

REALTIME FILE

Pacific ADA Center
NATIONAL NETWORK LEARNING SESSION: REVIEW OF
EMERGENCY PREPAREDNESS LITIGATION
FEBRUARY 8, 2018

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>> Lewis Kraus: Welcome, everyone, to the Emergency Management Preparedness Inclusion of Persons with Disabilities Webinar Series. I'm Lewis Kraus from the Pacific ADA Center, your moderator for this series. This series of webinars is brought to you by the Pacific ADA Center on behalf of the ADA National Network. The ADA National Network is made up of 10 regional centers that are federally funded to provide training, technical assistance, and other information as needed on the Americans with Disabilities Act. You can reach your regional ADA Center by dialing 1-800-949-4232.

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This is the fifth year of the webinar series which shares issues and promising practices in emergency management inclusive of people with disabilities and others with access and functional needs. The webinars provide an opportunity for emergency managers, people with disabilities and others with access and functional needs, first responders, planners, community organizations, and other community partners to exchange knowledge and information on promising practices in inclusive emergency preparedness and management for the whole community. The series topics have covered emergency preparedness and disaster response, recovery, and mitigation as well as accessibility and reasonable accommodation issues under the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the ADA, and other relevant laws.

Upcoming sessions are available at www.adapresentations.org/schedule.php. These monthly webinars occur on the second Thursday of the month at 2:30 eastern, 1:30 central, 12:30 mountain, and 11:30 a.m. pacific time. By being here, you are on the list to receive notices for future webinars in this series. Those notices go out two to three weeks before the next webinar and open that webinar to registration.

You can follow along on the web platform with the slides. If you are not using the webinar platform, you can download a copy of today's PowerPoint presentation at the www.adapresentations.org/schedule.php web page.

You may type and submit questions in the chat text box area or press control m and enter text into the chat area. At the conclusion of today's presentation, we will offer an opportunity for everyone to ask questions. The speakers and I will address those questions at the end of the session, so feel free to submit them as they come to your mind during the presentation.

If you are listening by phone and not logged in to the webinar, you can ask questions by e-mailing them to adatech@adapacific.org. If you experience any technical difficulties during the webinar, send a private chat message to the host by double clicking Pacific ADA Center in the participant list. A tab labeled Pacific ADA Center will appear. Type your comment in the box and enter. If you are using a keyboard, use F6 and arrow up or down to locate Pacific ADA Center and select to send a message. You can also tell us about any technical assistance by e-mailing us at adatech@adapacific.org or calling us at 1-510-285-5600.

Today's National Network Learning Session is titled Review of Emergency Preparedness Litigation. This session is a little different from what we have done in the past. This will actually be looking at legal issues involved that have been until the courts over time, as opposed to processes and programs that people have been using.

The ADA was passed before major emergencies such as September 11, Hurricane Katrina and Sandy Hook. As a result, the text of the ADA does not specifically reference the ADA's application to emergency preparedness efforts by state and local governments. So in this session Barry Taylor will discuss how the courts have interpreted the application of the ADA and other Civil Rights laws to the issue of emergency preparedness. He will also review the implementation of various emergency preparedness settlements across the country.

As part of this webinar, Barry drafted a legal brief with more detailed information that you can access. It's available at www.adapresentations.org website next to the webinar

description. Currently that's under the schedule page. By tomorrow it will be in the archive page. It is also, these legal brief summaries are also, available at our Pacific ADA Center website under emergency preparedness publications and resources.

Today's speaker, Barry Taylor, is the Vice President for Civil Rights and Systemic Litigation at Equip for Equality, where he has worked since 1996. At Equip for Equality, he has overseen many individual and systemic disability discrimination cases and he is currently co-counsel in five ADA class actions, including lead counsel in *Ligas v. Norwood*, a class action on behalf of people with developmental disabilities who are seeking community services. Barry has given numerous presentations on the ADA across the country to people with disabilities, family members, attorneys, employers, businesses, service providers, and advocacy organizations. From 1988 to 1993, Barry was a litigation associate at the Chicago law firm of Peterson & Ross. He is a 1988 graduate of the University of Illinois College of Law where he also received his undergraduate degree in 1985.

Barry, I'm going to turn it over to you.

>> Barry Taylor: Great. Thanks, Lewis. And thanks for all of your help in getting this set up.

Welcome, everybody. It's great to be part of this session today. As Lewis said, we're going to focus on litigation and how that's really shaped the whole landscape of emergency preparedness.

I'm going to skip the background because Lewis went through some of that already but we'll get into the litigation and first look at the litigation that was brought against state and local governments. Then we'll shift to litigation that was brought against schools. And then we'll talk about some of the federal agency guidance on emergency preparedness that's come out since the ADA. And as Lewis said, we'll have opportunities for people to submit questions.

This slide was just sort of the background that really there is nothing in the ADA that gives us information about emergency preparedness being somehow covered by the ADA. Many of the emergencies that have happened for people across our country have happened since the ADA was passed. Really litigation is the way we found out on how the ADA interplays with emergency preparedness.

So we're going to start first with litigation that's been brought against state and local governments. And the first major case that was brought was brought in 2007. This is the first major case brought against a city. It was brought against the City of Oakland. And the plaintiffs for disability rights organization, as well as an individual. They filed suit against the city of Oakland. And they alleged violations of the Rehabilitation Act in state law and soon thereafter, actually, amended their complaint to include the ADA.

It's estimated about 84,000 people with disabilities live in the Oakland area so it covered quite a bit of a number of people through this class action. And the plaintiffs had alleged that the defendants' emergency management plan did not take into account the needs of people with disabilities. And the specific allegations that they made included that it was no mass care shelter plan that addressed the needs of people with disabilities. And they also talked specifically about how inaccessible the shelters were, not just getting in but also the paths of travel, the bathrooms, showers, signage and parking.

And the complaint also talked how important it was for Oakland to have good plans for emergency disasters because of the frequency of earthquakes and flooding and fires and mudslides. And Oakland acknowledged that they had a problem but failed to address that in their 20-year-old plan that had been passed before the ADA. Then the complaint also talked a little bit about how people with disabilities are more adversely affected by emergencies

because they had to seek shelters more. They had to rely upon public transit. And they were often poor and therefore don't have their own resources to address problems that arise.

So the plaintiffs alleged maybe the allegations and shortly after filing the suit the parties negotiated a settlement. So in this particular case we have no ruling on whether there was an ADA violation. And we don't even have a decision as to whether the ADA applied to emergency preparedness. We didn't really have any sort of indication yet. And this suit did not provide that. So it's not really helpful, precedential value but it is important because it shows sort of how a case could be brought, the allegations made, and then it shows how the settlement played out as well.

Also on this slide, it indicates that a mass care and shelter plan annex was developed by the parties as part of the settlement to incorporate into Oakland's overall emergency preparedness plan. And we've given you a link on this slide if you want to look into the complaint, the settlement agreement, as well as the plan annex.

To go over a few provisions of the plan annex to give you a sense of how this played out, the City of Oakland agreed to provide text and voice emergency notifications through public access television network including accessibility statement in emergency notifications. Before when they did emergency issues it didn't include issues regarding people with disabilities. They agreed to identify vendors for durable medical equipment for emergencies. They agreed to establish functional need coordinators at shelters to identify and assist people with disabilities. They also agreed to make available ASL interpreters or remote video interpreters for deaf and hard of hearing people who might be using the emergency shelters.

