid fees, damages, and monitoring costs to plaintiffs, and provided the individual plaintiff with a free membership and a credit for 3,000 miles annually for five years.

II. EMERGING ISSUES

As described above, the Committee has strived to ensure that the principles of equal access provided for under the ADA and other laws are applied to current situations. As the way all people live and work has changed over time, so

⁹³ *Equal Rights Ctr. v. D.C.*, No. 1:04-cv-00529 (D.D.C. dismissed Feb. 21, 2007).

⁹⁴ *Wash. Law. Comm.*, Spring 2004 Update 4.

⁹⁵ *Id.*

⁹⁶ *Wash. Law Comm.*, Fall 2006 Update 6, 13.

⁹⁷ The suit originally named Flexcar, another car-sharing company, as a co-defendant. Flexcar, however, was acquired by Zipcar in the course of this litigation.

⁹⁸ *Compl. at 1, Equal Rights Ctr. v. Zipcar, Inc.*, No. 07-cv-01823 (D.D.C. filed Oct. 10, 2007).

⁹⁹ *Wash. Law Comm.*, Fall 2008 Update 13.

to have the challenges facing people with disabilities evolved. Thus, over the last few years, the Committee has continued to fight discrimination in a number of unique areas.

In the public accommodations area, the Committee has vigilantly embraced cases in order to fulfill the ADA's promise of equal convenience and enjoyment for people with disabilities. In *Ciotti v. New York City Department of Parks & Recreation*,¹⁰⁰ the Committee and cooperating counsel sued the City of New York and Central Park Boathouse, LLC alleging violations of Title II and Title III of the ADA, as well as the New York State Human Rights Law and the New York City Human Rights Law, by virtue of architectural barriers [*272] preventing access by wheelchair users such as Ms. Ciotti. Wheelchair users were only able to access the dining room through use of a steep movable metal ramp placed there by staff upon request.¹⁰¹ Similarly, access to the patio could only be gained by removal of obstacles. The case was promptly settled soon after it was filed.

The Committee and cooperating counsel sued four cab companies--Yellow Cab Company of DC, Inc., Grand Cab Company, Elite Cab Association, and Pleasant Taxi Club, LLC--alleging that they had all engaged in discriminatory practices when their drivers repeatedly failed to pick up Eric Bridges, the Director of External Relations and Policy at the American Council of the Blind ("ACB") and an ACB member, who was hailing a cab with his service dog, General.¹⁰² These incidents were all caught on video by local television station WUSA9, which was filming a documentary on this issue.¹⁰³ A settlement was reached in *Bridges* whereby the four taxi companies agreed to an accessibility initiative to ensure that blind individuals accompanied by service animals have full and equal access to taxi services.¹⁰⁴

Yet, the Committee's work over the last several years has expanded beyond the past scope of public accommodation. The advent of the digital age has brought new forms of discrimination and ableism with it, particularly in the context of digital platforms. The most egregious offenses arise when websites, applications, or software are not made fully accessible for those who are visually impaired. The pervasiveness of inaccessible digital tools has pushed the Committee to expand the scope of its efforts in defending the interests of people with disabilities.

Most cases of this kind turn on the accessibility of phone applications, software, and electronic kiosks. In 2016, the Committee filed cases against both Sweetgreen restaurants and the BarBri bar examination preparation company, alleging that these companies failed to [*273] ensure that their digital platforms - both their applications and websites - were accessible to people with visual impairments.¹⁰⁵ A settlement was reached with Sweetgreen and the company agreed to make its online ordering portal and its mobile application accessible, as well as paying settlement payments to the plaintiffs.¹⁰⁶ BarBri, which was filed on behalf of three blind law students, also settled,

¹⁰⁰ Compl. at 1, *Ciotti v. New York City Dep't of Parks & Recreation*, No. 1:16-cv-00853 (S.D.N.Y. filed Feb. 3, 2016).

¹⁰¹ See *The Committee Settles Lawsuit against Historic New York Restaurant and Boathouse*, Wash. Law. Comm. (Dec. 13, 2016), <https://washlaw.org/news/540-settlement-loeb-boathouse>.

¹⁰² Compl., *Bridges v. Grand Cab Company*, No. 2015 CA 001680 B (D.C. Super. Ct. filed Mar. 16, 2015).

¹⁰³ Several DC taxi companies agree to new guidelines, wusa9.com (June 21, 2016), <https://www.wusa9.com/article/news/local/several-dc-taxi-companies-agree-to-new-guidelines/2515811> 78.

