Toward a Barrier-Free Courthouse: Equal Access to Justice for Persons with Physical Disabilities

by Erica F. Wood

I. Introduction

For persons with disabilities, “getting into court” has a more literal connotation than just filing papers. It could mean confronting fights of stairs, heavy doors, or an unusable witness stand. Essential to “equal access to justice” are courthouses and courtrooms that are free of such barriers. Litigants who are mobility-impaired or physically frail, or who have sight, hearing, manipulation, or other disabilities must be able to navigate freely from the parking lot through the entrance and to each public space or facility within the court building. In addition to litigants, accessibility must be ensured for jurors, victims, witnesses, beneficiaries in probate proceedings, volunteers, social services workers, attorneys, judges, and court personnel who may have physical limitations.

The number of such Americans is significant. While estimates vary, according to the National Institute on Disability and Rehabilitation Research, more than 20 percent of noninstitutionalized United States residents over age 15 have a physical functional limitation—and some 7.5 percent (13.5 million) are severely limited in the functions of seeing, hearing, speaking, lifting or carrying, walking, using stairs, getting around, or getting in and out of bed. Moreover, this number is increasing, because, with advances in medical technology, more people are surviving disabling conditions, and because the population is aging, with the age 85-plus group growing especially rapidly.

Courthouses are part of our “built environment,” designed around the capabilities of a “normal” person. This person is a “large healthy adult male” who is right-handed and about 30 years old. Obviously, most of the population does not fit this norm, and may in varying degrees encounter barriers in the courthouse, as well as in other public buildings. But access to court may be more problematic, for two reasons. First, courthouses throughout history have been designed with an image of strength and dignity. Reverence for the law is often reflected in large columns, heavy doors, many steps, and other features that might impede accessibility. Second, people sometimes approach the courthouse with hesitation, anyway. Encounters with the law may seem frightening, and the intricate judicial system bewildering. Architectural barriers may add to already troublesome psychological barriers, precluding even an attempt at redress of grievances.

The law on accessibility in public buildings such as courthouses is very fluid now, due to the enactment of the landmark Americans with Disabilities Act. The Act effects sweeping changes, filling in gaps left by the criss-cross schema of existing federal, state, and local laws. This article will examine these laws, their applicability to courthouses, and judicial perspectives on resulting progress in making the court accessible.

II. The Architectural Barriers Act

Through the Architectural Barriers Act of 1968 (Barriers Act) and its amendments, the federal government mandated removal of barriers in buildings and facilities constructed or altered with federal funds after the effective date of the Act or leased since 1977. The law specifies that four agencies—the General Services Administration, the Department of Defense, the Department of Housing and Urban Development, and the U.S. Postal Service—develop accessibility standards governing the property for which each is responsible. Congress created the Architectural and Transportation Barriers Compliance Board (ATBCB) in 1973 to coordinate implementation of the Barriers Act.

Based on ATBCB guidelines, the four agencies jointly issued the Uniform Federal Accessibility Standards (UFAS) in 1984. These standards detail the accessibility features that must be included in new and renovated buildings—including ramps, stairs, elevators, windows, doors, entrances, drinking fountains, restrooms, telephones, and many other features.

While the UFAS contain no specific guidance for courthouses (as they do for libraries, restaurants, and health care and postal facilities), the General Services Administration has developed a United States Court Design Guide that makes reference to the UFAS and goes farther to provide detailed guidance on the judge’s bench (“if the presiding judge is handicapped”), jury box, witness stand, and public seating.

Clearly, the federal courthouses within the nation’s 94 judicial districts and 11 circuits would initially seem to fall within the jurisdictional catchment area of the Barriers Act, since all were constructed with federal funds. However, Barriers Act coverage of courthouses narrows upon closer examination. Many federal courthouses are old buildings, constructed long before the Act’s effective date of September 1969. Often, no alterations have been made since that date that would have invoked the Act’s jurisdiction. Moreover, even if an alteration is made, the entire building does not have to come into compliance with the Act. Thus, ironically, there is no requirement that if a courthouse restroom is modified, a ramp must be put on the outside of the building unless the steps are also altered. Additionally, older courthouses may be historic buildings. Preservation of narrow doorways or the “throne-like judge’s chair” may run squarely against accessibility objectives.

