

Cathy Gaddy v. Los Angeles County Metropolitan Transportation Authority (“LACMTA”), 2011

**Confidential Court Briefs
provided by LACMTA (“Metro”)**

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Part 1: *Introduction*

IN LATE MAY OF 2009, KABC AIRED A SPECIAL SERIES OF PRIME TIME NEWS BROADCASTS on bus service of LACMTA (Los Angeles County Metropolitan Transportation Authority, also known as “Metro”) for riders in wheelchairs. The broadcasters appealed dramatically to viewers off the bat: “Imagine if you were confined to a wheelchair and *forced to rely on* public transportation.” The tone implied that one notion compounded the other in its damnation — that relying on public transportation was as miserable a circumstance as being stuck in a wheelchair. If that initial blurt was a pre-emptive strike against Metro, then the portrayal that KABC was about to broadcast would be an appallingly dim one.

The eyewitness report would cast the Metro experience to an all-new low. The depiction showed LACMTA as a deplorable service to these patrons in wheelchairs and, furthermore, illustrated the disconnection between LACMTA management, who asserted ADA compliance with a tone of relaxed confidence in voiceover narration, while the juxtaposed footage revealed the disappointing reality that many wheelchair patrons suffer when they ride or try to ride Metro. The footage showed how the Bus Operators passed them up, didn’t know how to help the patrons strap their wheelchairs into the securement systems, or refused to do so and treated them with impatience and frustration. In many cases, the Operators admitted that they were never trained in using these strap devices for wheelchairs. At the end of each of the three programs, the news anchors appealed to viewers to share their stories of riding Metro with KABC, complain to the Federal Transportation Administration (FTA), or submit written complaints to LACMTA. At the end series, the anchor said that, in KABC’s contact with the FTA, it would conduct its own investigations into the ADA practices at LACMTA. The material included undercover cameras, interviews with patrons in wheelchairs, Metro Operations staff, Bus Operators, and ADA advocates. (1)

Public outrage and LACMTA’s shame from this exposed system of failure ensued. The LACMTA Board of Directors demanded that the agency make vast improvement to the customer

1. KABC, 26 May 2009

experience for riders with disabilities. The public pressure for LACMTA to take immediate and significant action was palpable. If there was a silver lining, it was that this case created the opportunity for Metro to systematically improve its service for the ADA community. In *Cathy v. LACMTA* (2011, United States District Court, Central District of California), five plaintiffs alleged that LACMTA, through its public transit services, failed to comply with ADA requirements in Title II. (2) The plaintiffs also claim violation of California State law, Article 9.5, Section 11135 of California Law which specifies:

No person in the State of California shall, on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

They also sought damages under California Civil Code 51 and 52 (the Unruh Act), and 54 (3).

David G. Geffen represented the five plaintiffs: Beverly Overton, Judy Griffin, Francisco Serrano, Cathy Gaddy, and Randy Horton. Ms. Griffin, Ms. Gaddy, and Mr. Horton were all featured in the KABC broadcast as well. Their cases sought to establish a common objective: They are qualified disabled people and who believed they were excluded from participation in and denied benefits of public entity's services because of their disability. Through this non-jury trial, they sought injunctive relief from practices that impact the thousands of other Metro riders with

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2. Title II applies to State and local government entities, and, in Subtitle A, protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities provided by State and local government entities. Title II extends the prohibition on discrimination established by section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, to all activities of State and local governments regardless of whether these entities receive Federal financial assistance. Subtitle B of Title II extends ADA requirements to public transportation services operated by state and local governments. The Department of Transportation (DOT) enforces transportation regulations related to the ADA. One such regulation requires all new buses to be equipped to provide services to people who use wheelchairs (i.e ramps and straps). Information and Technical Assistance on the ADA, https://www.ada.gov/ada_title_II.htm
 3. Individuals with disabilities or medical conditions have the same right as the general public to the full and free use of the streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals, clinics, and physicians' offices, public facilities, and other public places. California Legislative Information, http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=54.&lawCode=CIV

disabilities, and damages. Specifically, their cases described a host of transgressions from those addressed in the KABC series and beyond: Bus Operators passing up riders in wheelchairs who were waiting at bus stops, injuries from being thrown from their wheelchairs, rude and dismissive treatment, inability or negligence in helping wheelchair patrons strap into the accessibility space located on a bus, and sometimes even flatly refusing to help. The Plaintiffs expressed feeling that Metro as a public transport service was indifferent to the needs of riders with qualified disabilities and inflicted intentional emotional distress upon them.

Cathy Gaddy filed her lawsuit in federal district court on July 23, 2009. She complained of not being secured, of being trapped on a lift, and of being thrown out of her wheelchair because she was not secured, suffering lacerations on her person as a result. She had 16 complaints. Ms. Gaddy passed away in 2010. She had cerebral palsy.

The four additional plaintiffs filed their original complaints in September 2009. Judy Griffin had 172 claims of not being strapped in and of being passed up under false claim of no room. Judy Griffin sought \$690,000 in damages for 163 incidents but she also didn't stop riding Metro.

Francisco Serrano complained about 80 incidents. Mr. Francisco Serrano sought \$457,000 for 80 incidents, one of which involved an injury to his head and face as result of his wheelchair toppling. He had not been strapped into place when the bus proceeded on its route. Aside from this, he was also complained about being passed up or treated rudely by Bus Operators.