¹⁰⁴ Id.; see also *American Council of the Blind Reaches Agreement with DC Taxi Companies to Enhance Accessibility of Street-Hail Service for Blind Individuals with Service Dogs*, Wash. Law. Comm. (June 23, 2016), <https://washlaw.org/news/486-american-council-of-the-blind-reaches-agreement-with-dc-taxi-companies-to-enhance-accessibility-of-street-hail-service-for-blind-individuals-with-service-dogs>.

¹⁰⁵ Compl. at 2, *Farmer v. Sweetgreen, Inc.*, No. 1:16-cv-02103 (S.D.N.Y. filed Mar. 22, 2016); Compl. at 1, *Stanley v. BarBri, Inc.*, No. 3:16-cv-01113-O (N.D. Tex. filed Apr. 25, 2016).

¹⁰⁶ Stipulation and Order of Voluntary Dismissal, *Farmer v. Sweetgreen, Inc.*, No. 1:16-cv-02103 (S.D.N.Y. filed Feb. 01, 2017).

agreeing to an extensive consent decree including requirements that it modify its web content, mobile applications, and study tools using industry-recognized standards, add resources to help it comply with such standards, and respond more quickly to requests for accommodations from its customers, and undergo an accessibility audit after improvements were made, among other things. ¹⁰⁷

In August 2017, the Committee and cooperating counsel filed an action against the Social Security Administration, stemming from the failure of information and check-in kiosks to accommodate people with visual impairments. In *Nat'l Fed'n of the Blind v. Berryhill*, Acting Comm'r of the SSA, ¹⁰⁸ the NFB, and two blind individuals who receive Social Security benefits alleged that the SSA failed to make its Visitor Intake Processing touchscreen kiosks accessible to its blind visitors. Blind patrons were unable to check in independently at their local SSA field offices, instead being forced to rely on sighted third-parties or SSA staff--to whom they had to divulge private information, such as their social security numbers--to assist them in entering information into the kiosks. Moreover, because the patrons were unable to read the printed ticket generated by the kiosks, including their check-in number, they needed to rely on someone else to read the number or risk losing their appointment. According to the case docket, the parties have made repeated attempts at reaching a settlement, and the case has been referred for neutral case evaluation. ¹⁰⁹

[*274] Also in 2017, the Committee and the ERC sued Uber for not requiring or facilitating the use of wheelchair accessible vehicles by its drivers, instead requiring that customers with disabilities use a slower and more expensive option within the application to hail a non-Uber taxicab. ¹¹⁰ The Complaint alleged that the ERC investigation demonstrated that Uber's policy "relegates wheelchair users to a demonstrably inferior substitute for standard Uber service. Wheelchair users predictably must wait far longer for service through [the taxicab option] than others do for vehicles in Uber's own fleet" ¹¹¹ The Uber case continues to be litigated as this article goes to press.

The Committee's cases against the General Services Administration are demonstrative of how technology designed to improve workflow and productivity for sighted users can leave people with visual disabilities behind. The Committee's settlement in *American Council of the Blind v. Tangherlini*, ¹¹² discussed supra, required the GSA to make its website accessible to contractors with visual disabilities. Similarly, in *Ashley v. Murphy*, ¹¹³ the Committee and cooperating counsel filed an action on behalf of Mr. Ashley, an 18-year employee with visual impairments who relied on a talking screen reader as part of accommodations for his disability. Mr. Ashley alleged that the GSA's failure to provide comparable access to information technology across a wide array of software applications, as well as reasonable accommodations, violates the Rehabilitation Act. Among other things, the Administration's software had mouse-overs and text boxes that were not "viewable" by the talking screen reader. As a result, visually impaired employees at the Administration, including Mr. Ashley, were not adequately armed to meet their employer's expectations, and did not receive promotions for as long as thirteen years. The case is ongoing as this article goes to press.

The effect of the Committee's efforts in the digital realm are two-fold. The first effect follows the path laid by all of the Committee's prior disability rights litigation: preserving the statutorily enshrined rights of those with disabilities.

¹⁰⁷ Consent Decree at 6-11, *Stanley v. BarBri, Inc.*, No. 3:16-cv-01113-BK (N.D. Tex. filed Jan 22, 2018).

¹⁰⁸ Compl., *Nat'l Fed'n of the Blind v. Soc. Sec. Admin.*, No. 3:17-cv-1730-BAS-KSC (S.D. Cal. filed Aug. 28, 2017).

