



Transcript of Session 3: 4th Thursday ADA Talks

ADA Title II: Program Access and Structural Accessibility

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Presenter

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Slide 1: ADA Title II: Program Accessibility and Structural Accessibility - Public Facilities

Welcome to the fourth Thursday ADA, my name is Jason Jones. I'm a Project Director at the University of Kentucky's Human Development Institute in beautiful Lexington, Kentucky. We are having a kind of a gloomy day but supposed to be a little bit warmer, so kind of excited about spring finally getting here as I'm sure most of you all are as well. Today we're going to talk a little bit about, about Title two (II) the ADA, how it applies to program accessibility and structural accessibility of public facilities.

Slide 2: Disclaimer

And before we get started, we'd like to dispel this disclaimer, um, just to say that we're not an enforcement arm of the ADA at the Southeast ADA

Center. I'm sorry. I'm also the Kentucky liaison to the Southeast ADA Center. And we are here for advice and not for legal assistance or enforcement in the way of the ADA. All minds are clear.

And if you have any questions, I will keep the questions up. And Marsha usually helps me kinda look at those too. If you have any questions, just pop them up there in that Q&A box at the bottom of your screen. And we will address them as we can, moving through the program. And again, thank you so much for being here today.

Slide 3: Five Titles of the ADA

The ADA is something that's near and dear to me. I am a C-4 quadriplegic. I've been in a wheelchair for almost 33 years now and I have seen I actually was hurt the year that the ADA was signed. So, I've seen the ins and outs and the way that it has affected society in all aspects for people with disabilities over the past 33 years.

So, I like to always start these with going over the five Titles of the ADA. Most of you all are probably, if you're on here, somewhat familiar with these. Of course, Title one (I) is employment. And number, Title two (II) is accessibility in public entities, which of course is what we're talking about today. And public entities are those state and local government entities, Okay. Accessibility in business Title three (III) is what we generally think of. When we think of the ADA that's your accessibility into the hotels, restaurants, places that you frequent every day. Title four (IV) is telecommunications And Title five (V) is miscellaneous cleanup of all of those things. So those are the five Titles to the ADA. And again, we'll be spending our time today talking about things that involve public facilities in Title two (II).

Slide 4: Program Accessibility

So, what's program accessibility? We're talking about program here. Alright, and this is actually a picture of a ramp which is not necessarily programs, but it's more physical. But a public entity may not deny the benefits of its programs, activities, and services to individuals with disabilities because its facilities are inaccessible. Okay. Just because you can't get in a building does not mean that they don't have to provide the service to you in some form or fashion. A public entity, services, programs, or activities when viewed in their entirety. And we'll talk a little bit more about what that means in their entirety, must be readily accessible to and usable by Individuals with disabilities. The standard known as program accessibility applies to all existing facilities of a public entity. Okay? Alright.

Slide 5: Grandfathered In?

Now, this is one of the most common things we see as an error in what is actually true. We hear from businesses a lot. And we hear from public entities a lot that they are being grandfathered in. Facilities built before the ADA are not, capital N, capital O, capital T NOT grandfathered in and there's no grandfather clause under the ADA. They may do, they may have to do structural renovations to become accessible, but they are still responsible for ensuring program accessibility. Right. If the public is offered a program by a government entity, then that must be accessible for all citizens, and not just those that can actually, physically enter facilities. Alright.

Slide 6: Program Accessibility Options Include...

So, here's the program accessibility options. Alright. So, these are some things that you can do when you don't have the option of an accessible building. So, things like redesigning services to accessible locations, home visits, purchases of equipment, offering aid and assistance, auxiliary aids. We'll talk a little bit more about auxiliary aids in a minute. Structural change if no other option is available.

So basically, they're saying, you cannot find a way to provide the program to someone who are in a, in an area that is not accessible, then you must change the structure in order for that to be able to take place.

Slide 7: Program Accessibility: Examples

Alright, we'll go through this pretty quick. So, if you have any questions, please pop them up over there and let me know, okay? Alright.