Beverly Overton complained about inaccessible stations. She claimed that the Harbor-Gateway northbound elevator had broken for weeks in June 2008, December 2008, January 2009. She also complained about bus stop being on a median with unbanked curbs at San Vicente, Wilshire and La Cienega Boulevards.

Randy Horton had 18 complaints, some in which he could not ride the bus. He was passed up and not secured repeatedly.

Early in the litigation, LACMTA filed a motion to dismiss Mrs. Horton's complaint because the majority of them had not been submitted to Metro Customer Service and she had no evidence, but it was denied. The court set a non-jury trial for only injunctive relief claims on January 25, 2010. The Defendant and Plaintiffs met in December 2010 on the injunctive relief portion of

the litigation and were able to reach agreement on 26 issues (see Appendix). The Plaintiffs had sought damages under California's Unruh Act. (4)

Since LACMTA received no records of complaint for most of these claims and the Plaintiffs could not furnish evidence, the majority of them were denied. In sum, LACMTA paid \$865,000 to the Plaintiffs in damages and attorney fees.

LACMTA agreed to injunctive relief with the intent on improving service for all riders with disabilities, the approximately 60,000 boardings per year. LACMTA was ordered to carry out 26 orders (see Attachment). These are significant improvements to its ADA service. Among the most significant orders were to create a new ADA department, implement policy changes, institute improvements to training, perform better equipment maintenance and tracking procedures, make enhancements to the Mystery Rider program, redesign the complaint handling process and hold annual peer reviews on ADA compliance, and new ramp equipment on the buses allowed for manual operation in case of mechanical failure. LACMTA staff of all levels, including executives, were trained to operate the wheelchair securement devices onboard buses.

The settlement order made ADA concerns much more core to LACMTA operations and quality compliance. As part of the settlement, LACMTA hired an employee whose duty is specifically to coordinate efforts on accessibility and develop and maintain an effective complaint system. The reporting structure of the ADA compliance capacity would have to be direct to the office of the CEO, who gets final say on all policies. The compliance unit would be a separate department in the LACMTA agency and oversee ADA issues from across all departments in the agency — to develop better service and access to riders with disabilities and to close the loop on complaints. The work of other departments would need to be reviewed and approved by this ADA Compliance business unit. This work could include and is not limited to special orders, rules book changes, union contract language changes, training materials and time allotted to trainings, complaint investigation, alterations in the infrastructure of facilities, and capital and transportation

4. After enactment of the Americans with Disabilities Act ("ADA") in 1992, the Unruh Act was amended to incorporate ADA standards, declaring that a violation of the ADA would also constitute a violation of the Unruh Act. To prevail on a section 51 claim, a plaintiff must plead and prove that the defendant's violation was intentional, unless the action is predicated on a violation of the ADA. Damages are available under section 52 to prevailing plaintiffs in the amount of up to three times the actual damages and no less than \$4,000 in statutory damages. Unruh Act. Justia, <https://www.justia.com/trials-litigation/docs/caci/3000/3067/>

improvement programs.

The plaintiff's consultant would check in regularly at LACMTA to make sure progress towards these goals are continuous. The new ADA Compliance Office would recommend any adjustment of goals. An annual review a peer review panel from outside of the transit agency would ensure that ADA Compliance unit meets or exceeds established ADA policies, practices, and objectives.

The only issue for which the parties were unable to reach agreement was the subject of enhanced discipline against Bus Operators. The Plaintiffs filed a motion on Dec. 19, 2010 for an order to have LACMTA to not enter into a collective bargaining agreement with the Operators' union (United Transportation Union), which had been treating ADA violations as a lesser offense than other civil rights violations. LACMTA did not legally have to require the Bus Operators' union to penalize its members for ADA discriminatory infractions at the same high degree.

On February 17, 2011, the court denied the Plaintiff's motion because they failed to demonstrate a threat of immediate and irreparable harm, and because LACMTA is not legally required to elevate the ADA violations to the severity of other civil rights' violations. Of the 26 demands, this was the one outstanding demand from the Plaintiffs that LACMTA was not able to reach in the Settlement Order.

The damages phase of the litigation concluded on June 7, 2011.

Part 2: Intergovernmental Context

The Plaintiffs claim LACMTA has violated the ADA, Section 504 of the Rehabilitation Act of 1973, California statutes that incorporate the provisions of the ADA (CA Civil Code 51, 54, and 54.1); (5) committed acts of negligence, negligence *per se*, and intentional infliction of emotional distress and violated California Government Code 11135.

The focus of the Gaddy case is essentially on ADA Title II, which applies to public transport. To prove violation of Title II of the ADA (1990), the plaintiff must demonstrate that he or she:

1. Is a qualified individual with a disability

5. California Legislative Information, https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV§ionNum=51

2. Was either excluded from participation in or denied the benefits of a public entity's services, programs or activities, or was otherwise discriminated against by the public entity; and that such exclusion, denial of benefits, or discrimination was by reason of his disability.

Under Section 504 of the Rehabilitation Act (1973), a plaintiff must show that he or she

1. Is an individual with disability
2. Is otherwise qualified to receive benefit
3. Was denied the benefits of the program solely by reason of the disability

While the Rehabilitation Act only applies to federal institutions, the ADA applies to *all* public entities. The FTA DOT administers regulations and requires compliance of the ADA from LACMTA.