The plan also said Oakland would agree to evaluate all the emergency shelters for physical and programmatic accessibility. Remember, Title II requires program access not just physical access. And Oakland agreed to adopt transportation procedures for evacuating people with disabilities and did a pretty major review of the accessibility of its public transit system. They agreed to update and improve the city's Geographic Information System for identifying and locating people with disabilities during emergencies. And then finally they agreed to establish a medical shelter for people with disabilities who couldn't be adequately served in the emergency shelters.

One thing to remember is, of course, the ideal is to serve all people with disabilities in the local shelters for convenience sake but also to prevent segregation. Sometimes specialized shelters may be necessary for people with disabilities for high medical needs. So Oakland had shelters that were supposed to be accessible for people with disabilities but they also wanted to establish a more high-level medical shelter for people with more high-level needs.

So the next major case that came about was about four years later in 2011, also filed in California but this was actually filed against the City of Los Angeles and the County of Los Angeles. Again making the same allegations of violations of the ADA, the Rehabilitation Act and state law. In this case it was interesting because there were two defendants, the county and the city, and the county and the plaintiffs reached a settlement.

And you've got a link on this slide if you want to get more details about the specific settlement that they reached.

But the plaintiffs did not reach a settlement with the city. And so the plaintiffs said we're going to file a motion for summary judgment asking the judge to rule in our favor. And it was interesting because the city here said, you know, we can meet the needs of people with disabilities by providing ad hoc accommodations so we'll give accommodations to people with

disabilities but we'll do it upon request.

And this is a familiar defense we'll see in these cases. The city said, you know, the reason we think this is ok under the ADA is it's consistent with the way the ADA is interpreted in other parts of the ADA. So they gave the example of when an employee with a disability needs assistance in the workplace, they have to request it as a reasonable accommodation. The employer doesn't have to do anything proactively. It's up to the employee to initiate that request. So what the city was arguing here was the same should hold true for emergency preparedness. The city shouldn't be required by the ADA to be proactive. They just should respond appropriately to request for accommodations by people with disabilities. That was their argument.

The court disagreed and did not believe that that position was consistent with the ADA and they found in favor of the plaintiffs. They found, first of all, that the emergency procedures was a program benefiting the citizens of Los Angeles and that the procedures that were currently in place had violated the ADA because they affectively excluded people with disabilities from receiving those benefits.

And the court specifically talked about how people with disabilities are disproportionately vulnerable to harm and emergencies, similar to how that was discussed in Oakland, and then they went into more detail and said that there was no provision in Los Angeles plans for alerting people with cognitive or auditory disabilities in an accessible way and there were no plans for evacuating or temporarily housing people with disabilities.

What was interesting about this case is the court actually was provided with a memo that was issued by the Los Angeles department on disability. They found that memo to be very compelling. And they found that the memo really was evidenced that the city had failed to address the needs of people with disabilities even though they had been [Indiscernible] of them.

I just wanted to read to you one portion of the memo that said that cities, Emergency Preparedness Program is seriously out of compliance with the ADA. The memo went on to say that the city's residents with disabilities will continue to be at risk for suffering and death in disproportionate numbers unless the city drastically enhances the existing disability-related emergency management and disaster planning process and readiness as required by the ADA and other statutes. And the court found that the city did not take the Department of disabilities' concerns seriously and failed to implement nearly all of their recommendations.

So here we had a city that was not, you know, unaware. They had been aware, made aware, by their own disability folks internally what problems were there and they failed to act. So that was -- that seemed to be a very compelling component to this decision. That the court made.

So one of the reasons why this case is so important is it's the first time that a court has ruled and found that a government entity is legally liable under the ADA to its citizens with disabilities for failing to address their needs in the event of an emergency. And the court went on and said that they rejected the city's position about they only have to respond to the needs of people on the ad hoc basis to comply with the ADA. They said that's legally inadequate and is practically unrealistic.

I wanted to read one other quote from this case that I think is helpful because this whole ad hoc argument is made, and I think this statement by the court really shows why that shouldn't be something that cities should be saying.

So the court said that the purpose of a city's emergency preparedness plan is to

anticipate the needs of its residents in the event of an emergency and to minimize the very type of last-minute, individualized request for assistance described by the city. Particularly when the city's infrastructure may be substantially compromised or strained by an imminent or ongoing emergency or disaster.

So I think it's clear that the city is saying -- or the court is saying that, you know, cities, you have to plan ahead and figure this out for people with disabilities and responding on the fly when there's so much going on is both legally inadequate but it's also practically unrealistic that you're going to be able to meet those needs because of a lot of the preplanning that is necessary for that to be effective.

The other thing I wanted to point out here is that in addition to the parties that were involved, the Department of Justice also filed a statement of interest. And this was really important as well because you had the federal government weighing in, the Department of Justice, which is tasked with enforcing the ADA and interpreting the ADA, and so they weighed in favor of the plaintiffs here. And found that they reiterated the whole thing, that ad hoc doesn't make sense. You have to plan ahead.

And they also talked about how there had been previous emergencies and studies that had been done by the National Council on Disability, particularly the Hurricane Katrina, and how that had been so problematic for people with disabilities and how important it was to plan ahead. They also talked about how much federal funding that the City of Los Angeles had gotten from FEMA and failed to use that money to address the needs of people with disabilities.

And then finally, and I think most interestingly, they said this is really a different way of looking at the Olmstead decision. I think all of you are probably aware that the Olmstead decision by the Supreme Court said that people with disabilities have a right to live in the community in the most integrated setting. And Olmstead has been applied in a variety of ways and the Department of Justice said you can apply Olmstead to this situation as well that people with disabilities should be integrated in other emergency shelters, as long as you make them accessible, and not segregate them or certainly not institutionalize them, which has happened in the past when emergencies have happened. So an interesting reading on the Olmstead case through this Department of Justice statement of interest.

So as a result of the court's finding, they issued an order that required the city to hire an expert and revise their emergency preparedness plan. And if you want to look at that order, there's a link at the bottom of the slide.

The next major case came a couple of years later out in New York in 2013. The Brooklyn Center for Independence v. Bloomberg. This is very similar to the Los Angeles case but has a couple of different twists to it that I'd like you know about and further developed the case law we have now on emergency preparedness and its application to the ADA. In this case you had disability rights organizations as well as individuals filing a class action against the mayor and the City of New York. And they alleged that New York failed to plan for the needs of people with disabilities in large-scale disasters. In 2013, the court issued an opinion after a trial, finding that New York had violated the ADA with its inadequate emergency preparedness plan.

So this case goes even further than Los Angeles case. So the Los Angeles case was a ruling on what's called a Motion for Summary Judgment. So this is just sort of an argument on the papers about who should win. This is a case that went all the way to trial and both sides got to put in evidence and the court ruled post the trial who should prevail in the

case. And the court found that in this particular case the plaintiffs were entitled to prevail because of the violations of the ADA.

And the court found that New York actually had a really good plan for emergency evacuation. They called it impressive. But when you looked at how that applied to people with disabilities, they described it as benign neglect. And what that means is that they're saying defendants must do more than provide a program on equal terms for people with disabilities and people without disabilities; that, instead, they need to ensure that these facially neutral policies and programs to help all people don't discriminate against people with disabilities, like relying upon New York's public transit system while most trains were inaccessible at the times.