¹⁰⁹ Order Granting Joint Motion to Stay Proceedings at 1, *Nat'l Fed'n of the Blind v. Soc. Sec. Admin.*, No. 3:17-cv-1730-BAS-KSC (S.D. Cal. filed Dec. 6, 2017); Notice and Order Setting Early Neutral Evaluation Conference at 1-2, *Nat'l Fed'n of the Blind v. Soc. Sec. Admin.*, No. 3:17-cv-1730-BAS-KSC (S.D. Cal. filed Oct. 9, 2018).

¹¹⁰ Compl. at 1, 12, *Equal Rights Ctr. v. Uber Techs., Inc.*, No. 1:17-cv-01272 (D.D.C. filed June 28, 2017).

¹¹¹ *Id.* at 3.

¹¹² Compl., *Am. Council of the Blind v. Tangherlini*, No. 1:14-cv-00671 (D.D.C. filed Apr. 22, 2014).

¹¹³ Compl. and Jury Demand at 1, 13, *Ashley v. Murphy*, No. 1:18-cv-00574 (D.D.C. filed Mar. 14, 2018).

But accessible applications, websites, and software have the potential to revolutionize how people with disabilities **[*275]** interact with the world. By enforcing disability rights in the digital sphere, the Committee plays a second pivotal role in reducing the disparities between how able-bodied people and those with disabilities are able to access the world around them. The Committee is optimistic that, by redirecting efforts into the digital sphere over time, disability rights may become effectively evolve from a relatively reactive field to a more proactive one.

There is a theory in disabilities work which argues that no one is truly disabled. Rather, it argues that society chooses to "disable" those who are not able-bodied by continuously erecting obstacles for them to navigate. With the arrival of the digital age, the Committee is hopeful that the pervasive impact of technology paired with increasingly proactive disability rights litigation will limit how society disables others and highlight how each of us can play a role in creating a more inclusive world.

CONCLUSION

Among the many threads that are woven into this rich tapestry of progressive accomplishments in the field of disability rights, particularly from the standpoint of the Committee's advocacy, the role of technology in improving the daily lives of people with disabilities cannot be overstated. In thinking about how to fashion remedies to ensure a level playing field, keeping abreast of technological advances has been and continues to be critically important. And technology is not only advancing, but advancing at an ever-increasing rate. Thus, many solutions that were state-of-the art just a few short years ago, will likely be obsolete a few short years from now.

Conversely, as non-disabled workers, prisoners, and the public at large benefit from new technological advances, the challenge for employers and institutions will be how to ensure equal access to the same or equivalent technological amenities, as required by the ADA and other laws. Interestingly, non-profits and for-profit vendors alike may see opportunities for innovation in order to address such discrepancies.

The challenge for civil rights advocates practicing in the area of disability rights will be to closely monitor changing technology and continually assess whether persons with disabilities are being left behind, and whether the solutions--so often hard-fought--that we have erected in the past continue to be meaningful and effective in the present and for the future.

[*276] From the perspective of the Committee, the last quarter century has shown the value of partnerships in advancing the agenda of reform and full implementation of federally and locally guaranteed rights for persons with disabilities. The co-counsel relationships between the Committee and some of the most talented private practice lawyers and prominent law firms in the country have consistently yielded notable and often groundbreaking results. In many cases, skilled litigators with little or no background in disability rights, have leveraged the issue expertise on board in Committee project directors and staff attorneys, achieving far more than either partner could have done on its own. Similarly, the relationships between the Committee and other interest groups in the disability rights space have broadened the reach of the Committee, helping to identify problems in need of attention from a legal standpoint. They are on the front line of the struggle, and see potential cases in need of legal advocacy as they first arise.

These groups, such as the Disability Rights Council (now the Equal Rights Center), the National Association of the Deaf, the American Council for the Blind, and many others, have forged deeply-connected working relationships with the Committee. Investigators, attorneys and staff of these organizations have been the Committee's clients (serving as institutional plaintiffs, including claims for diversion of resources and frustration of mission damages) and collaborators. Those with in-house legal staff have served as co-counsel before local and federal courts, while investigators and staff have served as witnesses and consulting experts. The DRC (now ERC) has played a special role in pioneering and perfecting the use of evidence developed through testing of disability rights violations as a stand-alone basis for proving discrimination. Collaboration with the U.S. Department of Justice in appropriate cases has also furthered the Committee's litigation and advocacy goals, and should be pursued regardless of the political appointees who happen to be in charge during any particular executive term.

As the Committee embarks on its next half-century of work, the relationships it enjoys with the private bar and disability rights organizations should be deepened and enriched. Doing so will ensure that the Committee continues to enjoy unparalleled victories in the field, but continue to develop future waves of engaged and passionate counsel to carry on this vitally important work.

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