The plaintiffs in the Gaddy case believed that they were excluded from enjoying public transportation because of their wheelchair disabilities and that this denial was intentional discrimination against those in wheelchairs. LACMTA denied violation of Title II and insists that the agency is continuously improving its service for riders with mobility impairments by: special training for bus operators, upgrading camera technology and implementation of the customer service complaint system for monitoring and remedying problems for riders, and using its tether strap program on board LACMTA buses. The reason that some wheelchairs could not be secured, LACMTA stated, was not that the buses lacked the equipment but because these devices have no standard and some simply won't fit into the securement system. In fact, according to the ADA requirements from the DOT, LACMTA buses and strapping systems are not required to be able to secure all kinds of wheelchairs. At the time of the Gaddy case, LACMTA's buses could only secure analog, manual wheelchairs, not electronic, motorized ones, such as those used by the Plaintiff. According to the FTA: "Given the diversity of wheelchairs, transit operators should consult with the owner of the wheelchair to determine the best means of securement." (6) Therefore, Bus Operator is not required to know how to secure all wheelchairs.

As for the passing of a ride, the KABC footage showed some condescending behavior from LACMTA where the Operator let all of the able-bodied riders board before allowing the wheelchair patron board, at which point there was no space left on the bus. While the video starkly painted the Operator as in the wrong, the DOT would ascribe the situation according to this regulation:

6. Federal Transit Administration, <https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/questions-and-answers-concerning-wheelchairs-and-bus-and>

Section 37.165(e) of the DOT ADA regulations allows persons who use wheelchairs to transfer to a vehicle seat, if one is available. Such a move is the rider's decision and the operator cannot force another rider to transfer to a vehicle seat, although the operator can suggest a transfer in a non-coercive way. (6)

Essentially, DOT and LACMTA can only help a wheelchair rider gain access to a space on board the bus — but not guarantee it — particularly with respect to the mechanical operability of the wheelchair lift of the bus, the adaptability of the straps to any given type of wheelchair, or the availability of the space on board the bus. *There are any number of factors outside of the responsibility of the Bus Operator and of LACMTA, which could jeopardize the patron in the wheelchair's access to a ride.* When probed about whether the Operator was in the wrong to let all of the able-bodied passengers to board before the patron in the wheelchair, the LACMTA manager said to the KABC reporter that the Operator *can only ask* the other patrons to make space for the wheelchair patron but *cannot enforce* behavior, such as making the other riders wait and let the wheelchair patron board first.

The DOT regulations impose numerous specific obligations upon transit but also contain exceptions and express acknowledgment that certain conduct is not a violation of the law. The goal of the regulations is to provide a framework whereby discrimination against the disabled is minimized; it also recognizes the practical realities of running large-scale transportation for the general public.

The evidentiary burden of proving disparate treatment is large. In the Gaddy case, despite the media's portrayal of Ms. Griffin and Mr. Serrano of being plainly victimized in the court of public opinion, in the court of law, the Plaintiffs failed to prove that the Bus Operators were intentionally discriminatory. In the incidents, the failure to secure the patron into the straps were due to the Operators feeling the pressure of time, lack of knowledge, lack of ability, or faultiness of the equipment. In none of the cases did the failure to secure stem directly from a disdain or prejudice against disabilities *per se*. Certainly, the need to accommodate a rider in a wheelchair required a specific, extra set of procedures, and it was these procedures that strained the Operators—but not

6. Ibid.

the riders' possession of disability. This was LACMTA's argument and retort to the accusation of being discriminatory.

Nonetheless, the Plaintiffs claim LACMTA has willfully discriminated against them by intentionally denying them the "full use and enjoyment" of LACMTA's bus system on account of their physical disabilities. Plaintiffs claimed that the rudeness of the Operators also demonstrate disparate treatment. They claim that Operators mistreated them expressly because of their disability and sought to establish disparate treatment. Specifically, the plaintiffs claim that LACMTA bus operators pass them up at bus stops, falsely claim there is no room on the bus, refuse to secure their wheelchairs and their persons, negligently fail to secure their wheelchairs and their persons and that drivers are insensitive and rude to them.

LACMTA could not confirm or contest these Plaintiff complaints because the DVR recordings of onboard footage must be retrieved within two weeks; otherwise they are recorded over. The Defendant insisted Ms. Griffin was aware of this constraint because she had just successfully sued Big Blue Bus and understood this condition. According to tort law, there are four elements that must be satisfied: duty, breach of duty, causation, and injury. To claim damages, a breach of duty from the Defendant against the Plaintiff must occur and must result in injury. All of Ms. Griffin's tort claims were received in excess of the two-week window so the footage, or proof, was already gone, erased. Either the plaintiffs did not submit formal complaint or if they have claimed to do so, in more than half of the cases, LACMTA has no record of such complaint or incident. As for the ADA inaccessible bus stops, LACMTA stated that the amenities and accessibility of bus stops are city jurisdictions, not LACMTA's.