Finally, the cost of extensive structural changes in existing court buildings is of course a factor, and budgeting constraints might cause federal officers to press for an exception to the UFAS. Yet some measures can be taken relatively inexpensively, and it is sometimes the fear of high costs that influences planners.

Nonetheless, the Barriers Act has brought about both
major advances in accessibility of new courthouses and visible progress in eliminating physical barriers from many older courthouses throughout the country. Some are equipped with ramps, accessible doors, and other facilities. Indeed, one observer characterized federal courts as “bending over backwards to make sure accessibility is present.” But the actual number and percentage of federal courts that are fully or partially accessible is unknown, for “there is no central data base or comprehensive research study that documents the level of accessibility” under the Act, let alone singles out judicial buildings.

III. Section 504 of the Rehabilitation Act

Section 504 of the Rehabilitation Act of 1973 prohibits recipients of federal financial assistance from discriminating on the basis of handicap. The regulations drafted by the Department of Health, Education, and Welfare represent a very different approach toward achieving accessibility: “program accessibility.”

This policy recognizes but does not require the physical removal of barriers. Federal aid recipients may, for example, reschedule services to accessible locations or provide services in the homes of persons with disabilities.

For example, a court building with courtrooms only on the second floor might adapt space on the first floor as an accessible courtroom.

While a section 504 amendment extended its coverage to include programs “conducted by federal agencies” as well as recipients of federal funds, its applicability to the federal judicial system is unclear—unless a federal court shares space with a federal executive agency. Section 504 coverage of state courts would be limited to those that were built with federal funds (such as federal revenue sharing programs), that share space with other state or county facilities receiving federal funds, or that operate any federalally funded program. Thus, while statistics are not available, courthouse coverage of section 504 would appear to be scattered, at best—and compliance undocumented.

IV. State Laws

Some form of architectural barrier law exists in all 50 states and the District of Columbia, varying considerably in scope, standards, enforcement, and availability of waivers. In some states, buildings constructed before the law’s effective date are simply exempted. This could well include many older trial and appellate state courts. Other states require modifications for accessibility at the time structural changes are made. And, in some states, state-owned buildings (including state courthouses) may be treated differently than other public buildings. Few states provide any parallel to the federal section 504 mandate of program accessibility. Finally, in addition to state laws, some local building codes also include provisions to eliminate architectural barriers.

The state laws include or reference a variety of standards, including the federal standards, but the standards most frequently used are those of the American National Standards Institute (ANSI). A key factor in the effectiveness of these standards is the availability of waivers from compliance. “Given the demonstrable inclination of some administrative officials to favor lenient enforcement and narrow construction,” according to one source, “it is likely that waiver provisions will be utilized in many states to the fullest extent possible.” Such easily obtainable waivers may well affect state courts, particularly if costs are high or if historic preservation is involved.

A fragmentary approach to implementation and enforcement further weakens state laws. While some states name a single authority to promulgate regulations, approve plans, issue permits, and grant waivers, others delegate duties piecemeal to different agencies. Enforcement responsibility may be granted to a state authority such as a building code council, department of commerce, or fire marshall, or to a local building office or department. In 1981, only five states (Massachusetts, Michigan, New Hampshire, South Carolina, and Vermont) had special architectural barriers boards.

As a further layer of complexity, some state judicial systems may have design guidelines for the construction or alteration of state courts that may or may not refer to accessibility.

Given this lack of centralization, the differing standards, and the availability of waivers, it would not be surprising to find that a significant number of state and local courthouses are not accessible or are only partly accessible. The data, however, does not exist. A recent survey of all 50 states found that “state governments were not able to provide data on the barriers that exist in public buildings or the types and extent of efforts to remove those barriers.”

