

Supervision for People with Disabilities

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*Presented by West Resendes and Brian Dimmick,
ACLU Disability Rights Program; Allison Frankel,
ACLU Criminal Law Reform Project*

ACLU

Background: Supervision and Disability

Criminal Supervision Overview

- ❑ 3.7 million people, or 1 in every 71
- ❑ Must follow 10-20 rules per day
- ❑ Rules are complex & conflicting
- ❑ Lasts for years, decades, or life
- ❑ Risk of incarceration for any violation

DEPARTMENT OF CORRECTIONS
Division of Community Corrections
DOC-10 (Rev. 12/2016)

WISCONSIN
Administrative Code
Chapter DOC 110 & 112
Part 110.01
43 U.S.C. §§ 19031 & 19032
Federal Sentencing
Guidelines
42 C.F.R. Part 4

RULES OF COMMUNITY SUPERVISION

OFFENSE NAME _____ DOC NUMBER _____

18. You shall pay fees for the polygraph (lie detector) examination process as directed by your agent in accordance with Wisconsin Administrative Code 332.17(5) and 332.18 and shall comply with any required Wisconsin Department of Corrections procedures regarding payment of fees.
19. You shall follow any specific rules that may be issued by an agent to achieve the goals and objectives of your supervision. The rules may be modified at any time, as appropriate. The specific rules imposed at this time are stated below. You shall place your initials at the end of each specific rule to show you have read the rule.
20. You shall not use or possess any controlled substance, unless legally prescribed by a physician. If you have you shall inform your agent immediately.
21. You shall not have in your possession any drug paraphernalia, which includes but is not limited to scales, pipes, syringes, gum packs, rolling papers, etc.
22. You shall not knowingly be in the company of persons possessing illegal substances or paraphernalia for use or sale of the same.
23. You shall not enter places where drugs are sold or used. You shall not loiter in any known drug area.
24. You shall not have in your possession (including in your residence or in a vehicle) any papers, cell phones, or portable cameras.
25. You shall not have in your possession at any time more than \$100.00 in cash without agent's approval.
26. You shall have no contact with any known gang members, their associates, or gang activity. You shall not be at the residence where a known gang member resides or is staying.
27. You shall not display any gang representation, including but not limited to gang hand signs, articles of clothing, hats, jewelry, or items which depict criminal activity.
28. You shall be prepared to submit a urine sample at each contact with your agent or remain on the premises until you do so. You shall not tamper or falsify any urine sample. Refusal to submit a urine sample will be considered a positive result.
29. You shall conduct all business transactions using your legal name. You shall voluntarily disclose your probation parole status to any law enforcement agencies you may have contact with.
30. You shall report to any programming, including but not limited to: drug/alcohol, anger management, domestic violence, parenting, or any other treatment deemed necessary by your agent. You shall comply with the conditions of treatment programs and fully advise your agent of your progress and discharge. You shall not terminate any program without your agent's approval.
31. You shall seek and maintain full time employment, verified by a payroll check stub.
32. You shall pay all court ordered obligations to be satisfied 90 days prior to your discharge date.
33. You shall report to your agent within 24 hours of release from any correctional facility. If released on a weekend or a holiday, you shall report the following Monday or the next business day.
34. You shall not operate a motor vehicle without a valid driver's license.
35. You shall have no contact with any victim(s) or co-defendant(s) of your current or past offense(s), without agent's approval. No contact includes but is not limited to, in person, through mail, by phone, or through a 3rd party.
36. You shall cooperate with all Probation Parole Agents, law enforcement officers, and all DOC staff/programs.
37. You shall not engage in any forms of abuse to include verbal threats and acts of physical violence, nor shall you engage in any controlling or aggressive behaviors. This includes but is not limited to: intimidation, psychological, emotional, sexual, or financial abuse.
38. You shall maintain absolute sobriety. No alcohol use and/or possession. You may not enter any business or establishment whose main source of income is the sale and/or distribution of alcohol.
39. You shall have no ammunition or firearm or any object that resembles ammunition or firearm whether owned by you or another person, within your access, including but not limited to your residence or vehicle.