LACMTA states that the tort claims were unfounded. In fact, in Mr. Serrano's case, LACMTA gathered sufficient evidence to prove that he made remarks to actually provoke the response he received from the LACMTA bus operator. Furthermore, in terms of his claims that the experience caused emotional distress, anxiety, and fear, neither he nor the other plaintiffs suffered to any extent that they needed to consult professional healthcare for the trauma. But beyond refuting their tort claims, LACMTA clarified that their transportation service is aimed to support the entire ridership, and that means serving the public at large, including the ADA community. LACMTA says that the DOT regulations carefully balance the needs of the mobility-impaired and of the general mass-transit dependent public, and describe what the LACMTA must do to comply with

the law. They also allow the LACMTA to operate with some flexibility without violating the law. For example, the optional securement rule: LACMTA is legally allowed to give patrons a ride without securing their wheelchairs. They do not have to be secured before the bus proceeds. As for the fitting of the belts on all wheelchairs, DOT has neither provided standards on wheelchairs nor does it require LACMTA to provide a universal securement system. As a result, LACMTA does not have a system to secure all types, including motorized ones. (7)

LACMTA stated that the frequency of passing up its riders with disability is very low. LACMTA's Three-Day Rule (49 CFR §37.163(c) part 37 App. D § 37.763) affords that if there is no spare bus available to take the place of a bus with an inoperable lift, such that taking the vehicle out of service will reduce the transportation service, then the public entity may keep the vehicle [with a broken lift] in service for no more than three days from the day on which the lift is discovered to be inoperative.(49 CFR § 37.163(e). So, to prove disparate treatment, the Plaintiff must show that LACMTA intentionally used a bus with an inoperable lift for more than three days or that LACMTA intentionally failed to "promptly" repair securement devices. The plaintiffs were unable to do so.

Metro sometimes has to dispatch buses with faulty or non-operable wheelchair ramps because that's all the buses that the yard has available at that moment and LACMTA does not want to deny service to all riders by not dispatching any bus at all.

Furthermore, Ms. Beverly Overton complained that LACMTA's northbound elevator at the Harbor Transitway at Slauson has been out of service for weeks at a time causing her to have to take a second bus to double-back to her destination. She also complained that a bus stop located at a median near the intersection at San Vicente/Wilshire/La Cienega is inaccessible (no curb cuts). She further contested that LACMTA drivers have left her at the stop stranded in her wheelchair having to depend on the kindness of strangers to move her from the median. LACMTA again stated that bus stops are outside Metro jurisdiction, in city jurisdiction.

The evidentiary burden on the Plaintiff to show disparate impact is thus extraordinary. Disparate impact discrimination could be investigated in this court case but the burden of proof

7. Federal Transit Administration, <https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/questions-and-answers-concerning-wheelchairs-and-bus-and>

would be difficult for the Plaintiffs. The right to equal access versus the ability to claim violation of that right on a disparate impact is the conundrum as Kate Baldrige articulated:

California has given plaintiffs challenging institutional disparities a proverbial “cookie” by providing a private right of action for disparate-impact discrimination, but, ultimately, plaintiffs are denied their glass of milk by the overwhelming evidentiary burdens required to substantiate these claims. (8)

Applying rational basis review, the court recognized LACMTA’s inability to guarantee good working order of ADA equipment all the time. But — from a customer’s perspective — perhaps the more crucial perspective is from the rider’s: what kind of quality of ridership experience does the Three-Day Rule translate into for the average rider in wheelchair? Does employment of this rule create a disproportionate hardship on this rider segment compared to the average?

LACMTA said that they do not have to guarantee perfect rides. Despite proper policies, practices and training, occasionally there is a bad ride in any system as large as Metro, which provides approximately 720,000 rides per year to persons with disabilities who use wheelchairs. The nature of the securement requirements, common sense and the applicable DOT ADA regulations “do not contemplate perfect service for wheelchair-using bus commuters.” In *Midgett v. Tri-County Metropolitan Transportation District of Oregon* (254 F.3d 846,849 [9th Cir. 2001]).

Another way of saying this is that the ADA does not attempt to meet all the transportation needs of individuals with disabilities... [T]he ADA is intended simply to provide to individuals with disabilities the same mass transportation service opportunities everyone else gets, whether they be good, bad, or mediocre.

The court sustained that riders with disability should be aware about how satisfied or as dissatisfied the average rider is with Metro service and aim for that. The aim is not to seek outstanding ridership experience but rather what is comparable to the average riders’ experiences. Occasional problems, without more, do not constitute a violation of the ADA, as per *Anderson v. Rochester-Genesee Regional Transportation Authority*, (337 F.3d 201 208 [2d cir. 2003])

LACMTA was quick to point out that the total number of rides that each of the Plaintiffs took in proportion to their problematic ones (only claims substantiated with proof), success was consistently in the 90th percentile — meaning the vast majority of their rides were complaint-free.

8. Baldrige, 2.

In terms of the role of state law in the *Gaddy v. LACMTA* case, plaintiffs bore the burden of proving deliberate indifference but since they couldn't prove it, the plaintiffs opted to demand damages on state claims under the Unruh Act because they couldn't prove federal claims. The Unruh Act of California states:

All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever. (9)

The Unruh Act is California's expansion upon ADA protection and can be tacked onto claims of ADA violation allowing plaintiffs to claim treble damages with a minimum of \$4000 per access violation plus attorneys fees. District court may decline to exercise supplemental jurisdiction over state claims if the state law claims predominate over ADA claims. Given the number of claims in the Gaddy case, the judge found that interpreting the phrases "for each and every offense" in the state Unruh Act would be consume way too much court resources than a trial on the merits of their ADA claims alone. Due to insufficient evidence and lack of records, LACMTA was able to whittle down the number of actual claims. Still, because of the Unruh Act, California courts see 42% of the national ADA litigation, including this case in point. (10)