So on the face of it, it didn't look like it hurt people with disabilities but in practice it did. And so that's what they mean by this benign neglect. The court specifically said that New York had no system for mass evacuation of people with disabilities from high-rise buildings despite being 12 years after 9/11. And that they lacked a reliable and effective communication system for people with disabilities.

The court reiterated what we saw in the Los Angeles case, that advanced planning is critical. You can't wait for the disaster to happen to figure out what you need to do. They also rejected New York's claim that the people that they had in place and systems they had in place were fine. New York had what's called a special needs coordinator, an internal person to work on disability issues, and a Special Needs Advisory Committee that was supposed to assist with disaster planning. But the court found that these were positions in name only and they had no real authority or influence. Whenever they made recommendations, they were never implemented by New York. So those were seen as not very valid evidence.

They also were concerned about the position that the New York Police Department and the New York Fire Department took that they didn't need any personnel for disability issues for disaster planning. And the New York Fire Department actually testified that what they did was fine. They said, "We treat everyone the same way. We do on-the-scene planning and no advance planning for people with disabilities is necessary" and the court found that that was violence of the ADA.

A couple of other additional violations of the ADA that the court found. One was that there was very little information about emergency shelters accessibility and how people would learn which shelters were accessible. There was no protocol to address the needs of persons with disabilities in power outages and I'm sure all of you know electricity can be critical for people with disabilities, like for charging electric wheelchairs or making sure that medicine is refrigerated or people have a breathing machine. So there was nothing there to address those needs.

And as I mentioned before, the plan that they had in place at the time relied highly upon inaccessible public transit in New York for evacuations and at that time, most of the buses and trains were inaccessible, particularly the trains stations I think they pointed out, not the buses, and then 2%, only 2% of the taxis were accessible. And that also the paratransit system in New York was inadequate to meet all the needs that would arise in a disaster. Just like we saw in the California case, the Department of Justice filed a statement of interest. So they were once again involved. The brief is very similar.

One thing that I -- just to pause for a second. Remember, this is 2014, this case -- well, 2013 the case was filed. So it was under the previous administration. We don't have on record what the Department of Justice under the current administration thinks about this issue and whether they would be actively involved in any emergency preparedness litigation or if

they even have the same position that the ADA applies to emergency preparedness. Thus far there's been no sort of proactive efforts but also no efforts to remove anything that DOJ has said, removing any statement of interest or guidance that they've done. So at this point we don't really have any information as to what the current administration thinks about the intersection of the ADA and emergency preparedness. So it's something to watch as we go forward. The court here did not order a specific remedy but instead they order the parties and the Department of Justice to work out an agreement.

One thing I wanted to mention before we moved on to the next slide is that after this case was filed, Hurricane Sandy happened. And a lot of the problems that were highlighted in the lawsuit came to fruition in Hurricane Sandy. So that made for incredibly compelling evidence at trial because this disaster had just happened and did nothing but reiterate and confirm the allegations that had been made by the complaint that was filed before Hurricane Sandy.

So the parties and the Department of Justice got together and drafted an agreement. It was approved by the court in 2015. I wanted to share with you some of the things that are in that agreement.

First, the agreement says that the city is going to hire a disability and access and functional needs coordinator. So this is going to be a lead employee who is responsible for overseeing the disability focus on emergency preparedness plans unlike the previous position, the special needs coordinator that I mentioned before, which was sort of a low level position within the city and really had no -- not much authority, this person has much more authority and involvement and their recommendations are supposed to be incorporated into the city's plan.

The city also agreed to convene a disability community advisory panel. So previously they had a Special Needs Committee that had not been very effective or had much power. And this one is going to -- the settlements agreement indicates that this advisory panel will provide feedback on a regular basis as opposed to on an ad hoc basis that was ignored.

The city also agreed to ensure that at least 60 of their shelters were physically and programmatically accessible. They agreed to create a post emergency canvassing operation, which I thought was interesting. You don't see this in all the settlements that we're reviewing. So what this is is a requirement to survey households after a disaster happens to assess and identify the needs of people with disabilities, literally by going door to door and then respond together resource requests like food and water, electricity, medication, equipment.

So what I think this provision shows is that it's important for emergency preparedness plans to not only look at the needs of people before the disaster and during the disaster but also after the disaster happens as well. So I think this is really a great model for people if they're looking for updating their own emergency preparedness plan.

The city also agreed to develop an accessible transportation plan during emergencies. As I mentioned before there was a lot of inaccessibility of the public transportation system. So what the agreement requires is that the public transportation system in New York, the MTA, has to coordinate with the limousine and taxi commission to ensure that there's enough accessibility for people with disabilities. And there's also a need to coordinate with the New York Housing Authority so that people can get to accessible shelters and housing. And then finally, the city agreed to convene an ADA high-rise building evacuation task force. Remember I mentioned how there wasn't a real clear plan on how to get out of high-rises safely if you're a person with a disability. So that task force is in place.

At the bottom of this slide you have a link that gives you access to all the relevant documents including the settlement agreement. And this implementation is going on. There were some concerns the city wasn't moving fast enough but recently the parties agreed to give the city a little more time to comply with some of the components that haven't been reached yet.

The last major case I wanted to mention against an entire municipality, city, or county is the United Spinal Association v. District of Columbia. This is the most recent challenge that's been filed in the courts that I'm aware of. It was filed in 2014. In this case, like in the other cases we saw, the plaintiffs were organizational plaintiffs and individuals and they filed under the ADA, the Rehabilitation Act, as well as the relevant state law, the DC Human Rights Act, for failing to meet the needs of people with disabilities in emergency situations.

Very similar to New York, DC actually has a very extensive emergency preparedness plan but historically has really done very little with respect to focusing on disability issues. So unlike New York, which went to trial, the parties entered into an agreement.

First of all, before I talk about their working to enter in an agreement, indicate the allegation that have been made, one of the things they said that DC failed to do was to publicize information about emergency shelters' accessibility. They also failed to plan for emergency communications for people who are deaf or blind. They failed to put emergency evacuation options in place and failed to plan for supply chain disruptions for medication and the replacement of durable medical equipment.

As I alluded to before, soon after this case was filed the parties agreed to engage in settlement negotiations. That's been happening for a number of months. And they are supposed to be back in court in open to report the status of their settlement negotiation. So we don't have a settlement agreement yet in this case but it appears the parties have been working hard to try to reach common ground. So you should look out for a new settlement agreement in the DC case, hopefully very soon.

All the cases I've talked about before have been against an entire municipality. I want to talk about a couple of different cases that aren't necessarily citywide or countywide issues but instead focus on a specific place or a specific issue.

The first one we're going to talk about is a case that focuses on a specific place. This is California Foundation for Independent Living Centers v. County of Sacramento. And in this case you had plaintiffs who alleged that Sacramento's airport evacuation procedures inadequately addressed the needs of people with disabilities.

Just to give you some context, Sacramento had completely renovated one of its terminals, spent over \$1 billion, and after they finished that renovation, there were allegations that were many, many areas of the airport that were out of compliance. So it wasn't just limited to emergency preparedness. Most of the cases we talked about so far have just focused on that issue. This complaint talked about all the ADA violations in the airport. So counters weren't low enough to be accessible for somebody in a wheelchair. A variety of architectural problems that were not in compliance with the ADA. But then they also said that the emergency preparedness plan was also not something that addressed the needs of people with disabilities. So it's a case that is broader than emergency preparedness but definitely gets to that issue.