So, here's some examples, right? So public hearings, meetings, information, they need to be accessible. Alright, so this is, in public hearings are very important. But we said a lot in the disability community where we have an opportunity to lend a voice. We need to be able to be there and to have a forum or fashion in order to be able to voice our opinion and be heard. Some things you could do move into an accessible location. Providing an ASL interpreter as we have here, Providing handouts, I'm sorry handouts, or meeting minutes and alternative formats. That's usually done before most of these programs. So, they can have those things on hand and available. The requests, that is, we go into a person's home to give them necessary information. And we saw this in, during COVID where the health department actually come to your house to give you a shot if you have a disability. And that was more of a protection there was that was more of a protection aspect there in order for people not to have to come to

a facility that could be dangerous where the virus is being spread. But this is an alternative way of providing accessibility. Okay,

Slide 8: In Its Entirety (slide 1 of 3)

So, we've talked a little bit about "in its entirety." So, a program must be evaluated both in terms of the parts or elements that make up the program and in terms, any terms of the way they work together as a whole. Alright.

Slide 9: In Its Entirety (slide 2 of 3)

So public entities are not necessarily required to make each of their existing facilities accessible or every aspect of the facility structurally accessible. This allows for both structural and non-structural methods of achieving program accessibility. Alright, so in its entirety.

Slide 10: In Its Entirety (slide 3 of 3)

So, here's an example. So, the city library system has six branches. To evaluate the accessibility and usability of the library system in its entirety, it is necessary to consider the following resources and activity provided in each library and facility. Okay. The operation libraries and the system as a network. Any, any out of building activities that are part of the operation of the system. So, when you answer these questions, it will help you determine whether all the services and resources available in the system are available in accessible locations.

Alright, yes, the PowerPoint will be made available. And I got just got that question.

Slide 11: Important Point A

So, here's an important point. I like private entities, right? And we're talking about private entities, we're talking about Title three (III). Public entities are not required to remove barriers for each facility even if removal is readily achievable. But a public entity must make its program accessible. We said before, physical changes to a building are required only if there's no other way, right? We talked about that earlier. Alright,

And a good example of this is like parks and rec programs. Like here in Lexington, we have a couple of non-accessible buildings. And so, some of the programming that they offer in those buildings they can offer in other places in order to be able to to be able, to provide for the community and people with disabilities.

Slide 12: Limitations to Program Access

So, there are some limitations to program access, right? And this is a term you'll hear a lot, the undue burden of determination, but public entity does not have to take any action resulting in a fundamental alteration in its program or activity, right? It changes what is actually happening. And they do not have to make that change cause undue financial administrative burdens. Sometimes that could be we don't have the capacity to do it. We don't have people to facilitate it. We don't, we can't afford to do these things, right?

Undue burden determination, however, can only be made by the head of the public entity or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. You can't just say, we're not gonna do it. You can't afford it. It has to be at the end. It has

to be written and it has to be filed. And determination to undue burden would result, must be based on all resources available. Alright.

And just as a note that the public entity must still, must find a way to ensure access to benefits and services of the program or activity. So, let's talk a little bit about effective communication. Alright.

Slide 13: Effective Communications

So, government entities must provide effective means of communication to people with visual, hearing, speech, cognitive disabilities, those kinds of things. The communication must be provided in a manner that enables people with disabilities to participate or benefit from the service or program on an equal basis with each other.

And that's always one misconception about something, especially receiving employment, is that the ADA, you have special treatment in some way to people with disabilities, whereas the law is clearly written to make it an equal playing field. So, they must ensure that applicants, participants, and members of the general public have communication access that is effective as that provided to people without disabilities.

Excuse me, I gotta get drink there. So, effective is the key point here, right. So, you can't just say, we're going to have an ASL interpreter for everybody who is hearing impaired. Right. Everyone doesn't know ASL. It may not be an effective form of communication at all for some people that may want to access your program. In that case, they would need to find a more suitable and effective communication tool to accommodate.

Slide 14: Examples of Auxiliary Aids & Services for People with...

So, here's some examples of auxiliary aids. Qualified interpreters, written material, assistive listening devices, video remote interpreting. And that's video remote interpreting is a service. Means for, interpreting service, that uses videoconferencing technology, not a dedicated line.

So, I'll make visual disabilities, braille, audio descriptions, recordings, like I just said, CDs and tapes. I think those things kinda are, no longer with us. I heard the other day that actually vinyl records are outselling CDs now for the first time in 25 years. So that's kinda neat. So anyway, these are some good examples.