One more important impetus in the swift litigation process and the extensiveness of the settlement order is the role of the media. Were it not for the timing of these series of shameful reports of LACMTA's disregard and negligence toward riders with disabilities, would LACMTA and the Plaintiffs arrived at as numerous and far-reaching ADA improvements? KTLA's broadcast invited complaint to both LACMTA and the FTA, which ensued with its own investigation of LACMTA's practices. The television news inserted the application of the First Amendment into this case. Among mass media's many roles is activating democracy by endowing the public sphere with information, knowledge, debate and hence political participation. (11)

9. California Legislative Information, https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV§ionNum=51

10. McNichol, p. 22.

11. M. Simone, p.293.

At the risk of social stability, allowing marginalized groups a forum to voice their opinions is necessary for the health of a democracy. In realms of minority classes, such that the ADA establishes for the disabled community, the amplification of their concerns and plight into the mainstream's sphere of awareness and influence would be the normal civic duty of the press in a democratic society. To what extent it affects court outcomes is that defendants fare better under moderate rather than no publicity, in terms of trial outcomes. (12) What the broadcast managed to achieve was a vivid documentation of the personal experience of the disabled rider, which stands in ironic contrast to the many well-meaning rules and regulations for the ADA community by which LACMTA operates, or believed it operated.

The Plaintiffs' evidence might have been weak but the portrayal in the media compensated by mounting political and public pressure for LACMTA to improve.

Part 3: *Constitutional/Legal Context:*

There are several constitutional issues to this case, including discrimination and access to fundamental right of travel.

First, the right to travel is a fundamental right, which these Plaintiffs would argue, is LACMTA bus service, without which they could not get around. In fact, for many in wheelchairs, public transit is the most popular choice for transportation. Most cannot drive their own cars or cannot afford the customization required to enable them to drive their own cars. Some disabilities do not even qualify for paratransit's strict requirements. Without access to transportation options, especially those who are outside of urban areas, they become confined to their homes. (13)

However, the court would not likely equate riding LACMTA buses as their exclusive means of travel for people with disabilities, even though it probably is for these Plaintiffs, for economic reasons. In *Miller v. Reed* (176 F.3d 1202, 1206 [9th Cir. 1999]), the court indicated that placing burdens "on a single mode of transportation does not implicate the right to interstate travel." (14) In *Miller*, the imposition of additional procedures in license renewal does not obstruct their access

12. Buschke, p. 108.

13. Bezyak, p. 53.

14. *Miller v. Reed*.

to the right to travel since driving is not the only means of transportation for them. Given that the additional procedures were designed to ensure protection of overall public safety and welfare on the streets, at the cost of eliminating some unqualified seniors' rights to drive, one could argue that LACMTA's application of the Three-Day rule is to ensure a consistency of service to the overall ridership population, at times sacrificing some riders in wheelchairs from an opportunity to board a bus with a working ramp. This is a point of potential disparate impact on ADA riders if the Plaintiffs could prove that the seemingly benign and fair Three-Day Rule practice resulted in a disproportionate negative outcome for riders with disabilities as compared to able-bodied riders. Another is bus boarding. Unlike Japan or Germany, where riders naturally form and enter a bus according to a queue, bus riders in LA throng to the door of an arriving bus, often leaving the riders in wheelchairs overcome by the nimbleness of able-bodied riders. When bus operators state that customers in wheelchairs were passed up because the bus got full, the fact is this manner in which the LACMTA bus loads up on passengers has a disparate impact on the ADA patrons, because they are consistently last to board, and as such, often times don't get to board at all. Without a mechanism to increase their probability of boarding before the bus gets full (particularly during rush hour, which has the most negative impact on their ability to hold steady jobs), they are at a significant disproportionate disadvantage.

Because this case is not subject to strict scrutiny, but rather rational basis review, the legitimate government interest served by LACMTA buses as it stands is to uphold the general welfare of the community by providing affordable and basic transport to the overall public—a rational basis which may supersede the disproportionate inconvenience and hardship that broken buses, over-worked Bus Operators, delayed elevator repairs and rushed and unyielding crowds may impose on a segment of disabled riders in wheelchairs. When mass transit funding is slim pickings and the only practical option for those at the margins of society, those with disabilities and in wheelchairs, who intrinsically need greater care to be active participants in the community, are systematically at a disadvantage. I can only surmise that this is the court's position, since the case never reached judgment, as Plaintiffs and Defendant were able to reach agreement on their own.

Lastly, the First Amendment and right to free speech likely played a role in the success of the Plaintiffs. The absence of any evidence, which hurt the Plaintiffs' cause in court, contrasted with the plethora of documentation that the news broadcast provided—and cemented public

opinion. In terms of LACMTA's sentiment of innocence or guilty, the KTLA broadcast seemed to make up for any evidence that was missing in terms of Metro wrongdoings inflicted on the wheelchair patrons. The court of popular opinion seems to have significant impact on LACMTA's litigious decisions to settle out of court. The Gaddy case was no exception.