Overrepresentation of Disability

Higher rates of:

- **Mental health conditions**
- **Substance Use Disorder**
- **Intellectual/developmental disabilities**
- **Chronic illnesses**
- **Hearing and vision disabilities**

Barriers to Supervision for People with Disabilities

Barriers to Understanding Conditions

- Effectively communicating about conditions given vision and hearing disabilities
- Comprehending conditions with cognitive disabilities
- Remembering and keeping track of conditions due to memory difficulties



Barriers to Effective Engagement

- Effectively communicating during meetings for people who are deaf/hard of hearing
- Trusting and engaging with supervision authorities given mental health conditions
- Stigma against certain disability-related behaviors (e.g., fidgeting, difficulty focusing, speaking loudly)



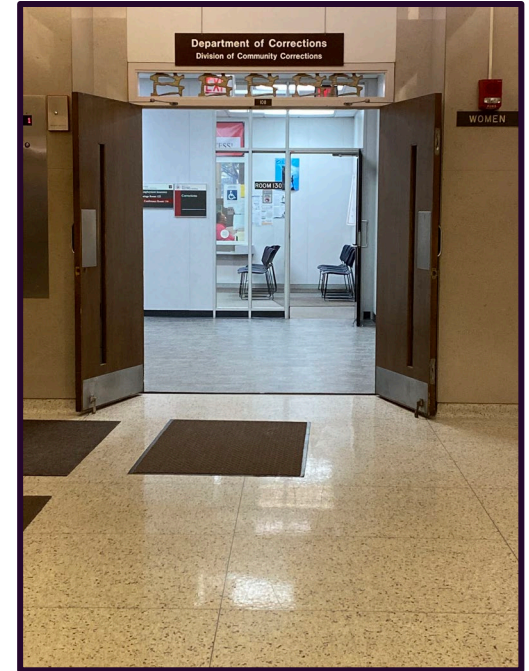
Barriers Getting to Required Appointments

- Inaccessible meeting locations
- Transportation barriers
- Triggering due to site of prior trauma
- Difficulty leaving home given anxiety, depression, or paranoia
- Trouble remembering or planning for meetings given cognitive disabilities



Barriers to Engaging in Mandated Treatment

- Navigating logistics to enroll in treatment
- Programs inappropriate to disability-related needs
- Prohibitions on Medication-Assisted Treatment (MAT)
 - *Violates ADA if the individual has Opioid Use Disorder*



Additional Obstacles

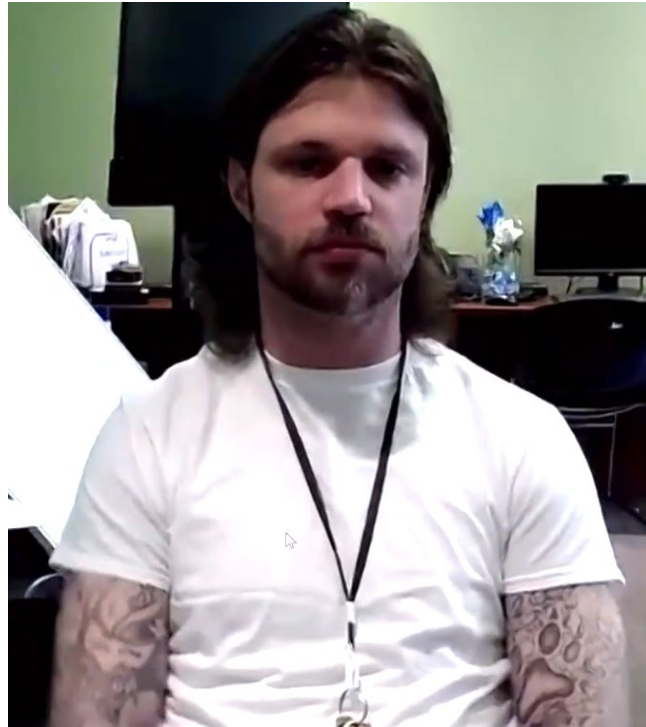
- **Structural Barriers:** Housing, job, healthcare access
- **Unequal Treatment:** Closer surveillance, more conditions, heightened chance of incarceration
- **Lack of Accommodations Systems:** Few supervision agencies have systems to proactively assess/provide accommodations