Slide 15: Providing Effective Communications

So public entities, must give primary consideration to the communication preference choice. This is important and this goes back to what we said a minute ago. The choice of the person who needs, right, accessible format in some way, shape, or form is to be given preference. Okay.

But the public entity must honor that choice unless it can demonstrate that another equally effective means of communication is available or that the aid requested would result, again what we said before, the fundamental alteration or an undue financial or administrative burden. And we do see this sometimes with things like interpreting because it can be kind of expensive. And so, this is very key, equally effective, but that's, it's difficult to determine if someone telling me this is the best way for me to do it that would I think lead you to believe that that's the only way communication provided must be effective.

As we said before, and if undue burden exists, you can still provide the best means of effective communication. Alright.

Slide 16: Factors to Consider

So, there's some factors to consider when you're talking about effective communication. Duration and complexity of the communication. Alright, it's not feasible to have somebody write back and forth if there's an hour-long presentation. You've got to determine whether or not there's some pretty [inaudible] you want to make sure that that communication is understood well.

Okay, so there's also the context of the communication, number of people involved and importance of potential impact of communication, like we said before.

Alright. Yes, Ms. Bush raised her hand and someone taking care of that. Okay.

Slide 17: Structural Accessibility of Public Entities

So, we talked about the program side of things. Now we need to talk a little bit about the structural accessibility of public entities. And now we're talking about the actual buildings. Right.

So, the intent of this presentation is to familiarize you all with structural accessibility issues for new construction and existing facilities. So, there's two ways to look at this. When a building is being built and when a building is being retrofitted or being remodeled. Alright. Because you're going to find if one of those two things is not happening in the ADA, in most cases, does not apply.

Slide 18: New Construction and Alterations

So, new construction and alterations. And this is very important. All, all new construction, and alterations, to existing facilities, those that were built before the ADA, must be readily accessible to and usable by people with disabilities. Alright.

If you change anything in your building, you have to make that accessible. And we'll give some examples in a minute. But think about things like bathrooms. If you have to remodel a bathroom, remodel a part of a building that has a bathroom in it then you have to make that bathroom accessible according to the ADA, Okay.

Slide 19: Existing Facilities

Facilities built before the ADA are not required to make the property structurally accessible if they can provide non-structural program accessibility for their services, programs, and activities. We've talked about that before.

So, if non-structural program accessibility is not possible. then structural accessibility must be provided, unless again, it would result in alteration of program or undue burden. You guys sick of hearing those words yet? All right, that's kinda the meat of what we're talking about.

Slide 20: What do you think?

So, here's an example. Public school built 1985. It has five main entrances. Three of which are accessible. It is about to undergo renovations on the side of the building, but it has one of the, I'm sorry, it has one of the the inaccessible entrances, Since the building already has three accessible

entrances and was built before the ADA, it does not have to renovate the entrance to be ADA accessible, true, or false?

Just think about that for a second. The school is undergoing renovations. It is new construction, alright. But we already have accessible entrances on other parts of the building. Remember, this is a public school, Title two (II), falls under government entity. Alright.

Slide 21: The law says...

So, the law, what the law says. Since part of the school is undergoing renovations, it is considered new construction. Yet therefore, that part of the building has to be made accessible, alright? And that's kind of a misconception we hear a lot. It's like, well, we have an accessible entrance suggests, but you just renovated another part as a Title two (II) entity.

When you renovate, or when you alter the current form of a building, then you must make that building that part of the building accessible.

And again, there's no such thing as grandfathered and renovations are always considered new construction. Alright. And there's been some case law and to try and determine what those, how far that goes. Right.

Especially in a Title three (III) or Title two (II). Okay.

Slide 22: Overview of Design Standards

So, the ADA establishes some minimum standards for access for people with disabilities. These standards are reinforced by state and local laws and hopefully supported by the principles of universal design, usability for all.

So, it's not important that you remember the exact codes. It's important to let you know that some of these minimum standards are or what some of these minimum standards are. Okay. Let's move forward.

Slide 23: State and Local Building Code Official

So state and local building code, alright? So, each state has its own building code. Alright. We have it here in Kentucky. So, years ago, I worked with the Mayor's Commission on Disability here in Lexington. And we went to Frankfurt, and we had some of the codes updated. We wanted a couple of different things to happen from a business standpoint or for, for business stands for business standpoint and also in residential design. And we went to Frankfurt, and we argued for that point and were able to get some of those things passed. Alright.