In *Labor/Community Strategy Center v. LACMTA*, plaintiffs claimed that LACMTA was spending a disproportionately large portion of its budget on rail lines and suburban bus systems while neglecting inner-city and transit-dependent minorities. The court case dragged on without successful settlement and plaintiffs filed a class-action suit alleging LACMTA intentionally discriminated against members of the poor and minorities. Ultimately the parties settled, similarly to Gaddy, in pre-trial, an achievement possibly owed to LACMTA's deep aversion to have a finding of racial discrimination against them, including statistics of disparity and overtly discriminatory practices. In both this case, and *Gaddy v. LACMTA*, LACMTA's motivation was at least partially owed to an interest in averting negative press, particularly in terms of discrimination against a disadvantaged population. (15)

Part 4: Analysis

Gaddy v LACMTA represents another case of how difficult it is to establish a case of disparate treatment, moreover disparate impact, in public services for minorities. The causal requirement that the Plaintiff must prove is tremendous and difficult to achieve. Proving disparate impact may be more provable between the two but the ADA laws at the DOT level have so many caveats (i.e. optional securement of a wheelchair and patron in a moving bus, or the Three-Day Rule), that encourage ADA accommodations from an operational standpoint but don't guarantee a standard quality of customer experience. Coupled with limited resources, perhaps those who are in greater need (such as time, special attention, customized tools) are systematically at a disadvantage. When a service is under strain, the resulting outcome becomes disproportionately more

15. Linton, <https://la.streetsblog.org/2017/01/05/strategy-center-files-civil-rights-complaint-against-LACMTA-fare-enforcement/>.

16. Funding for mass transit is based on usages (i.e. gas tax) that actually discourage mass transit, and in fact encourage more driving of personal vehicles. "SAFETEA-LU was the epitome of a political approach, where those in power got more of the pie. New York, regardless of its political clout in Congress, stands

unfavorable to patrons in wheelchairs than able-bodied patrons. Given a perennial shortfall of funding for mass transit (16) and exceptional needs, infliction or perceived infliction upon wheelchair patrons of disparate impact and disparate treatment can become intertwined as transportation operators are constantly devising ways, and flustering themselves in the process, of doing more with less (ex. trained bus drivers, working vehicles, finite frequency of service routes). The ADA alone cost transit providers \$1.4 billion per year in the mid 1990s, about one third of federal transit spending. (17) Metro employees' loss of wherewithal toward extra tasks versus towards those who are relying on Metro to perform these task can accidentally get conflated.

Not providing an acceptable ADA experience presents a cost and loss to society and to the disabled individual. According to the U.S. Census Bureau (2011), approximately 36.3 million Americans experience one or more disabilities, which is equivalent to one out of every eight Americans. Further research indicates 30% of individuals with disabilities have difficulty accessing transportation. In addition, people with disabilities travel less frequently and rely on public transportation more than the general population. As a result, barriers to public transportation quickly affect the ability of people with disabilities to live full lives in terms of work, community, and pleasure. Approximately, 560,000 people do not even leave home as a result of transportation difficulties, giving cause to poverty, mental illnesses such as depression, stress on the immediate family, lack of fulfillment and joy in life, and lack of productivity and participation in society. (18)

While the population of registered disabled residents in Los Angeles County is at 6.9% (US Census, 2018 estimates), their proportion of the Metro ridership is much larger, due to their lack of option of driving private vehicles, which would require the driver side be customized and fitted. In fact, LACMTA entitles those with disabilities to free rides on Metro, with their application for and acquisition of the Persons with Disabilities Reduced Fare TAP card. Metro encourages them to choose mass transit as their mode of transportation. This may also be due to the fact that paratransit is significantly more expensive to operate as a public service compared to public mass

to gain from a less political approach where funding is distributed based on needs. ... They are currently denied that funding, in part, due to a political process that insists upon determining allocation in part by a state's contribution the Highway Trust Fund. That contribution is directly correlated to consumption of gasoline, which is not necessarily something that should be encouraged. Panagopoulos and Schank, p. 188-189.

17. Lewyn, p. 265.

18. Beyzak, p. 55.

transportation. If Metro were to invest more in its ADA accessibility and exceed state and federal requirements, the expenditure could be seen as an investment and as cost-efficient alternative to the higher societal cost of operating paratransit and dispensing government aid for the negative psychological and financial outcomes of exclusion from normal activities in society. (19)

In light of the budgetary constraints of operating mass transit, the recurrent challenges in maintaining ADA accommodations, and the ever-increasing ridership and its service demands, agencies such as Metro should consider the concept and practice of universal design. This approach aims to create systems that are accessible for the entire range of ridership needs. Universal street design facilitates station access, system equity, and ease of movement for all users, especially people using wheelchairs or mobility devices, the elderly, people with children and strollers, and people carrying groceries or packages. (20)

In fact, the concept of *universal design* is recognized and promoted in the Conventions on the Rights of Individuals with Disabilities of the United Nations. (21) In metropolitans throughout the world, the concept of universal design, also referred to as inclusive design, is in steady adoption. For example, the concept of the low-floor bus not only reduces the grade of the ramp that must be deployed for the wheelchair patron but also eases the ascent for seniors and small children. A further enhancement would be design and develop a slope instead of a staircase at the entrance and exit of a bus. Additional areas for development include the height and location of handrails. Innovation in this area would benefit those with difficulty maintaining balance and the majority of riders who occupy their hands with their smartphones during their rides. Design research methodology grounded in observation of natural user behavior in the bus is critical for

19. "Finally, the exclusion and segregation of people with disabilities was viewed as discrimination. Previously, it had been assumed that the problems faced by people with disabilities, such as unemployment and lack of education, were inevitable consequences of the physical or mental limitations imposed by the disability itself. Enactment of Section 504 showed Congress' recognition that the inferior social and economic status of people with disabilities was not a consequence of the disability itself, but instead was a result of societal barriers and prejudices. As with racial minorities and women, Congress recognized that legislation was necessary to eliminate discriminatory policies and practices." Mayerson, Disability Rights Education & Defense Fund, <https://dredf.org/about-us/publications/the-history-of-the-ada/>

20. NACTO, <https://nacto.org/publication/transit-street-design-guide/stations-stops/stop-design-factors/universal-design-elements>

21. Convention on the Rights of Persons with Disabilities, <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-2-definitions.html>

22. Hwangbo, Hwan; Kim, Jiyeon; p. 185.

designing interiors that serve the maximum range of rider needs.(22) Such a practice evolves many public sector workflows, where the first deployment of a new feature is merely an initial iteration upon which many iterations and refinements, based on testing and observation of user behavior, will need to be designed and deployed. Long gone is the idea of one and done solutions; rather, the idea is that progress is continuous. As the FTA offers basic guidelines and thresholds of ADA provisions, transportation agencies have the opportunity to transcend this baseline and close in on the gap from an imperfect experience towards one that is satisfying, secure, and thoughtfully considered.