Real-World Examples

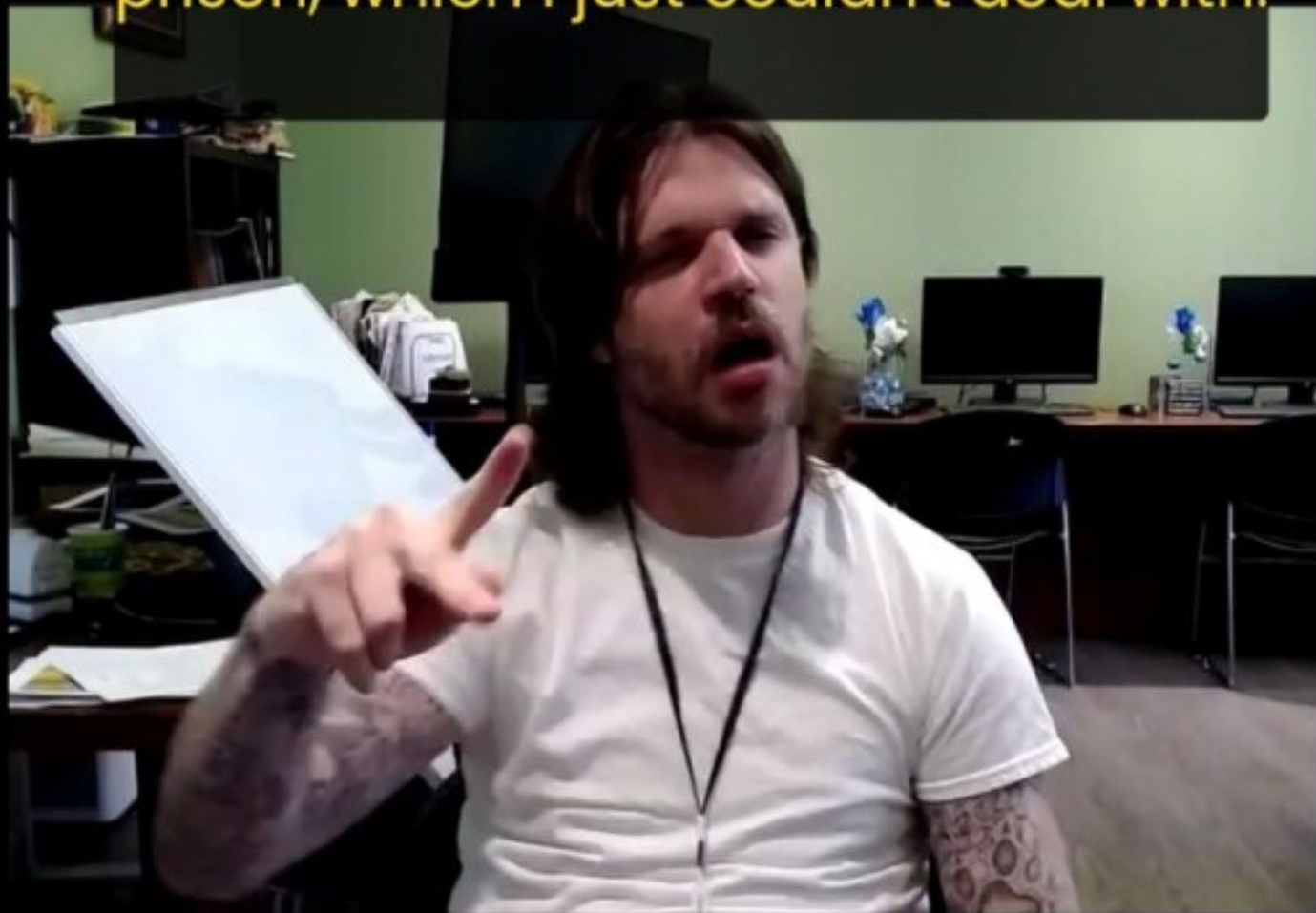
12. My CSO knows about my congestive heart failure. I also gave my CSO a list of all of my appointments at the VA hospital and asked that my supervision meetings account for them. She never offered to change my appointment dates, and she has never offered to meet me at my home rather than require me to come into her office. She has also never offered to let me call-in instead of report in-person.