So, each state building code is based on the ICC or the International Code Council, which basically sets the minimum standards for each state.

Alright, so this is the bare minimum, okay? So, some states have stricter regulations than the ICC. The stricter regulation always applies for new construction renovations through existing facilities. You must contact your building code official first and follow, again the strictest. Because you are not in line. If you don't follow what the top of the line is.

An exception, state agencies don't have to contact their code official because they write their own building code. Yes, that's right, they write their own.

Slide 24: U.S. Access Board & Standards for Accessible Design

U.S. Access Board and Standards for Accessible Design. This is what the Access Board is federal agency that develops accessibility standards. The DOJ actually enforces them. Okay.

And formally, it's called an A-D-A-A-G, right? And they're now known as the 2010 Standards for Accessible Design. And the standards cover everything from signage to the bathrooms.

And on the local level, you and your human rights commissions are the enforcement of because as we always say, the ADA is a human rights bill and a human rights law.

And so, under that, the Human Rights Commission are the enforcement arm on the local level. So, if you do have an issue with Title two (II) or Title three (III) entities and you would go to first. Okay.

Slide 25: The 2010 ADA Standards

So, what did the 2010 ADA standards do? So, the related construction operations had to be complied with beginning on March 15, 2012. So right at 11 years ago.

They had to be in harmony with the state codes. And have clearer illustrations and diagrams, and right that is something that's really important.

And do not have a retrofit requirement, meaning these existing buildings that are already accessible don't have to go back and redo what they've already done. Alright, there was a good faith effort. All okay,

Slide 26: 2010 ADA Standards for Accessible Design (slide 1 of 3)

So, what do the 2010 standards say? Minimize compliance burdens on entities subject to more than one legal standard. So, what we had were all these different things to look at. It was hard to decide.

First of all, if you were using the strictest and sometimes just what all the different design models and compliance. Things that were out there, whether or not they would even be aware of all of them when you were doing construction.

So, they harmonize with the federal standards implementing the Architectural Barriers Act with the private sector model codes that are adopted by most states now.

Slide 27: 2010 ADA Standards for Accessible Design (slide 2 of 3)

So, this row includes a general "safe harbor," which means what we talked about a minute ago, the retrofitting of existing buildings. So, elements in congregate facilities that were built or altered in compliance with the 1991 standards are not required to comply with the 2010 standards until the elements are subject to a plan alteration, which again goes back to if you do something new in the building, then you would have to come up to the 2010 standards. Similar safe harbors were adopted for elements associated with the path of travel to an altered area. And we'll get to that in a second.

Slide 28: 2010 ADA Standards for Accessible Design (slide 3 of 3)

So, um, safe harbor, provide an accessible path of travel, are required to the extent that they are not disproportionate to the original alteration. Just had a question come in. To the extent that the ADA accessibility costs do not exceed 20% of the cost of the original alteration to the priority functional area. Okay. That's upgrades. Okay. Awesome. More than 20% of what you originally did to alter the facility, alright.

Sorry, I'm reading a question out, but it's not there either.

Slide 29: Uniform Federal Accessibility Standards (UFAS)

So, to the UFAS, the Uniform Federal Accessibility Standards. These standards for facility accessibility for federal and federally funded facilities, alright, not, not state, and local, federally funded standards are to be applied during the design and construction and alteration of buildings and facilities. And this e-mail or this web address here takes you to, to all the UFAS standards, and you'll have that.

Slide 30: Important Point B

So, here's what's important. So, when doing new construction alterations up until the 2012 date Title two (II) entities, could, they basically had a choice, right. They could you use the ADAAG or the UFAS, depending on which works best for them. Alright.

So now the 2010 standards brought all that together and altered construction must comply with those standards. Alright. And it is because it was gravely helpful because it just standardized and brought those things together.

Slide 31: Design Priorities

Okay. So, we've talked about the path of travel. So, there are some things to keep in mind if you're trying to decide what needs to be done first in terms of accessing a building. So again, there's some more information on that last slide about the URL to go to get to that information.