Through universal design, transportation departments will practice better fiscal responsibility, save money by investing in the most accessible products for the most users from the start; innovate and create products for everyone regardless of ability; enlist user-testing and co-design process, and engage staff to promote inclusivity. Paving the way for more people with disabilities to be employees at transit agencies and part of the rider experience design will bring about better transit experiences for all, including patrons in wheelchairs.

Since there is no ADA police, FTA investigation, mass media watchdog reports and litigation in courts remain the most popular means of quality controlling a minimum of ADA accessibility on our transit systems. Unfortunately, these means costs time, exorbitant fees, and frustration for all parties. By adopting design methodology driven by user research, involving diverse rider segments in the design process and using ADA policies as merely the floor from which to develop more enhanced rider experiences, transit agencies can avoid expensive legal fees, bad press, and declining ridership. The initial investment in research and development may seem significant in terms of time and money but the customer frustration and potential litigation averted can justify it. Transit agencies will be participating in transportation conferences sharing their design innovations with each other and watching ridership grow. They can save public money by focusing on a design that fits all (or as many as possible), deliver satisfaction off the bat, and decongest urban regions too.

Bibliography

Anderson v. Rochester-Genesee Regional Trans. Authority. Civil No. 6275L
United States District Court, Western District New York: 2001. <https://caselaw.findlaw.com/us-2nd-circuit/1483895.html>

Article 2, Conventions on the Rights of Individuals with Disabilities, United Nations, 1 October 2016, <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-2-definitions.html>

Baldrige, Kate. "If You Give a Mouse a Cookie: California's Section 11135 Fails to Provide Plaintiffs Relief in *Darensburg v. Metropolitan Transportation Commission*," 43 *Golden Gate U. L. Rev.* 7 (2013). <https://digitalcommons.law.ggu.edu/ggulrev/vol43/iss1/5>.

Bezyak, Jill L., et al. "Public Transportation: An Investigation of Barriers for People With Disabilities." *Journal of Disability Policy Studies*, vol. 28, no. 1, June 2017, p. 52-60.

Bruschke, J., and We Loges. "Relationship between Pretrial Publicity and Trial Outcomes." *Journal of Communication*, 49.4 (1999): p.104-20.

"CACI No. 3067. Unruh Civil Rights Act-Damages (Civ. Code, §§ 51, 52(a))." Justia, Justia, 25 Apr. 2018, <https://www.justia.com/trials-litigation/docs/caci/3000/3067>.

"California Civil Code 51." California Legislative Information, California Law Database, 1 Sept. 2019, https://leginfo.legislature.ca.gov/faces/codes_display-Section.xhtml?lawCode=CIV§ionNum=51

"California Civil Code 54." California Legislative Information, California Law Database, 1 Sept. 2019, http://leginfo.legislature.ca.gov/faces/codes_display-Section.xhtml?sectionNum=54.&lawCode=CIV.

Donald S. Miller v. Sally R. Reed, California Department of Motor Vehicles. Case No. 97-17006; United States Court of Appeals, Ninth Circuit: 1999. <https://caselaw.findlaw.com/us-9th-circuit/1054787.html>

Eric Mann, Los Angeles Bus Riders Derail the LACMTA, *Highway Robbery: Transportation Racism & New Routes to Equity*, Vol 33, Robert D. Bullard et al. eds., 2004, p.33.

Eyewitness News KABC-TV 26 May 2009 5-6PM, 11-12A; 27 May 2009 5-6PM.

Gaddy v. Los Angeles County Metropolitan Transit Authority. Case No. CV 09-2343: 201; United States District Court Central California: 2011; LACMTA County Counsel.

“The History of the Americans with Disabilities Act.” Disability Rights Education & Defense Fund, Disability Rights Education & Defense Fund, 17 Oct. 2012, <https://dredf.org/about-us/publications/the-history-of-the-ada/>[Accessed 29 Sep. 2019]

Hwangbo, Hwan; Kim, Jiyeon ; et al. “Toward Universal Design in Public Transportation Systems: An Analysis of Low-Floor Bus Passenger Behavior with Video Observations.” *Human Factors and Ergonomics in Manufacturing and Service Industries*, vol. 2, 2015, pp.183-197, doi: 10.1002/hfm

“Information and Technical Assistance on the ADA.” State and Local Governments (Title II), US Department of Justice, 1 Jan. 2010, https://www.ada.gov/ada_title_II.htm.

Joseph Midgett v. Tri-County Metropolitan Transportation District of Oregon. Civil No. 98-140-JO; United States District Court, D. Oregon: 1999; <https://law.justia.com/cases/federal/district-courts/FSupp2/74/1008/2424462/>.