45. The Commission knew that I was getting help from ULS for my mental health. The Commission also knew that I was making lots of efforts, despite my mental health issues, to follow my supervision rules. It felt like none of that mattered to the Parole Commission.

Real-World Examples Cont'd



prison, which I just couldn't deal with.



***Disability Discrimination Legal
Framework***

Americans with Disabilities Act

- **Covers the activities of state and local government entities**
 - **Includes court systems**
 - **Also includes supervision agencies**
- **Federal supervision—not directly covered by the ADA**

Americans with Disabilities Act

“[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”

42 U.S.C. § 12132

What is a Disability?

- **Physical or mental impairment that substantially limits one or more major life activities**
- **Broad coverage**
 - **Not a demanding standard**
 - **Not just physical/mobility disabilities**
 - **Includes mental health conditions and hidden disabilities**

Substance Use Disorder

- **The ADA does not cover people engaged in the current illegal use of drugs**
- **But it does cover:**
 - **Those in recovery not currently using**
 - **Those dependent on alcohol**
 - **Those with a record of addiction and treatment**

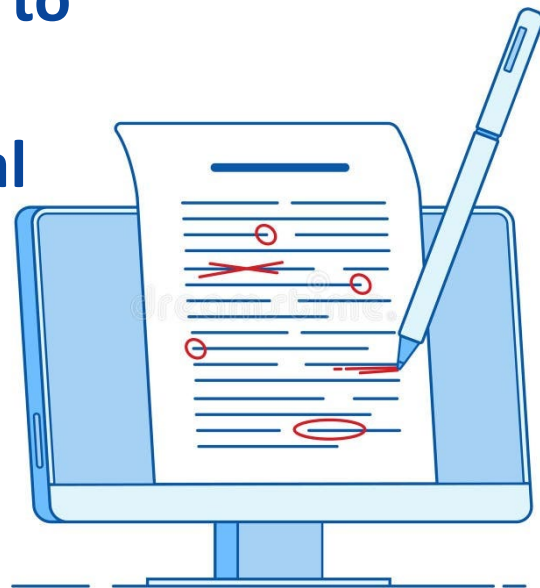
Discrimination Under the ADA

Available Legal Theories

- Unequal Treatment
- Lack of equal opportunity
- Integration mandate
- Failure to make reasonable modifications
- Failure to provide effective communication

Reasonable Accommodations

- Reasonable Accommodations: Changes to the rules or how things are done that allow a person with a disability an equal opportunity to succeed
 - May involve removing or altering otherwise-required conditions
 - Inherently individualized
 - Interactive process



Reasonable Accommodations Cont'd

- Agencies must *proactively* assess accommodation needs
- *But* best practice to request needed accommodations
 - No “magic words”
 - *Ask* about system to request accommodations & ADA coordinator
- Sometimes need documentation

Reasonable Accommodations: Defenses

Defenses:

- Fundamental Alteration
- “Direct Threat”



Response:

- Govt needs specific, individualized evidence of burden/threat

Effective Communication – Auxiliary Aids & Services for Hearing Disabilities

- Qualified sign language interpreters
- Real-time captioning
- Assistive listening devices
- Captioned phones
- Video Relay Services



Effective Communication – Auxiliary Aids & Services for Vision Disabilities

- Braille materials
- Large Print materials
- Audio recordings
- Screen readers
- Magnification software



Effective Communication – Preferred Method of Communication (PMC)

- Way that the disabled person prefers to receive information and communicate with others, considering their individual needs and circumstances
- Primary Consideration
- Obligation to provide an alternative aid or service if not using PMC
- Increased likelihood of understanding with PMC

Effective Communication – Plain Language

- **Barrier to Understanding**
- **Clear, concise, well-organized**
- **Typically relies on:**

**Reader-Centered
Organization**

**Active, not passive,
voice**

**Short sentences and
paragraphs**

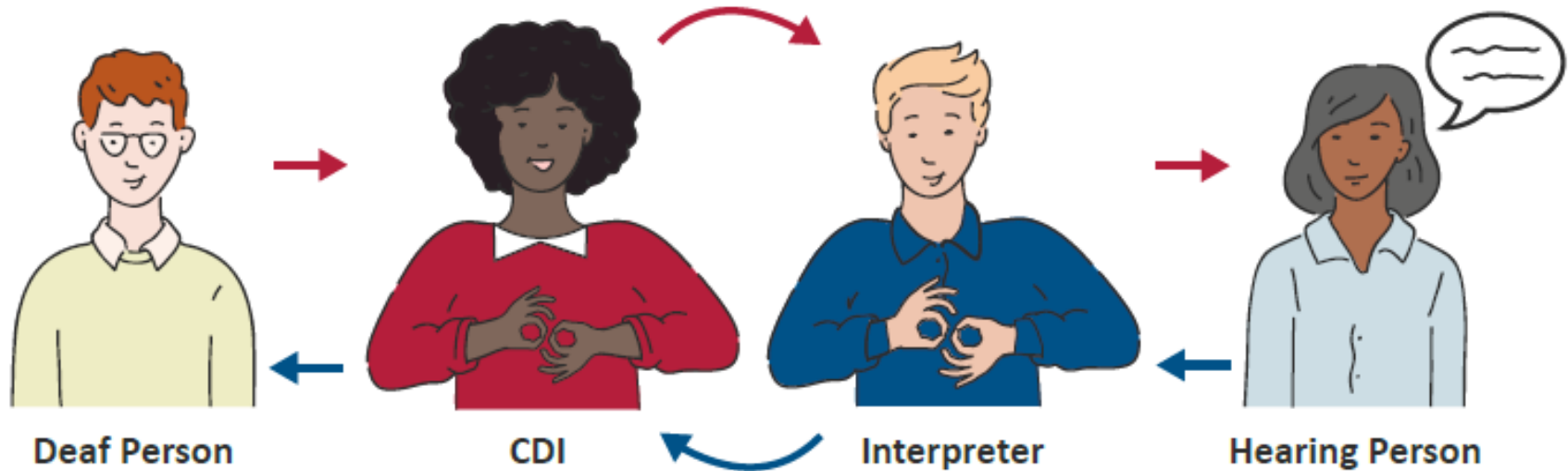
**“You” and other
pronouns**

**Common, everyday
words**

**Simple design features
(e.g., tables!)**

Effective Communication – A Real-World Application

- Deaf Interpreters



***Supervision Litigation: Cobb v.
Georgia Department of
Community Supervision***

Lawsuit

- **Filed in Northern District of Georgia in 2019**
- **Alleged that Georgia Department of Community Supervision was:**
 - **Denying equal access to the benefits of supervision**
 - **Failing to provide effective communication**

Lawsuit

- District court certified a class and denied summary judgment
 - 2022 WL 22865202 (N.D. Ga. Oct. 13, 2022)

The Settlement

1. Communication Assessment
2. Communication Plan
3. Appropriate use of auxiliary aids

[NOTICE TO THE CLASS: COBB V. GEORGIA DEPARTMENT OF COMMUNITY SUPERVISION](#) >

Settlement Agreement

This is the ASL translation and plain language version of Cobb v Georgia Department of Community Supervision Settlement Agreement.