And interestingly, the plan that was in place acknowledged that people with disabilities might have problems complying with the evacuation directions and procedures but

they didn't provide any guidance or solutions so that was sort of acknowledging the problem but not doing enough to address that.

So the court had a ruling for a summary judgment in front of it that was filed before any trial would go forth and the court ruled for the plaintiffs giving what's called a partial summary judgment. They didn't rule for the plaintiffs on all the issues but they did rule on some important aspects of the emergency air evacuation plan. So this is the first time I think we have a court applying the ADA to an airport emergency evacuation plan.

So let me tell you about things that they found in favor of the plaintiffs here. First they found that the emergency preparedness plan really had no provisions for evacuating people with disabilities from the new people mover, which is the shuttle train that takes you from one part of the airport to another part. There was no evacuation chair in the people mover. And no plan and no training how people would get out.

The plan also failed to train personnel on the needs of people with disabilities. There was even testimony that the ADA coordinator didn't know the location of evacuation chairs in the terminal. So clearly if your ADA coordinator doesn't know, your line staff probably will not know even if you have them in place.

Also the court found that the city -- excuse me, that Sacramento failed to -- county failed to reserve persons to assist people with disabilities. And the plan heavily relied, when you were disabled traveler to rely upon your friends or family or even fellow passengers to provide assistance if there were any accessibility barriers. As I'm sure all of you know, asking people to just rely on friends and family and the kindness of strangers is not a great plan when it comes to providing information about accessibility and assistance for people with disabilities.

The court also found that there was inadequate communication about accessible evacuation assistance within the airport. There were emergency announcements but it was just generalized info. There was no disability specific information provided in the announcements.

The court also found that there was an inadequate incorporation of people with disabilities into the airport's recovery plan. So the plan had a provision about relocating to a safe area but it didn't have any provisions about the specific needs of people with disabilities like how were they going to reunite with their durable medical equipment or how are they going to get reunited with their service animal. So that was seen as a violation of the ADA as well.

So after the court came out and found in favor of the plaintiffs on these different issues, the parties agreed to discuss settlement. So that what's ongoing right now.

The other case I wanted to talk to you about under Title II is a case that focuses on a particular service as opposed to a particular place or against a whole city and all of its issues. And the service involved here we're focusing on is the 911 emergency services and the accessibility of that service. So this is a case called *Enos v. State of Arizona*. It was a case that was filed by the National Association of the Deaf, a national advocacy organization for deaf folks, along with three deaf individuals. And they sued the state of Arizona as well as local governments that play a role until providing 911 services. So in Arizona, there are shared responsibilities with respect to 911 services. And the plaintiffs alleged that the current 911 services were inaccessible to them because the way it was set up in Arizona is you could only call 911 if you were deaf by using a TTY.

I'm sure most of you know that's the mechanism where you type in through a machine to communicate and the other person on the other end has to have one of those machines as well. And TTYs, while certainly an important device for people to communicate

who are deaf, are now becoming much more obsolete as technology has evolved. The other option was to use the relay service which requires the use of a high-speed internet connection which is problematic for many deaf people, too.

And so what was interesting about this case is even though the plaintiffs and the organization involved were focus on the needs of people who were deaf, there were allegations that the current system would also potentially be inaccessible to people with other types of communication disabilities, like people with certain types of cerebral palsy or Parkinson's disease or people who had non-verbal autism.

So I think even though they didn't have plaintiffs with those types of disabilities, what they were trying to do is show how pervasive and how extensive these barriers would be for a number of people with disabilities, not just people who were deaf.

So what were the plaintiffs looking for here? What they were asking for was the ability to send texts to ask for 911 assistance as opposed to using a TTY or the relay service. And the defendants refused to implement what's called a text-to-911 system.

So the state of Arizona and the different municipalities filed a motion to dismiss saying this was not a legally viable claim under the ADA and the court disagreed. They said, ok, we're not deciding it for sure. We haven't had enough evidence yet. We're not going to have a motion for summary judgment. We're not going to enter judgment for the plaintiffs but we are going to let their case proceed. We think there's enough -- sufficient allegations to make a viable claim under the ADA. So the court found that the plaintiffs stated a claim under the ADA when they made the eagles that they couldn't use the 911 system that had been set up by the state of Arizona.

One of the things that the defendants had claimed here was that the individual plaintiffs didn't really have legal standing to bring this case. They were saying it's too speculative. We don't know if they'll need 911 in the future or not. So if you don't know somebody will need a service, how can they bring litigation against it? The court said we think there's enough here to let them proceed with their case; that it's not overly speculative. They had real fear and uncertainty, that non-disabled people didn't experience. So that's making a claim for discrimination. So we're going to let that proceed.

Arizona also claimed that their current system provided plaintiffs with meaningful access meaning that that's all they had to provide under the ADA. They don't have to provide equal access. It doesn't have to be the same as long as it's meaningful. And the court said, you know, it's not meaningful if the systems aren't working for at least some people who are deaf. The fact that some people could get through on a TTY or relay service doesn't mean it's meaningful access for all.

Also, I think what was significant to the court was that this is something, the system the plaintiffs were asking for is something a lot of different municipalities across the country have adopted. At last count there were 599 municipalities in 36 different states across the country that used some sort of text option for 911 services. So that really undercuts any kind of claim that the state would make that the texting option would be too difficult or expensive since so many other municipalities across the country have implemented it.

So we now wanted to turn to sort of a more specialized setting. That is emergency preparedness in schools. There's two cases we want to talk about that focus upon emergency preparedness in schools. Unfortunately due to the gun violence in our country there really is a concern about emergency preparedness and disaster when situations can arise or other disasters as well, not just mass shootings. But certainly that's what's garnered a lot of attention

recently.

One reason I want to talk specifically about these is because of the increased nature of mass shootings since the ADA has been passed gives rise to the potential of future litigation and also I think the importance of schools to really critically look at their current emergency evacuation plans to ensure that they're incorporating the needs of people with disabilities.

So the first case we're going to talk about is the Shirey case. The Shirey case I believe is the first reported case on emergency evacuation. It was even filed before the Oakland case that we talked about. But unlike the Oakland case, which was on behalf of over 80,000 people, this is a case that was brought by one person, a single plaintiff. And certainly under the ADA you can bring individual cases on emergency preparedness if it impacts you and you are discriminated against, which is what this plaintiff was claiming.

So in this case you had a student, her name was Katie Shirey, a middle school student who had a mobility disability of her parents sued the school board under the ADA as well as the Rehabilitation Act after two incidents had happened in which Katie had not been evacuated from the school.

Let me tell you about the first instance. The first problem that arose was the school had received a bomb threat and when they received the bomb threat, all the ambulatory children were evacuated from the school but the other students, I think only two, Katie and another student, were left in the school and an adult sat with them for 70 minutes as they tried to determine whether or not this bomb threat was real or not. It turned out the threat wasn't real but as you can imagine, the parents were very upset. So they ended up filing a complaint with the Department of Justice office for Civil Rights -- I should say the Department of Education. That's the typo. So they filed it with the Department of Education's Office for Civil Rights. They investigated the case and ended up ordering a plan of correction.