Labor/Community Strategy Center v. Los Angeles County Metropolitan Transit Authority. No. 06-56866. United States Court of Appeals, Ninth Circuit: 2009. <https://caselaw.findlaw.com/us-9th-circuit/1298593.html>

Linton, Joe. “Strategy Center Files Civil Rights Complaint Against Metro Fare Enforcement.” Streetsblog LA, January, 25, 2017. <https://la.streetsblog.org/2017/01/05/strategy-center-files-civil-rights-complaint-against-metro-fare-enforcement/>

M Simone, Maria. “Invisible Hands or Public Spheres? Theoretical Foundations for U.S. Broadcast Policy.” *Communication Law and Policy*, 2006, Vol. 11(2), p.287-313.

McNichol, Tom. “Targeting ADA Violators”. *California Lawyer*. California Bar Association: 22, January 2012.

Panagopoulos, Costas, and Joshua Schank. *All Roads Lead to Congress: the \$300 Billion Fight Over Highway Funding*. Washington, D.C.: CQ Press, 2008.

“Questions and Answers Concerning Wheelchairs and Bus and Rail Service.” Federal Transit Administration, United States Department of Transportation, 1 Sept. 2015, <https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/questions-and-answers-concerning-wheelchairs-and-bus-and>.

“Universal Design Elements.” National Association of City Transportation Officials, 2 May 2016, <https://nacto.org/publication/transit-street-design-guide/stations-stops/stop-design-factors/universal-design-elements/>

Attachments

Summary of Gaddy Settlement Order Terms		
a.	Metro shall create a direct reporting structure for the head of the ADA Compliance unit to report directly to the office of the CEO.	Completed & Continuing
b.	Metro shall expand its present ADA Compliance unit to adequately address ADA issues.	Completed & Continuing
c.	Metro shall create an ADA Compliance sign-off policy to require all departments making changes that could impact accessibility to gain approval.	Completed & Continuing
d.	Metro shall ensure that the ADA Compliance Unit has a seat on committees or projects where accessibility could be reasonably impacted.	Completed & Continuing
e.	Metro shall ensure that the ADA Compliance Unit is promptly informed of pertinent information involving ADA related matters.	Completed & Continuing
f.	In the fifth month after the effective date the ADA Compliance Unit shall gather and quantify data from the Mystery Ride Program to establish a baseline of certain ADA related performance areas.	Completed
g.	A Peer Review Committee from Orange or San Diego County transit agencies shall provide independent oversight by yearly planned reviews to ensure the ADA Compliance Unit meets or exceeds its established policies, practices and goals.	Completed & extended to include participation from other agencies
h.	Metro shall ensure that all ADA related customer complaints are promptly referred to the ADA Compliance Unit for proper handling.	Completed & Continuing
i.	The ADA Compliance Unit shall identify problem areas recommend changes necessary to bring the MTA system into compliance based customer complaints.	Completed
j.	Metro shall develop an ADA customer compliant reporting system that ensures all relevant departments receive monthly, quality and yearly reports on the performance of each division.	Completed & Continuing
k.	Metro shall develop a process that ties customer complaints to employee training and discipline policy.	Completed & Continuing
l.	Metro shall continue its present Mystery Ride Program to provide an internal monitoring systems that independently tests the service provided though the use of undercover monitors.	Completed & Continuing
m.	Metro shall develop a quarterly reporting policy for Mystery Ride Program reports.	Completed & Continuing
n.	Metro shall develop opportunities for recognition of drivers who have 100 performance on key accessibility measures.	Completed & being extended
o.	The ADA Compliance Unit shall timely ask Division Managers to pull the bus Digital Video Recording whenever an ADA category complaint is reported through any sources.	Completed & Continuing
p.	Metro shall require bus operators to call Bus Operations Control to report non functioning lifts, ramps, securements systems or lap and seat belts immediately upon failure and take the bus out of service unless it is less than 2 hours from the end of its day.	Completed & Continuing
q.	Within 12 months of the effective date Metro shall replace all missing or damaged bus stop signs with new signage.	Completed & Continuing
r.	Metro shall post car cards in the securement area of all buses stating that Metro recommends wheelchairs be secured.	Completed & Continuing

s.	Metro will train and require bus operators to automatically rise from their seats and secure wheeled mobility devices and recommend lap belt and shoulder harness for safety, however Metro is not required to secure a mobility device if the patron affirmatively refuses securement.	Completed & continuing with revisions based on new securement systems
t.	Operations Central Training shall work with the ADA Compliance Unit to identify and procure 5 different types of mobility devices for hands on securement training at each MTA Division.	Completed & continuing
u.	Metro shall develop a hands on training module for all operations personnel.	Completed & Continuing to update as needed
v.	Metro shall update the Operators Vehicle Condition Report (OCVR) to include pre-trip functional assessment of the securement system.	Completed & Continuing to update as needed
w	Every bus operator shall certify all accessibility equipment meets the minimum requirements prior to leaving the yard for the morning pull out by signing the OVCR.	Completed & Continuing
x	All reports to Bus Operations Control of failure of ADA lift and securement devices shall be provided to the ADA Compliance Unit.	Completed & Continuing
y	Metro shall add an updated pre-trip inspection policy and an updated (OCVR) to ADA bus operations training curriculum	Completed & Continuing
z	Any vehicle that is claimed to have faulty accessibility equipment in the field will be examined by Metro's maintenance department and if the equipment is not found fault shall notify the ADA Compliance Unit.	Completed & Continuing