[f](#) [t](#) [l](#) [s](#)

[Definitions \(Part I\)](#) [Definitions \(Part II\)](#) [Recitals](#) [Terms and Conditions \(Part I\)](#) [Terms and Conditions \(Part II\)](#)

Communication Assessment and Plan

Applicability

Communication Assessment and Plan

Notation, Tracking, and Following Communication Plan

Communication Assessment and Plans for Current Person on parole or probation with DCS

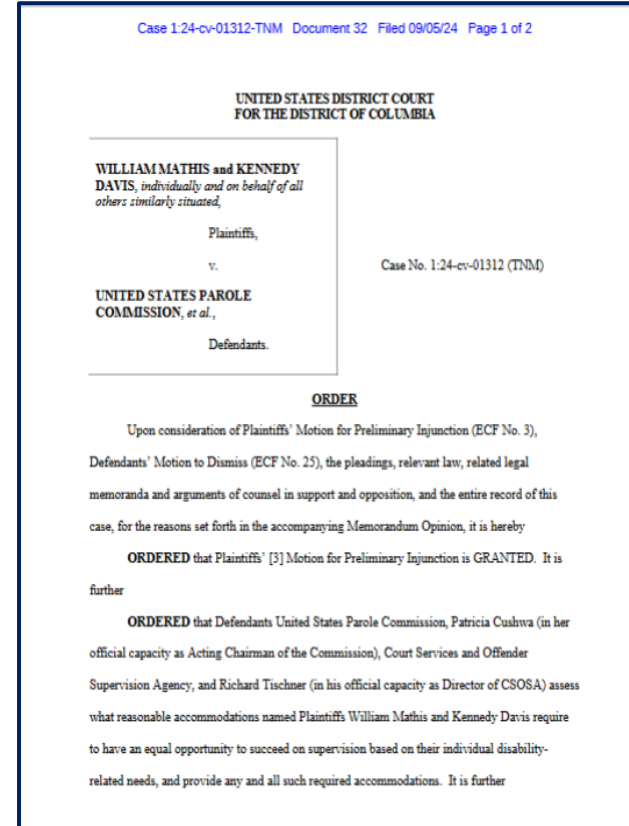
Use of VPI



**Supervision Litigation: *Mathis v.*
*United States Parole Commission***

Mathis v. USPC

- Systemic failure to accommodate people on parole/supervised release in Washington, D.C.
- Covers all types of disabilities
- Court rejected Motion to Dismiss & granted Preliminary Injunction requiring accommodations for named Plaintiffs
- Awaiting class-cert decision



Mathis v. USPC Key Takeaways

- Discrimination is “by reason of” disability if disability makes it harder to navigate supervision without needed accommodations
 - *Even if* other factors (e.g., housing instability) contribute to *downstream harms* such as revocation



Mathis v. USPC Key Takeaways Cont'd

- Denial of equal treatment *is itself* an “injury”
 - *Even if* Plaintiffs ultimately complete supervision without any alleged violations
 - “The law requires no further downstream harms”