So the plan of correction required the school to work with students and parents and faculty as well as with first responders, the police and the fire personnel, to develop an emergency evacuation plan for people with -- for students with disabilities. And what they came up with is to designate a safe room that would be established for students with disabilities who can't easily evacuate and then they would designate a faculty member with a cell phone who could communicate with other school personnel as well as first responders and also have a flag that would help first responders find the safe room. Then if evacuation was needed under the emergency, the emergency personnel would go to that safe room to rescue the students and evacuate them safely.

So the school by all accounts sort of fully embraced this new plan. They had a lot of training. They did practice drills. So it looked like everything was in good shape. Unfortunately there was a second incident. And things didn't go as planned. There was an unplanned fire drill and the new plan was not executed properly. What happened was the plaintiff, Katie, was left alone when she went to the safe room and the person who was designated to stay with her, I think it was the librarian, actually evacuated with the non-disabled students. Fortunately for Katie her math teacher found her and realized that she had been left alone and that the plan had sort of not been effectuated so she stayed with Katie until the fire drill was completed. There wasn't a fire, obviously, it was a drill. So Katie did have somebody with her but there was a period of time where she was left alone because the plan had not been implemented properly.

So the parents filed suit under the ADA, under both incidents. The lower court found in favor of the school board. First they said, you know, you already -- the first incident you can't

really file in the first instance, that you already agree to this plan of correction with the Office of Civil Rights. And then they also found that -- because they had this plan in place that was sufficient. So then they got appealed up to the Appellate Court. So the Appellate Court actually went a different route. They said, you know, with respect to the first incident, we find that it was a violation of the ADA, there was no plan at that time to evacuate students with disabilities and we don't believe that the parents waived their rights under the ADA when they entered into the agreement with the Office of Civil Rights.

But the problem for the parents here was the court said, you know, we find that there's a violation after that first incident but the relief we would have ordered would be for the school to develop emergency plan that takes into account the needs of people with disabilities. And they've already done that. So we don't really see that there's any relief for you beyond what you already got from that plan of correction.

So then the court looked at the second incident, the unplanned fire drill where they had a plan in place and it didn't work. And the court said there's no ADA violation here. The board had a plan. It was well developed. And they had had practice drills and training. So they met their obligations even though there was imperfect execution of the plan. It wasn't an ADA violation as long as the plan itself conformed to the ADA. And the court said the ADA does not require perfection. What it requires is in this context, that you have a plan that conforms to the ADA and that reasonable efforts were made to try to implement that plan.

So that's where the court ended up on this case. Now we want to turn to a more recent case that was filed in 2015. This is a case in Los Angeles. It's a little bit of a twist but I think it's very helpful in sort of evaluating how this can play out in schools. And what possibilities could be put in place.

So this was a case against a school that focused on deaf and hard of hearing students. It's a school in Los Angeles called the Marlton School. The case was filed by five teachers who themselves were deaf or hard of hearing. And what's different about this case is that the case was brought not under Title II of the ADA, state and local government services, but it was brought under Title I of the ADA, the employment provisions of the ADA, because the teachers were employees and what they were claiming was that the school had failed to accommodate them. They had raised concerns so that they could effectively do their job and evacuate students as well as themselves. And they needed accommodations to do their jobs because the current evacuation system wasn't accessible for teachers who were deaf and hard of hearing.

In fact, the school was using sort of a standard PA system to announce when there were any kind of problems. And for the deaf and hard of hearing students, they had no information about what was going on. They were unaware if there were drills. They were unaware when there were actual emergencies. And then they were unaware what they should do when they realized there was something going on.

So as you know, sometimes in emergencies evacuation is the right thing to do and other times you want to shelter in place because it's not safe to evacuate. So they had no idea what they should do for themselves or their students because the information being provided by the school wasn't accessible to people who were deaf. So this case reached a settlement. The settlement has some really interesting terms that I think are particularly helpful if you're thinking about emergency evacuation involving people who are deaf and hard of hearing.

So one thing they agreed to do was to install a new visual PA system that had large, high-definition screens and a scrolling LCD display system as well as video phones being

added to classrooms and common areas to allow for communication of emergency messages and that would be capable of two-way communication with the front office. They also agreed to install flashing door bells on classroom doors along with peepholes or windows in the doors. They also agreed to put in place an ASL interpreter in the command center whenever emergencies occurred. They also agreed to develop a video that had ASL describing the emergency procedures at the school. They agreed to do a meeting with the first responders to make sure they were clear on the new procedures and the equipment that were available. They installed a two-way video camera at the entrance gate to facilitate better communication.

And then because this is under Title I of the ADA, the plaintiffs also received monetarily -- remember there were five plaintiffs, each got \$30,000 for the total of \$150,000 for these five teachers that brought the suit. This agreement was not public but as far as easily findable on the website. So we reached out to the plaintiffs' attorney and she agreed to give us copies of the settlement. We've put it on our own website. That's why the link at the bottom here is to our website because it's not on -- we couldn't find it anywhere else. So we wanted to give you -- have access to this agreement because I think it's really creative in its way to address the needs of students who are deaf and hard of hearing as well as the teachers.

Obviously in certain circumstances you're going to have -- in mainstream schools you're not going to have that high a population of deaf and hard of hearing students or deaf and hard of hearing teachers but I think a lot of these remedies that are in this settlement agreement could be applied to mainstream schools because we see more and more kids with disabilities, including students who are deaf and hard of hearing being integrated in schools as well as some teachers who are deaf and hard of hearing in mainstream schools.

So while this agreement certainly is focused on a school that is primarily -- kids who are deaf and hard of hearing as well as teachers, it could be applicable to the broader school context.

So the last thing I wanted to do and then we can open it up for questions is just make sure that you're aware of some resource that are out there. One of the reasons I wanted to share these with you is because a lot of the resources reiterate what some of the court decisions have found in the settlement agreements have provided for. So we see a synergy between what the federal government is now saying and what some of these cases are bringing to light.

Also, as I mentioned, the ADA and its implementing regulations didn't focus on the interface of emergency preparedness and people with disabilities. So now to have it brought out by the Department of Justice and some other federal agencies, it's very helpful even though it wasn't in the initial ADA and the initial ADA regulations.

So the Department of Justice has two main resources that are out there if you're not aware already. One is a document called Making Community Emergency Preparedness and Response Programs Accessible to People with Disabilities. It's an ADA guide for local governments. You've got a link there. And then there's also a Title II Checklist for Emergency Management. I think especially this checklist is very practical. It has a step-by-step process, action steps for how to incorporate and address the needs of people with disabilities in emergency planning.

The DOJ guide is also helpful to sort of lay out the different areas of concern. A lot of it is sort of a common sense but I think having it all written down in order is very helpful. So there's a notification provision letting people with disabilities know emergencies and the accessible communication so they're able to understand just like the general public. They

should be focusing on evacuation, making sure people can get out of where they are, making sure that there's accessible emergency transportation so that they can get out of any danger that's existing, sheltering, making sure that people, when they go after, they evacuate. When returning home is an option it's stable. Look at access to medications and refrigeration and backup power. Access to mobility device or service animals, again a big issue after Katrina. And, again, also just access to accessible information, making sure that people can make informed choices and have all the information necessary.

The DOJ guidance emphasized a few other areas that are important. One, they talked about the importance of using multiple methods of communication, audio and visual. They also talk about something that's a little bit controversial that I'm sure probably you talked about in previous webinars but DOJ talked about a favorable view of voluntary, confidential registries to identify people with disabilities who need assistance --

>> Lewis Kraus: Ok. Sorry, everyone. It looks like somehow Barry crashed and fell out of the system. So give me a moment while I try to make contact with him. And he'll be able to complete the session. So give us just a couple of minutes. Hold on.