But things to consider, getting to the door. Okay. This seems pretty simple right there. We shouldn't have to write this out. If you can't get from the parking lot to the door, nothing else matters. You don't have accessible parking if you don't have an entryway, that's by there. If you don't have a

ramp or some source of getting up on a curb, those kinds of things. You can get from your vehicle or if you're just out for a walk, the route entrances and the doors must be accessible.

Second, accessing the service, merchandise, food services inside the establishment. Then finally, public bathrooms. If they are public and available to the public, they are sure to be an accessible bathroom. Alright.

Are there any questions? So, getting to the door, getting through the door, alright, accessing everything that is inside. And finally, bathrooms.

Bathrooms are modestly where we really fall down, especially in Title two (II), especially in Title three (III).

Okay. Alright, so is there any questions about, that's kind of the meat of everything right there. And then we'll talk a little bit about the case, and I'll get your all's opinion on what you think about this case. Any questions?

Slide 32: Smith v. TransCor America

Alright, So, let's talk about a little bit about where this good case that kinda tests this notion of what the responsibility of a public entity is and how far that should go. This is Smith versus TransCor America. This was actually a case in the Western District Court of Kentucky, and it is again, it is a Title two (II) case that occurred in 2007.

And just through my research, I found that TransCor America, which operates prisons across the country, is sued often for a litany of things. But this particular case involves the ADA and disability. Alright.

Slide 33: Smith v. TransCor America (slide 1 of 4)

So, Mr. Jake Dean Smith, is an incarcerated man. Now keep in mind, you still have rights in prison. And those rights do fall under the ADA if there's a disability involved or can. So, he describes himself, describes himself as handicapped. Not a word I would use. Because his left leg was amputated. His right knee, in his words, was very weak. So, he has one amputated leg, and the other leg is very weak. Alright. So TransCor America, which we've seen privatization of jails all over the United States, and then that's not an uncommon thing. So TransCor America was responsible for transporting Mr. Smith between jails, but allegedly did not operate an accessible bus. He was kept on the bus for up to three days on two different occasions without rest.

Now, let me explain exactly what that meant. He was picked up in Englewood, Colorado. Okay. On March 27th of 2007. Alright. To go to South Bend, Indiana on a bus that he said was inaccessible. After a 24-hour rest and after they left Colorado, they stopped in, gave him a 24-hour rest in Texas. Alright. Then he was loaded back on the bus that he claimed was not accessible. And was kept on that bus approximately three additional days.

Now, I don't know about you, but traveling in a nice, comfortable car is difficult. Three days. He says he's being put on a bus that is not accessible and is not given the proper treatment that he says he deserves. Also, he says that he alleged that the bus operator took some of his belongings before entering the bus and threw them away. And from what I can understand that it was sweater, a coat and in his words a very expensive Zippo lighter. So they were, just basically the bus drivers said, "you can't

bring this stuff on here" and they were taken and thrown away. And he'll argue why that is not that is not okay in the case. Alright.

Slide 34: Smith v. TransCor America (slide 2 of 4)

So, we started at the Christian County Jail in Kentucky, which also was not accessible. And while they were there, he was unable to get around independently and relying on inmates to carry him to the bathroom, shower. And they had to carry him to get meals. And at one-point he hurt himself trying to get in the shower, he fell. And I'm going to read just a little excerpt of what he actually said.

[start reading of case excerpt] He said: On the 3rd of April 1st, I was dropped off with the Christian County Jail in Kentucky. When I was taken to the jail, I was put into a gym with about 30 other people. I was made to sleep on the floor of the gym on a three-inch thick mat."

[comment from Jason] Okay. So, everybody is doing that. We're not to the violation yet.

[continue reading of case excerpt] Christian County Jail is in no way equipped for the handicapped. Because of my disability, I was unable to get up off the floor by myself. Several inmates had to pick me up off the floor and physically take me to the bathroom which had no handicapped bars. I could not get off the toilet by myself either at that point. At that point, my knee was in bad shape. The gym did not have a shower in it and to shower. all the TCA inmates were taken to a separate gym with a shower that was not accessible.