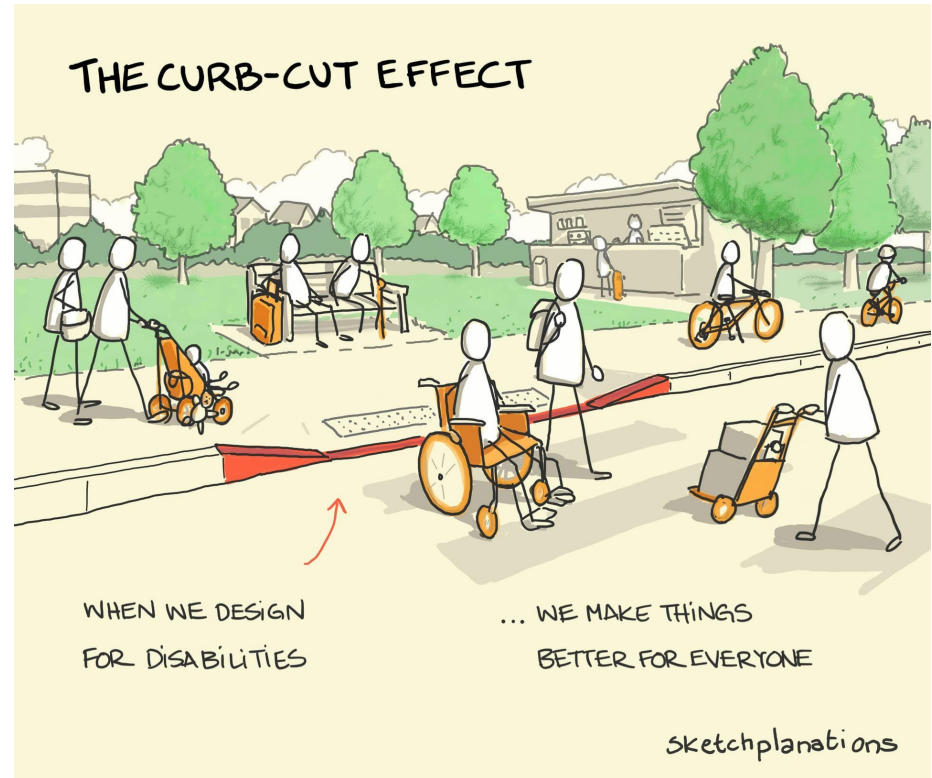
Using Disability Law in Daily Practice

Identifying Reasonable Accommodations

- **Initiate the discussion with your client**
- **Don't make assumptions about disabilities**
- **Ask open-ended questions**
 - **Are there any communication methods that work best for you?**
 - **Do you have any difficulty with reading, writing, or understanding information?**
 - **Are there any parts of the supervision process that you think might be challenging?**

Universal Design in your Practice

- Provide flexible scheduling for appointments
- Provide materials in plain language
- Use teach-back technique rather than asking “do you understand?”
- Provide take-home notes



Seeking Accommodations

When to Raise

- When conditions are set
- During course of supervision
- During revocation

How to Raise

- Court filings
- Informal advocacy with supervision authorities
- Demand letter

Caveat: case-specific strategic concerns

Potential Reasonable Accommodations

- **Moving meetings or making them virtual**
- **Rescheduling appointments**
- **Meeting reminders**
- **Plain language**
- **Consistent schedules and supervision officers**
- **Interpreters or other communication aids**

Opportunities for Collaboration

- Thought partnership on individual cases
- Resource sharing
- Investigate systemic violations



Questions and Answers

Resources

- **Reducing Barriers Report:** <https://www.aclu.org/publications/reducing-barriers-a-guide-to-obtaining-reasonable-accommodations-for-people-with-disabilities-on-supervision>
- ***Cobb* Settlement:** <https://www.aclu.org/documents/settlement-agreement-cobb-v-georgia-department-of-community-supervision>
- ***Cobb* ADA Policy:** <https://www.aclu.org/documents/americans-with-disabilities-act-policy-cobb-v-georgia-department-of-community-supervision>
- ***Mathis* Preliminary Injunction:** <https://www.aclu.org/cases/mathis-v-united-states-parole-commission?document=Preliminary-Injunction-Opinion>



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For More Information

West Resendes, ACLU Disability Rights Program: wresendes@aclu.org

Brian Dimmick, ACLU Disability Rights Program: bdimmick@aclu.org

Allison Frankel, ACLU Criminal Law Reform Project: afrankel@aclu.org

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WE THE PEOPLE