

State Courts Agree to Provide Deaf Litigant With Written Copy of Court Proceedings

Submitted by Richard Schall and Patricia Barasch

It took five years of litigation, the defeat of the State's motions to dismiss and motions for summary judgment, expert testimony by an advocate for the deaf, days of depositions, tens of thousands of dollars in costs and legal fees, and a pending trial in federal court to get the State of New Jersey to provide a simple accommodation for Stephen Gregory, a profoundly deaf individual.

In a settlement finalized on June 30, 2004, the State of New Jersey and its Administrative Office of the Courts (AOC) agreed to provide Gregory, a resident of Pitman, New Jersey, whenever he appears in the Superior Court, the Appellate Division, or Supreme Court of New Jersey with a copy of the print-out of the proceedings generated by a system known as Computer Aided Real-Time Translation (CART). With CART, a deaf litigant is provided with a computer monitor on which he can simultaneously read the words spoken in court as they are transcribed by a court reporter. While CART is a very useful system aiding communication with the deaf, it has significant limitations, including mistranslations by the court reporter and the difficulty the deaf litigant has in following the scrolling words on the computer screen while at the same time trying to follow the action in court. It is for this reason that Gregory sought to obtain the written CART record - so that he could review it during court breaks or after court to make sure that he understood what had transpired.

The history of Gregory's efforts to obtain this simple accommodation spans some eight years. In 1996, when Gregory first learned that the New Jersey courts were providing audio tapes and/or videotapes of court proceedings to litigants, attorneys, and the general public for the nominal fee of \$10 per tape, he requested a comparable service from the State. Since he was deaf, audio tapes and videotapes were of no use to him, and so Gregory asked the AOC to provide him with a record that would be of use - the written record generated by the reporter operating the CART system. After his repeated requests were denied by the AOC, Gregory filed suit on April 16, 1999 seeking that he be provided with a copy of the CART print-out.

For unknown reasons, the State fought Gregory's request for accommodation as if he were seeking to abscond with the State's treasury, rather than to simply be afforded the same opportunity to understand courtroom proceedings as that provided to non-disabled individuals. Thus, while a number of states across the country had waived any 11th Amendment immunity defenses, the State of New Jersey, in a 30-plus-page brief filed with the federal court in April,

2001, argued that it was "immune" from the Americans with Disabilities Act and should be free to discriminate against the disabled. In an opinion dated October 18, 2001, and reported at 168 F. Supp.2d 319,

Judge Orlofsky of the United States District Court of the District of New Jersey denied the State's motion to dismiss based on its assertion of 11th Amendment immunity.

Subsequently, in a case raising the same issue - the immunity of the states from the

ADA - the United States Supreme Court, in the case of *Tennessee v. Lane* (May, 2004) held that all state court houses were properly subject to the ADA, putting this issue for rest once and for all.

In March, 2004, Judge Freda Wolfson of the District Court of New Jersey again denied the State's motion for summary judgment; denied Gregory's cross-motion for summary judgment, and set the case down for trial. It was at that point that the parties entered into serious settlement negotiations that ultimately resulted in a settlement with the State granting Gregory the relief he had sought for the previous eight years, and paying his attorneys, the firm of Schall & Barasch of Moorestown, New Jersey, \$75,000 in attorneys fees. The amount of resources spent by the State in defending this action over the course of five years was undoubtedly significant as well. It remains a mystery to this day as to why the State fought so vigorously, and spent so much taxpayer money, to deprive one its disabled citizens of such a simple accommodation.

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