There's no way I could get into the shower as there was a step-up and not handicapped equipped. I was told that was the only shower I could use. I tried and fell hitting my right knee on the step up into the shower. There were about 25 inmates that saw this. And made the guard aware that I fell and hurt my back and right leg. And a wheelchair was finally brought to me. A lieutenant crew took me to the nurse's office where he gave me ibuprofen and a couple of Benadryl and said, "go to sleep." I did not see a nurse or a doctor. I was taken back to lay down again on the gym floor. I could not get up at all.

[comment from Jason] Alright, so we're starting to see some of the some of the violation here, or some of the potential violation.

[continue reading of case excerpt]. After four days, I was taken to another room that was smaller and had more people in it. Most of the time, I had to be helped up by two men who were very nice before the bus came back to pick me up. [end reading for case excerpt] Alright. So, sounds like they're basically saying you're on your own and he found a way to get around and to be able to do. But then he says later that he did not have a shower for seven days.

Slide 35: Smith v. TransCor America (slide 3 of 4)

So, alright, he files a suit without an attorney, did not hire an attorney, thought this is basically egregious enough, that I don't need an attorney. Right. So, he filed under Title two (ii). He also alleged that TransCor America and the Christian County Jail failed to accommodate his disability. TransCor America, however, is not a public entity. Okay. So they are, they are a private company.

Slide 36: Smith v. TransCor America (slide 4 of 4)

So, he also started claims for cruel and unusual punishment, deprivation of property into the 8th and 14th Amendments. And while Christian County Jail is a public entity. Okay. Their TransCor is a limited liability company. However, the court treated TransCor America as an instrumentality of the state and Title two entity.

Slide 37: Is TransCor America a “public” entity under Title II?

Alright so they basically said, "you're under contract." The court treated TransCor America as an instrumentality of the state as it was under contract to manage a public facility. So as a contractor of a state facility, you fall under Title two (II). And that exists all over in government because they do so much sub-contracting with non, non-government entities to provide a service. In that case, those two falls under Title two (II). That's been upheld several times in the courts over the years. Okay.

Slide 38: Issues of the Case

So here are the issues in the case. So first of all, does Mr. Smith have a claim against TransCor America and the Christian County Jail for failing to accommodate his disability under the ADA. Thumbs up or thumbs down, what do you all think? Yeah. Okay. So, does he have a claim for accommodation under the ADA? Most of you are saying, "yes."

Does he have a claim against Christian County for cruel and unusual punishment? Okay. And what does cruel, and unusual punishment mean? Under the 8th Amendment prohibits deliberate indifference to the needs of prisoners, including the basic elements of hygiene. And this was held in an earlier case in Stale versus Gamble in 1976. So, there's some presidential,

precedential case law that says, absolutely." So, a plaintiff has a right to be free from cruel and unusual punishment that is in conflict with the 8th Amendment rights of prisoners. Okay. Alright. So, does he have a claim for cruel and unusual punishment? From what I read, in the decree, "yes" is probably the answer.

So, does Mr. Smith have a claim against TransCor America for deprivation of property? Alright. And deprivation of property. Plaintiff's claims concerning his property fall within the purview of the 14th Amendment, which provides that the state may not deprive a person of his property without due process of law. Okay. And I don't know that due process exists when a bus driver takes your stuff and throws it away. Alright.

Got some questions, I'm sure. Thumbs up. All right. Great. Thank you all for participating. I am, I enjoy feedback and it's been really difficult over the last three or four years to present only on Zoom. And I understand the reasons for it, and that kind of stuff. And I'm glad that we can reach so many people all across the country. But I do miss the face-to-face. So, I appreciate your participating in any form or fashion that you can.

Slide 39: Consider This (slide 1 of 2)

So, things to consider. So, the ADA Title two (II) prohibits public entities from discriminate against individuals who have a disability, operation of services, programs, or activities. We think of programs and activities by government entities. We don't think, or when we think of those things, we don't think of prison being a program, but there's no other way to look at. It's a program. That is, you don't have a choice of whether you participate, but it's still a program. And well I guess you do have a choice. If you decide not to do, I guess in the first place.

But in operation of services, programs, or activities, it is an activity, it is a program that's offered or operated by a state. So, state, and local prisons and jails are public entities subject to Title two (II). Mr. Smith asserts the TransCor America, and Christian County failed to accommodate his disability in providing a service.

Slide 40: Consider This (slide 2 of 2)

So again, we said the Four[teenth] Amendment Due Process Clause protects pretrial detainees like Mr. Smith from cruel and unusual punishment.