In California, however, a special situation exists. Regulations adopted by the state architect directly address courtroom facilities, providing that each judge’s bench constructed in a “county of first class” must be accessible to the handicapped, and that courtrooms must provide wheelchair access to the witness stand. But currently pending bills would reduce the requirements to provide that “each new or remodeled court facility [must have] at least one accessible judge’s bench for every ten courtrooms or portions thereof,” and that courtrooms may provide “either movable or fixed wheelchair access” to the witness stand.

V. Americans with Disabilities Act

The Americans with Disabilities Act represents a giant step forward in achieving accessibility throughout the United States. Section 202 of the Act concerns “public services,” and broadly prohibits discrimination against individuals with disabilities by state or local government. This will plug the gaps in the panoply of existing state and local laws covering public buildings—including, for instance, older courthouses not covered by

While accessibility law is in flux and enforcement as to courthouses is undocumented, ... judicial policy statements are beginning to recognize the issue.
state laws, and courthouses that have made only partial modifications or may have received liberal waivers. Under the new law, the Attorney General will promulgate regulations consistent with existing section 504 regulations mandating "program accessibility."32

VI. Litigation

Litigation has not been a significant route toward the elimination of architectural barriers. Constitutional arguments, including the right to travel, right to petition the government, and equal protection claims, have been advanced to establish the right of access for persons with physical disabilities to public buildings and transportation facilities.33 But litigation relying on these theories has generally been unsuccessful.34 Arguments based on the equal protection clause have faltered on the courts' unwillingness to classify people with disabilities as a "suspect class," which would force the state to show a compelling governmental interest to limit access.35 Federal and state barrier laws have spawned relatively little litigation.36 The laws generally do not include a private right of action and the federal ATBCB has stressed voluntary compliance.

Hill v. Shelby County37 was a case directly on point on the issue of physical access to the courthouse. A 68-year-old woman with a lung condition that prevented her from climbing stairs was the defendant in a civil suit pending in Shelby County, Alabama. In the Shelby County courthouse, built in 1905, the law courts were on the second floor, and there was no elevator. The woman brought a section 1983 suit against county officials, alleging denial of state constitutional rights to due process and state statutory rights under an Alabama law ensuring full use of public facilities for the physically disabled. The federal district court held that plaintiff was deprived of due process or a property interest, since county officials offered "to cooperate to make sure that her defense could be fairly presented."38 However, the court did not elaborate on what kind of "cooperation" was offered.

VII. Judicial Recommendations

While accessibility law is in flux, enforcement as to courthouses is undocumented, and litigation is of little help. Judicial policy statements are beginning to recognize the issue. First, the Citizens' Commission to Improve Michigan Courts recommended in its 1986 Final Report that "every courtroom in this state must be made accessible to persons with mobility handicaps."39 Second, the Tentative Trial Court Performance Standards developed in 1989 by the National Center for State Courts and the U.S. Department of Justice recommend that court facilities be "safe, accessible and convenient to use" and that "all who appear before the court are given the opportunity to participate without undue hardship or inconvenience."40

Finally, growing judicial/architectural awareness of barrier-free courthouse design is evident in a planned supplement to the landmark volume The American Courthouse, which initially resulted from a project of the American Bar Association

American Bar Association Seeks Information on Architectural Barriers in Courthouses

The American Bar Association Commission on Legal Problems of the Elderly and Commission on the Mentally Disabled are seeking examples of experiences that persons with disabilities have had with architectural barriers in courthouses. The examples will be used as background information at a February 1991 conference on "Court-Related Needs of the Elderly and Persons With Disabilities," funded by the State Justice Institute and sponsored by the National Judicial College and the two ABA entities. Please send information to Erica F. Wood, ABA Commission on Legal Problems of the Elderly, 1800 M St., NW, Washington, DC 20036.

and American Institute of Architects.41 The update will include specific recommendations on accessibility.

VIII. Conclusion

"Equal access to justice" may remain elusive for persons with physical disabilities who are stopped at the courthouse door by lack of jurisdiction, standing, funding, or legal assistance—but by stairs, hallways, restrooms, and seating arrangements that they cannot use. On the horizon, the "courthouse of the future" may present imaginative new possibilities looking beyond physical presence in the building—e.g., use of video, teleconferencing, and computer conferencing in the judicial process, and use of innovative methods of dispute resolution in a broad range of cases.