[CART/Captions Standing By]

Ok, Barry, are you back with us?

[No Audible Response]

>> Lewis Kraus: Barry, this is Lewis. I've given you moderator privileges. Are you back with us?

>> Barry Taylor: Hello. Can you hear me?

>> Lewis Kraus: Yes. Great. We've got you, Barry. Can you hear us?

>> Barry Taylor: Hello?

>> Lewis Kraus: Ok. Hold on.

>> Barry Taylor: Ok. I'm not sure what happened. I can hear you. Can you hear me?

>> Lewis Kraus: Yes. Yes. This is Lewis. Yes.

>> Barry Taylor: Hello? Can you hear me now?

>> Lewis Kraus: Yes.

>> Barry Taylor: Can you hear me?

>> Lewis Kraus: Hold on, Barry.

>> Lewis Kraus: Sorry, everyone.

>> Barry Taylor: Hello? Can you hear me now?

>> Lewis Kraus: We can hear you. Let's do it this way.

Barry, we can hear you if you can hear me now.

>> Barry Taylor: Yes, I can hear you. Can you hear me?

>> Lewis Kraus: Yes. We can hear you.

>> Barry Taylor: Ok. Shall I proceed?

>> Lewis Kraus: Yes.

>> Barry Taylor: Great. Ok. So I am on slide 33. I was talking about highlights from DOJ resources. I'm not sure where I cut out but one of the things I was starting to talk about is the second bullet point about the use of confidential registries to identify people with disabilities who might need assistance. There are some people in the disability community who have been concerned about these registries because they think that there's issues of confidentiality and that they may be deemed possible targets that people are aware of their needs. But DOJ thinks that these type of registries with beneficial, especially if their voluntary and are confidential. And as long as the entity that's using them makes sure they use good methods to

publicize it as well as make sure they keep the information up to date because people can move. And if the registries aren't updated, they can be problematic.

The DOJ guide also talks about shelter accessibility and that all aspects of the shelter should be accessible, how important it is to publicize the information about accessibility. This was a big issue in New York because they didn't have a lot of information about sheltering accessibility.

The guidance also talks about how important it is to do the surveys ahead of time by developing a plan to remove the identified barriers rather than waiting for the emergency, how important it is to train shelter staff, also making sure that the no pets policy does not prevent service animals from entering into the shelters, ensuring that there are backup generators to charge wheelchairs and other issues that we talked about before with the importance of electricity. And then making sure that there is effective communication that staff are trained to be able to communicate with people of different types of disabilities.

And the final thing I think that's in the document is very important that is sort of pervasive in all the agreements we talked about so far today is the importance of including people with disabilities in the planning process. And that nothing without -- the whole "nothing about us without us" holds true I think when we're talking about emergency preparedness, and what do people need and how can their needs best be met. You can find that out by including them in the process and giving them the opportunity to give input.

In addition to the DOJ guidance, there's guidance from the Department of Health and Human Services on emergency preparedness. The documents avoiding disasters for the special needs population. And there's a link to that document on this slide. And that document reiterates a lot of the things that is in the DOJ guide but they also have a couple of other provision that I think are important. One is making sure that state and local governments have readily available a contract out for quick access to durable medical equipment, medications, and other supplies. So this is part of the post emergency preparedness aspect of things, as well as securing necessary personnel, vehicles, and tools for accessible evacuation and transportation.

And then this last slide has some additional emergency preparedness resources. The Department of Homeland Security has a whole series on ready.gov for different issues including one specific guide for people with disabilities and how they can develop their own emergency preparedness plan.

And then all of you on this call, since you're well verse in the this issue, certainly know about some of the other resources out there like Portlight, the Partnership for Inclusive Disaster Strategies, as well as the Pacific ADA Center which has all kinds of great resources on emergency preparedness including podcast, webinars, and other strategies.

So at this point I'm happy to answer any questions that people have. There are some additional cases that I've highlighted in the PowerPoint -- excuse me, the legal brief. So to the extent we have some extra time, I'm happy to talk about those cases. But before I do that, why don't we see if there's any questions.

>> Lewis Kraus: Ok. Thank you so much, Barry. So while everyone is -- go ahead and submit your questions in the chat window. For the two people that submitted already, can you resubmit your questions? I think I lost one of them.

Anyway, as people are sending them in, Barry, the last time we talked about the case in Los Angeles, the Marlton School for the Deaf, we were thinking that it applied to the entire Los Angeles School District. Is that still true in your mind?

>> Barry Taylor: I'm not remembering that it applies to the whole entire school district. Let me pull out the agreement and see if it says that. I didn't remember that it was as broad as that. But let me check. I could be --

>> Lewis Kraus: Ok. While you're looking, for people who are asking about -- if you don't know about the PowerPoint, the PowerPoint is on the ADA presentations www.adapresentations.org website, under the schedule. It's associated with this webinar. It will be on schedule today. By tomorrow it will go to the archives section. And on that as well is the legal brief that Barry wrote with this topic and it goes into more detail on all the cases. So if you have an interest, you can actually go and look there for that.

Ok, Barry.

>> Barry Taylor: Yeah. It does specifically talk about the Marlton School. This was a case that was brought against the Los Angeles School District but as far as the actual provisions that it requires to be implemented, specifically references the Marlton School but it was against the broader school district. So arguably you could say that they're on notice and need to be look at these issues beyond that. But agreement specifically talks about what they are going to be putting in and installing are at the particular school but they have reference like the broader school district like the duties of the disability coordinator for the Los Angeles School District and that sort of thing.

>> Lewis Kraus: Ok. Let's turn to some questions that people are turning in.

In regards to the resource of the DOJ Checklist one person said that checklist was based on the 1991 standards. Is that an issue?

>> Barry Taylor: You know, I'm probably not best person to answer that question. So I do remember that John Wodatch, when we were at the conference that the Pacific ADA Center hosted, had said that there had been efforts to update the checklist and that those had not been accomplished yet. So my guess is that the updating -- I think the checklist was like 2006 or something like that -- would be needing to be updated to meet the technical requirement that have happened since then. So that's a great point. Thanks for raising that.

>> Lewis Kraus: Ok. Next question --

>> Barry Taylor: Before you go on, Lewis, I think a lot of principles in the checklist are still very much applicable even if some of the technical standards might need to be tweaked a bit.

>> Lewis Kraus: Ok. One person was wondering whether there was any litigation in the 5th Circuit. He's from Texas.

>> Barry Taylor: You bring up a great point. I was going to say this at the beginning and I neglected to do so. If you look at the litigation that's been brought, what we've seen so far is litigation that's primarily been brought in quote/unquote blue states. We have a lot of California litigation, a DC, a New York. But most recently, as all of you know far too well, we've had disasters, especially weather disasters, in more traditional red states. So we've had disasters in Texas, Florida. And I think it will be very interesting to see if we have litigation. Certainly there were some accounts of issues arising for people with disabilities as a result of some of the more recent weather incidents. I haven't seen any litigation filed yet but I think given that we had emergencies in Florida and Texas, and so Texas is in the 5th Circuit, we might be seeing some litigation filed on that front.