And according to the basic needs of prisoners, hygiene is protected from intentional [correction] indifference on the part of the prison officials. And he claimed that TransCor America intentionally deprived him of his property again, without due process under the 14th Amendment. Alright.

Slide 41: The Ruling

So, here's what the ruling said. So, the ruling says the court held that Mr. Smith can proceed, could proceed against TransCor America and Christian County Jail for his ADA claims.

Remember we have three things going here. We have the ADA claim. We have the cruel and unusual punishment claim. And we have the deprivation of property claim.

So, check on number one. And he may also proceed against Christian County for cruel and unusual punishment.

Alright. So, the judge says, "Yes, we have enough evidence this happened. We can go to trial with these, or we can move forward in the process." And

usually, these things come out of attorneys asking, or entities asking for summary judgment where the judge would say, "if we use your summary judgment, it ends today, it's over." In this situation they say, "Yes, there is enough evidence to move on. There is a case here."

The third thing, the court did not permit his deprivation of property claims to continue because he failed to show that TransCor America refused to remedy the loss of property. And I couldn't really find anything more about that. But I think what they're basically saying there is that TransCor probably offered to replace the items. And so, it was kinda, there was no reason to proceed with that. Okay.

So those are the rulings and those are the facts of the case. Now, I always like to do cases when I can because I think it really illustrates what some of the issues are and kind of really, kind of bring, brings home what, sort of, what we're talking about.

Questions?

So, this is, that's the end of our, of our presentation. And this is where I like to take questions, if there are any questions from the audience.

>> **Barry:** Hey, Jason, I see a couple of hands raised. I will allow Hope to talk. Go ahead Hope. Hope? - Hope you have to unmute.

>> **Hope:** I'm sorry. Yeah. My hand was not raised. I'm sorry.

>> **Barry:** No worries.

[chuckles and jokingly Jason comments]

>> **Jason:** Nope. You raised your hand. You're forced to ask a question.

>> **Hope:** Do I have to make up something? Do I have to make up a question?

>> **Jason:** No, I don't think so.

>> **Hope:** Thank you.

>> **Marsha:** So, there is a question about "if the prison or jail are subrecipients of federal assistance, would they be covered under 504 of the Rehab Act?"

>> **Barry:** I'm sorry, I was doing two things at once. Can you repeat that? And we also have Becky.

>> **Becky:** I would say that answer is yes. This is Rebecca.

>> **Barry:** Yeah. What was the question? I didn't hear it, Becky.

>> **Becky:** If a jail or prison receives federal financial assistance would 504 also be covered?

>> **Barry:** Yes, absolutely. Yes.

>> **Jason:** Yes. Are there any other questions?

>> **Barry:** Yes. Carrie has a question. I'll unmute her.

>> **Jason:** OK.

>> **Barry:** Go ahead Carrie. Or you have to unmute yourself. I've just allowed you to talk.

>> **Carrie:** I'm sorry. I didn't have I didn't know I had my hand raised.

>> **Barry:** No worries.

>> **Jason:** I think when I when I asked for the thumbs up, I think some people hit the, hit the hand raised button.

>> **Barry:** Ok, so that might be the issues.

>> **Carrie:** That was me. Yes.

>> **Jason:** That's great. That's fine. There's a question. "Do all entities that are state contractors that received both state and federal funding, apply under the ADA?" My answer to that would be, not necessarily because some of those would fall under 504 as we talked about before.

>> **Becky:** Jason, this is Rebecca. Would you repeat the question, I didn't quite get all of it?

>> **Jason:** The questions were, do all entities that are state contractors that received both state and federal funding, apply under the ADA?

>> **Becky:** I'm reading the captions. [pause] Well, I mean, both laws are going to come into play because if it's still a state entity, there will be ADA responsibilities. But the federal, federal funding is kinda like we said earlier, that'll trigger 504.

>> **Jason:** Right. Hey, anybody else? Any other questions? So, again, part of the Human Development Institute. Okay. We have one more question, did you say the compliance are reportable to the Civil Rights Commission in the town? It's usually called the Human Rights Commission. But yes, and listen I'll be straight up honest with you. Even in Lexington where we are, and we do a lot of work with local government. Our Human Rights Commission was not aware of that. But they are your local go-to when you have a complaint about the ADA, and they were kind of shocked by that. And I will warn you that a lot of those conditions are well underfunded. So, it took a little while for them to kind of get their feet under them to be able to do a lot of investigations and that kind of stuff. But yes, they are the local

resource. And you can always make a complaint to the Department of Justice as well. Alright.