For now, advocates for the elderly and for persons with disabilities can take steps toward a barrier-free courthouse. Initiate an "accessibility check-up" on your local courthouse. Determine whether it is in compliance with applicable laws and regulations, recognizing that even technical compliance does not always guarantee accessibility. Involve persons with disabilities to test for a barrier-free route. If a new courthouse or significant renovations are planned, ensure that the planning committee and the evaluation team for the building permit include individuals with disabilities—or at least persons who are sensitive to and knowledgeable about accessibility. Finally, monitor the regulations process for the Americans with Disabilities Act to urge that it address judicial buildings with specificity.

Erica F. Wood is Associate Director of the Commission on Legal Problems of the Elderly, American Bar Association, 1800 M St., NW, Washington, DC 20036, (202) 331-2297.
Endnotes

1. NAT'L INST. ON DISABILITY & REHABILITATION RESEARCH, CHARTBOOK ON DISABILITY IN THE UNITED STATES 2, 4 (1989) [hereinafter CHARTBOOK].


4. S. 933, supra note 2.

5. A longer version of this paper is being prepared for a February 1991 conference on “Court-Related Needs of the Elderly and Persons With Disabilities,” funded by the State Justice Inst., and sponsored by the Nat’l Judicial College, in cooperation with the American Bar Ass’n (ABA). Comm’n on Legal Problems of the Elderly, and ABA Comm’n on the Mentally Disabled. Another paper for this conference will cover “communications access” to the court, including problems of hearing loss and vision loss.


13. UFAS, supra note 9 at § 4.1.6(2), 4.1.6(3).

14. For discussion of costs, as well as fear of costs, see ADVISORY COMM’N ON INTERGOVERNMENTAL RELATIONS, DISABILITY RIGHTS MANDATES: FEDERAL AND STATE COMPLIANCE WITH EMPLOYMENT PROTECTIONS AND ARCHITECTURAL BARRIER REMOVAL, No. A-111, at 87-88, 95 (1989).

15. Id. at 95.

16. Id. at 80.


19. ADVISORY COMM’N ON INTERGOVERNMENTAL RELATIONS, supra note 14 at 80.

20. Interview with attorney in Coordination & Review, Civil Rights Division, U.S. Dep’t of Justice, June 1990, indicated that federal courts would not be covered. However, other experts interviewed disagreed with this interpretation.

21. ADVISORY COMM’N ON INTERGOVERNMENTAL RELATIONS, supra note 14 at 81.

22. Id. at 44. See also chapter entitled “Eliminating Environmental Barriers,” in SALES, POWELL, VAN DUZEND & ASSOCIATES, DISABLED PERSONS AND THE LAW: STATE LEGISLATIVE ISSUES, at 224-276 (1982) [hereinafter SALES].

23. ADVISORY COMM’N ON INTERGOVERNMENTAL RELATIONS, supra note 14 at 47. SALES, supra note 22, Table IV, at 246-250, shows the phases of construction covered under each state's statute as of 1981. At that time, new construction was covered by state statutes, renovation and remodeling by 28 states, additions by 21 states, facilities under construction by 13 states, and existing facilities by 7 states.


26. SALES, supra note 22 at 227.

27. Id. at 228-229; ADVISORY COMM’N ON INTERGOVERNMENTAL RELATIONS, supra note 14 at 47.

28. ADVISORY COMM’N ON INTERGOVERNMENTAL RELATIONS, supra note 14 at 84.


32. Id. at § 204(a).

33. SALES, supra note 22 at 221.


35. Eisenberg, supra note 34 at 944-945.

36. Id. at 951-953, 961; See also Goldman, Architectural Barriers: A Perspective on Progress, 5 W. NEW ENG. L. REV. 471 (1983).


38. Id. at 304.


41. AMERICAN INST. OF ARCHITECTS & ABA JOINT COMMITTEE ON THE DESIGN OF COURTHOUSES & COURT FACILITIES, supra note 12. The supplement is being prepared by the Nat’l Center for State Courts, through a State Justice Inst. grant.