I try my best to find all the relevant litigation. Certainly there's those of you out there who might be aware of litigation that I didn't highlight so feel free to let us know in the chat box if you've seen litigation in those states. But thus far I haven't seen any in the 5th Circuit.

>> Lewis Kraus: Ok. The next question -- and do please submit -- if you're raising your hand,

you may want to try to submit your question in the chat box or write us an e-mail if you're having difficulty.

How does in this -- does this apply to private institution? All the examples are government entities.

>> Barry Taylor: So I think it depends on the private institution. If the private institution is an employer, certainly we saw the school case, even though that was a public employer, Title I applies to private employers. So I think that's one place to look at sort of the coverage of private entities. Then I think you also have Title III entities that we haven't seen really any litigation on this front but I think a lot of the same strategies and analysis that goes to Title II schools would apply to Title III coverage schools as well.

So I think that's certainly something that just because it's been brought under Title II, private schools shouldn't think that they are exempt from this. I think while Title III is different as far as some of the requirements, as far as program accessibility versus achievable barrier removal, I think there would still be some obligation of a Title III school to ensure that people with disabilities are able to get out.

The other thing to remember is that a lot of private schools receive federal funds. As you noted, almost in every single one of these cases, there were brought not only under the ADA but they were also brought under Section 504 of the Rehabilitation Act. So if a school is receiving -- and not just school but if there's other private entities receiving federal funds, they would be on the hook as well.

And the third point, and this gets a little tricky to talk about in this context, is that there are a lot of state laws out there that address these issues as well with. In almost all the cases except for one that I can think of, they not only brought it under federal law in the ADA and Section 504 of the Rehab Act, they brought it under state law. So even if for some reason the ADA doesn't apply and the entity doesn't receive federal funding, a state law may still apply and require that people with disabilities be accommodated and receive other assistance and services in emergencies.

It's sort of a long, convoluted answer but I think there's a lot of different ways that the ADA, other federal laws and state laws can apply even if they're not technically a Title II entity.

>> Lewis Kraus: Ok.

>> Barry Taylor: I'm sorry, Lewis. One of the things we need to watch is any cases that are brought outside of the ADA and if the courts feel like there is different levels of obligations because it's separate from what we've seen already under the Title II litigation.

>> Lewis Kraus: Ok. Next question. We are a small rural county and have had a shelter with a resident who was very heavy and our staff could not lift him. It would have required a specialized lift which requires training to use. The resident agreed to go to a skilled nursing facility where they had equipment and could better meet his needs but a state emergency services employee on site rejected this, stating we had to meet the resident's needs on site. Is the county required to meet the needs of all people with disabilities at the shelter or can we find alternatives? And what if the resident does not agree?

>> Barry Taylor: Well, first of all, I'd just like to say that I can't really give you legal advice so I would recommend that you consult with your own attorney because that's the right way to go.

I'll talk a little more generally. I think the first option should be to try to accommodate somebody with a disability in the same scenarios that you're serving people with and without disabilities. We saw that in a couple of the cases that talked about how important it was to make sure it's integrated. And DOJ is on record saying the accommodations should be, and

shelters should be not only accessible but it's important for integration purposes for people to stay with their families, go to the closest shelter, that sort of thing.

That being said, the ADA does have a couple of defenses and one of the defenses that it has under Title II is that it would be some sort of undue burden to provide the accommodations that are necessary or it would be a fundamental hardship. A fundamental alteration, sorry, to make the changes necessary to accommodate a specific person.

So I think the reaction of a skilled nursing facility is right under the ADA in that that's really sort of not where people should be going in emergencies but I think the ADA recognizes that it's not possible to necessarily accommodate every single person if it would be an undue burden or a fundamental alteration.

So I think it sounds like you made some real efforts to try to accommodate that person. And in fact, that person was agreeing to an alternative. Obviously it can be a different scenario when the person wouldn't agree to the alternative but here it sounded like the person agreed to the alternative and perhaps there's just ways to talk further to figure out, you know, if there were alternatives you missed that could have been used or if there's ways to accommodate them in an option that's different than the one that the skilled nursing facility is recommending.

>> Lewis Kraus: And let me add a little -- couple of little plugs here. For questions like this, if you come up with questions around this, even after this session, you can call your Regional ADA Center. And I'll give you the number again at the end, but 1-800-949-4232. And they can help you to understand what the ADA might require in certain circumstances, not giving legal advice as well but still being able to help you understand what the ADA is saying.

And, I would also point you in the direction of the FEMA Regional Disability Integration Specialist. FEMA has 10 Regional Disability Integration Specialists in the same regions around the country. You can get to them. And they may be able to help you figure out some of these issues as well. So those are two points for you there.

>> Barry Taylor: I just want to mention, there is one -- I forgot about this but there is one Title III case I highlight in the brief that I can talk about briefly if you'd like me to or I'm happy to answer questions, too.

>> Lewis Kraus: We're getting a lot of questions. I'd like to go through those if we can.

>> Barry Taylor: Of course.

>> Lewis Kraus: And see if we can get to them.

>> Barry Taylor: And people can look at the brief later, so that's fine.

>> Lewis Kraus: Mm-hmm. One question here. Do cities have a responsibility to reach out to various organizations for the deaf, blind, and others to request assistance in emergency preparedness? And this includes learning what is offensive and can cause people not to want to evacuate to a shelter.

>> Barry Taylor: Yeah. I think the requirement isn't specifically under the ADA, you have to reach out to had this person or do that or do this. I think the general requirement is to make sure that you're meeting the needs of people with disabilities. So that's the legal requirement, making sure you modify your policies and that you're meeting the needs of people with disabilities and not ignoring their needs.

I think how you do it is really up to the different entity. Certainly what we try to highlight through talking about the settlements and guidance that we talked about are some best practices. Obviously one of the things I mentioned at the end was the importance of including people with disabilities in the process. I would think that sort of a corollary to that is

including advocacy organizations that work with people with disabilities that have specialized knowledge about particular disabilities.

So I think reaching out to organizations that work with the Deaf and Hard of Hearing community, that work with the Blind community, that work with people who have mobility issues, with people who have cognitive issues, people with mental illness, think those are all great best practices that should be done. Would I say that by not contacting a particular organization you're in violation of the ADA? It's probably not going to work out like that but it's going to be looking overall as a whole what it is you've done to try to Mike sure you're meeting the needs.

And I think one of the things that's really important is when you're on notice of somebody's needs and you fail to address them, that's where you're going to get in trouble legally. So the last school case that I talked about, the Marlton School, these teachers have really complained a lot to the school about the fact that they were not able to safely evacuate their students. And while the school did a few things, it really wasn't addressing the broader needs. So I think that's really -- even though that case settled and the court didn't rule, I think that's really, you know, when entities can get in trouble, when they are aware or should be aware and fail to take action.

>> Lewis Kraus: Ok. Next question. For small municipal airports where there are mainly private pilot airplanes and some commercial entities such as small commercial planes that travel customers remote, are they required to have an emergency preparedness plan? There is not a terminal at the small airport. So does this apply?

>> Barry Taylor: Yeah, I'm not really sure. Did you say, Lewis, it's a public airport?

>> Lewis Kraus: Yeah. I was looking for that, too. The only thing he says here is a small municipal airport.

>> Barry Taylor: Municipal makes it sound like it's a public airport.

>> Lewis Kraus: Just wrote and said public airport.