>> **Becky:** Jason, this is Rebecca. I'd like to just piggyback on that a little bit. The state Human Rights Commissions or Human Relations Commissions, or whatever they're called. Yes. Complaints can be filed there, discrimination violation complaints, but they would actually be filed under your state civil rights law. And these commissions often work together the designated federal agency for the particular type of complaint under the ADA. So, your State Civil Rights Commission can enforce and investigate state violations.

>> **Jason:** Right.

>> **Becky:** But they're not going to necessarily be able to investigate federal violations. Federal laws are enforced through a federal agency. State violations are enforced through your state agency. So, when I talk with people, I do refer to both agencies, and you're right, most of the state ones are under federal or underfunded, but they often work jointly with the state or the federal agency.

>> **Jason:** Yeah, a lot of times, what we find in these cases too, is that sometimes it's just ignorance on the, on the entity in the first place and we just have to, sometimes that letter from one of these groups really carries a lot of weight and they fix the problem. Not always, but sometimes is the case. Also, I have a question, what is the status now with this suit? And somebody from, one of my colleagues may be, I could not find what the next step after this was. And I searched wholeheartedly for it. I'm assuming probably there was a settlement involved, maybe a sealed settlement. But for purposes of this presentation and for this case, the idea was is just

whether or not it was determined that there were violations under the ADA and due process. So that's as far as that got. But as far as we know, but Barry - you, Marsha, or anybody know how much further that went? Or Becky. I don't, I couldn't find anything to find out how the case turned out, which I'm assuming is there was a settlement.

>> **Becky:** This is Rebecca. I have not heard anything on that one Jason.

>> **Barry:** I don't either.

>> **Jason:** And I'm very curious, but that's usually what the case is. So now I think at that point once the judge ruled that those things had taken place and were violations, then I think you know the other side, TransCor America decided we need to, we need to fix this. So that's why there's no trail, no paper trail.

Also, I want to mention this is the Southeast ADA Center. We come to you as part of the Southeast ADA Center. Listen folks, this is free. This is great advice. Just make a phone call or an e-mail, tons of resources on the ADAsoutheast.org and follow social media as well. But you know this is a place where if you have a question about something ADA-related, you can pick up the phone. They refer to local states all the time and have affiliates in those states. And just a plethora of information and guidance, not legally binding. We can't intervene in these cases or anything like that, but we can let you know what your rights are under the ADA.

And I'm also part of the HDI Center for Assistive Technology Services. That's who started this program about five years ago. And that is here in Lexington. And this is my information if you have any questions, especially

if it's Kentucky related, feel free to drop me a line and give me a call or send me an email and we will try to help in any way we possibly can.

And with that, I would thank all of you all for participating. Thank you so much for being here today. And we will be back again next month. Same time the fourth Thursday at 10:00 A.M. And I hope to see as many of you there as as possible. I hope you've learned something today. And with that, I'll turn it back over to you, Marsha.

>> **Marsha:** Thank you, Jason for sharing all that information. And just as a heads up, the next session on Thursday, April 27th is on ADA, employment and long COVID. Attendance to this webinar does provide the opportunity to earn a certificate, after you complete the post-test eval and confirmation of attendance.

You will want to make a note as it may appear in the post-test about knowing a bow-wow from Steve and his guide dog, Caitlin, at Fenway Park. So, we have a picture of Steve Kuusisto, one of our co-workers. And he's a huge baseball fan. And he is with his guide dog, Caitlin at Fenway Park. Note that for the test. Next slide.

The link to this post-test eval for session three will be sent to all email, will be emailed to all participants at the conclusion of this event. The web address is: <https://bit.ly/adatalks3-032323>

The archive for this session will be available on Friday, April 8th. Materials from this presentation are available to download from the excuse me, from the website: disabilitywebinars.org

You can go back one slide Jason. That is our housekeeping. Here you go. Thanks. Thank you again for joining us for today's session.

Contact and Questions?

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