>> Barry Taylor: So it is a Title II entity. I think it's a little different than typical when you don't have, you know, the public services but you do have people who are using that. It's paid for by state and local government money. So I think there are Title II obligations.

I think what would come up there is, you know, I think it probably makes sense to have a plan. The issues would then be if there's issues that -- in implementing the plan, are there any undue burden, offense that could be made? You know, too expensive for the small number of people you're serving or that sort of thing. But I don't think you could say because it's not generally open to the public, since it is a Title II entity, I think there would be requirements under the ADA there.

>> Lewis Kraus: Ok. Next question. We have rural counties in Texas where public transit is scarce. Is there any precedent requiring better -- sorry, better paratransit service in emergencies in rural areas?

>> Barry Taylor: You know, we haven't seen -- that I have, I haven't seen any litigation regarding rural areas. I highlighted the big cities because that's where the litigation is done. So Oakland, L.A., New York, Washington, DC.

So, you know, I think as people know, paratransit is only required as sort of a paralegal system to existing public transit. I think oftentimes in rural areas you're not required to provide paratransit because there isn't the parallel of the mainline transit. So I don't think there would be a requirement to institute a paratransit system if it's not already in place because of the fact that there's limited parallel public transit. But I think to the extent you have

paratransit parallel to public transit, then I think that paratransit certainly should be a component of emergency disaster preparedness plan because it is something that's already in place. I just don't think you have to require paratransit to be put in place if there's not a parallel mainline transit.

Now, that's just saying, you know, your requirements under the ADA, do you have a paratransit system. There may be separate requirements that people would need just for evacuation purposes and whether it's considered paratransit or some other transit. It may just be we're talking semantics. But I guess what I'm trying to answer is the specific question about the Title II provisions for paratransit really are very specific when they're required and when they're not.

>> Lewis Kraus: And I'm going to add that in terms of planning, you know, usually what cities are trying to do is develop a plan that however they can find transit that can get people out and evacuated in emergency, they use. Whether that's, you know -- to sort of depend on paratransit is probably extremely unlikely considering the number of people who might need it at any one time. So the planning of that is what's really important in figuring out what's the best approach.

>> Barry Taylor: Right.

>> Lewis Kraus: With the impacts of disasters in the last 12 to 18 months, what issues do you think are likely to produce additional litigation? Against which jurisdictions or organizations? That might be hard to predict but yeah.

>> Barry Taylor: Well, the only prediction you can make in that kind of context is where have they been recently. I'm ignorant about how good different places exist in emergency preparedness plans are, so I don't know if Houston or Puerto Rico or some of the place that were really hard hit by the most recent weather disasters have good plans in place for people with disabilities. But if they don't, they I think would be vulnerable given the issues that happen there.

>> Lewis Kraus: Right. There's a couple more. During emergency disasters and after emergency disasters, each county emergency management services either provides shelters and/or partners with American Red Cross to provide shelters. My question for deaf and hard of hearing who need communication accommodations, who is responsible for providing communication accommodation, who is responsible for paying for these services?

This may not be one for you, Barry. But I can try to deal with this a little bit. There have been a couple of previous webinars on deaf and hard of hearing services in shelters on our webinar series. So you can go back and look at some of those and you may get a much more clear answer to your question. But I think probably the answer is always going to be going back to your planning; obviously the planning for people who are deaf or hard of hearing and the communications needs of those people in your shelters needs to be planned for and then the paying for that needs to be planned for as well.

>> Barry Taylor: The only thing I would add, with respect to Title II, is you can't sort of contract away your ADA -- to give you an analogy, in Illinois, our state relies upon a lot of private institutions. They are publicly funded but privately owned. So when we brought our Olmsted litigation, we didn't sue the institution which is a private institution; we sued the state even though it was the institution that was providing the services because the state had funded those services. So I think that's where the Title II violation was for Olmsted in that case. So I think you could make, potentially not knowing all the details here -- just want to remind people that Title II entities can't necessarily contract away their obligations when providing funding for

them.

>> Lewis Kraus: Ok. Barry, we have a couple of minutes left. Did you want to summarize the rest of that case?

>> Barry Taylor: Sure. So this is a case, it's a really odd case. And I hesitate to talk about it because it feels like an outlier but because it is a Title III case and somebody asked about Title III, I just wanted to mention it.

It's a case involving a movie theater. It was AMC Movie Theaters. This was an old case, back in 1994. So this was back when we had a lot of that movie theater litigation about integrated seats. Remember all of that, that people had? And at this particular movie theater the only accessible seating was in the back row. And so a patron who used a wheelchair wanted to have integrated seating and not sit in the far back row but to be -- have some accessible seating sort of in the middle where everybody else wants to sit.

And what was interesting about this case, you know, they made the usual kind of arguments about architectural access and things like that. But the defendant here said we believe that you, person with the disability, and people like you would be potentially be a direct threat and prevent the safe evacuation of non-disabled people as well as yourself if you would be in integrated seating and that by being in the back you wouldn't get in the way of non-disabled people and you could get out much easier than if you were in integrated seating.

So it's kind of a twist on what we usually see and that the court seemed mostly concerned about the safety of non-disabled people in this particular movie theater, thinking that a person with a disability, you know, in a wheelchair, would somehow disrupt the flow of evacuation and that that should be held against them and prevent them from having integrated seating in a movie theater.

So that's really the only Title III case I came across. It's not one that I've seen followed by a lot of other courts or that's sort of a trend. And now that we're seeing movie theaters with integrated seating, you know, you're not hearing these cries of concern about, oh, my goodness, we can't get out of these theaters because people in the wheelchairs are in the middle of the theater. But it is at least a Title III case to respond to that one question we had before.

And -- you -- there is one other case that's in the PowerPoint -- excuse me, in the brief called Loye case. That's a case that's focused specifically on the needs to provide interpreters in specific disaster situations this is one where there was a chemical hazardous kind of release of chemical on a playground and people who were deaf were saying they needed to have better interpretation on the spot during decontamination procedures. And the court there said in an emergency it's going to be -- you can't hold a Title II entity responsible for having interpreters on demand for these procedures and that the communication had been effective enough for them to go through the decontamination procedures and then when there were follow-up, they did provide interpreters.

So that was sort of the whole issue of interpreters on demand when you have a very extreme situation. So people could take a look at that if we want to delve more deeply into that issue.

>> Lewis Kraus: Ok. We realize that many of you may still have questions for Barry and apologize if you didn't get a chance to ask your question but you can contact your Regional ADA Center at 1-800-949-4232 to ask questions and they may be able to answer the question as well.

You will receive an e-mail with a link to an online session evaluation after this

session is done. Please complete that for today's program as we value your input and want to show the impact to our funder.

We want to thank Barry today for sharing his time and knowledge with us. It was really interesting and a great presentation, very different from what we're used to. Hopefully everyone found it really beneficial.

A reminder, again, that today's session was recorded. It will be available for viewing next week at the www.adapresentations.org/archives.php page. We look forward to speaking with you all again in March for our ADA National Network Learning Session: Recovery From The Recent Disasters; Lessons For Disability Planning in Remote Areas. And that will have three of the FEMA Regional Disability Integration Specialists talking about their recent experiences. Watch for your e-mail about this in a couple of weeks.

Thank you all for attending today's session. Thank you, again, Barry for a great presentation.

Everyone, have a great rest of your afternoon.

Bye-bye.