Transcript: Legal Advocacy for Unhoused People with Disabilities  
March 6, 2025

ERIN NGUYEN NEFF: Hello, everybody.  The training you're currently is "Legal Advocacy for Unhoused People with Disabilities: Toolkit to Challenge California Laws Criminalizing Homelessness."

So my name is Erin Nguyen Neff. Recently we released a toolkit, the same name as the webinar, to help people who are bringing legal claims on behalf of unhoused people with disabilities particularly in the context of encampments.  So this training, this webinar, is to go over the toolkit and learn a little more on how to bring the claims.

For our agenda, this is a look -- for the agenda I'm going to go over what DREDF does and the context of the toolkit.  There is a lot in the toolkit and we only have a little time today.  We're going to focus on two major issues, bringing disparate impact claims and reasonable modifications.  And then we're going to have a Q&A with attorneys and advocates with living experience who have worked on the cases that are mentioned in the toolkit.  So the people who will be joining us a little later for the Q&A is Brigitte Nicoletti, a Staff Attorney at the East Bay Community Law Center, EmilyRose Johns, an Attorney with Siegel, Yee, Brunner & Mehta and Jason Sarris, a community activist and Robbie Powelson, also a community activist.

So the first thing I just want to go over briefly is a little bit of what DREDF does.  DREDF is a support center for qualified legal service providers or QLSPs.  So that is -- a lot of organizations that if you have legal aid or legal service in your name, then you are probably a QLSP.  If you're providing support and get funding from the California state bar to help low-income people, the odds are you're a QLSP.  We're funded by the state bar to be a support center for QLSPs and to provide expertise on disabilities.

So if you're bringing litigation on behalf of unhoused people and you want to represent unhoused people with disabilities, please reach out to us.  We can help support you in the work that you're doing.  As a support center we do trainings, we do consultations for people, we can co-counsel on cases, we can provide advice in the background on cases.  We work in a lot of different areas.  Here's a list of some of them.

I personally as a senior Staff Attorney focus on housing rights, rights for unhoused people and special education.  If you're interested and want help in one of those three areas, you can call or e-mail me.  My contact information is here.  If you're interested in a different area that DREDF works on like health, transportation, reproductive rights, we work have r on a bunch of other stuff too, I suggest you check out our website.  If you're interested in one of the other things I would e-mail info@dredf.org.

One of the reasons why I really want to emphasize reaching out to DREDF is that in doing work for unhoused people and looking at a lot of different cases, one thing that we've noticed is that, you know, sometimes disability claims are sort of tagged on, you know, at the end of the complaint as an additional claim.  And it sort of doesn't get the focus that it needs and deserves.  And I think particularly when people are bringing like bigger impact cases that are really focusing on strong constitutional causes of action, when disability is tagged on to that too, it can often be overlooked by the judge.  The ruling of the case is contingent on the constitutional issues and the disability issues aren't fully litigated and supported in the same way the constitutional issues are.

So, you know, we really want to encourage people in bringing these cases, if you have strong disability claims, to ensure you have a disability rights lawyer works on the claims with you and to make that be a focal point of the litigation.

So to talk briefly about the toolkit, again, we can't go over everything on the toolkit here.  There's too much information in the toolkit.  But I wanted to let you know about the contents so you know how you can use it.

First, the toolkit is based almost entirely on federal law and Ninth Circuit.  So the toolkit will focus on California as a subject matter, all of the cases that are in the toolkit focus on California and sort of the background information.  The toolkit sets off with setting the scene with what's happening with homelessness in California and how it impacts people with disability.  That's predominantly based on research and facts for California with some nationwide facts too.

But with that being said, because it focuses on the ADA and federal law, Ninth Circuit law, the toolkit can be helpful for people who the Ninth Circuit, Oregon, Washington, other states, other than California.  It can be useful beyond that but because of the issue of homelessness, it's a problem nationwide but it's a particular problem in California with the high cost of housing and everything happening in California.  So it does focus subject wise on California and on California cases.

So there's a little bit of a background on that.  Chapter 2 talks about disability law in general.  Here we do talk a little bit about California state laws that are sort of the companion law to the ADA.  We talk a little bit about Section 504 and other claims that can be brought.  But the meat and potatoes of the toolkit really focuses on the Americans with disabilities act.  That is where you're going to have your strongest claims.  So it reviews, gives an overview of the Americans with Disabilities Act, specifically Title II.  Title II is, unlike the rest of the ADAs, really focus on the actions of government.  So in most cases when it comes to encampment, it's a city, a local municipality enforcing an anti-camping law that's generally going to fall under Title II.  It has disparate impact and communication.  If you're clearing an encampment with a person who is deaf or hard of hearing and they need ASL interpretation or another means of communicating with them, that should be provided under the ADA.

We're not going to go into a lot of detail about that to.  We're really focusing on disparate impact and reasonable modifications.

The toolkit goes over how the government might respond to reasonable accommodations.  We'll go over that briefly today but for a more in-depth look at that and the nuance of that, check out the toolkit.

The other thing I'll say is that DREDF has done a lot of training so we do have materials on how to draft a reasonable modification.  The toolkit is really looking at more how do you bring a claim in court if a reasonable modification is wrongfully denied or not responded to.  So you could decipher from this how to draft a reasonable modification and the nuts and bolts of that.  But it's focused on bringing a claim for that.

But we do have trainings and I have a link to it later in this webinar about the basics of drafting a reasonable modification.

So that's an overview of the toolkit.  At the end here is a link to the toolkit.  Please check it out.  Also, if you just Google DREDF unhoused toolkit, it should pop up.  There's an html version and PDF version.  If you need a modification of the toolkit for a disability or other reason, please feel free to reach out to me and we can get the toolkit for you in another format.

Okay.  So let's dive in a little bit into what the toolkit says and how it could be useful to you all.  So again, the toolkit focuses a lot on Title II.  That is the most relevant to encampment, sweeps and clearings.  So Title II applies to almost anything a local government entity does.  So the law refers to it as services, programs or activities and this could be the state government, city government, municipalities, departments, agencies of that government

it pretty much covers anything that a public entity does, including the encampment sweeps and the activity related to that

and it specifically prohibits disparate treatment.  And in the on text of Title II, Ronald modification and accommodation is the same term.  If you're talking about tenant rights and the fair employment housing act, for example, those two terms have distinct definitions.

but for our purposes under Title II they can be used interchangeably

for a little more detail about what each of these means, particularly disparate treatment, check out the toolkit.

Sorry, having some technical difficulties.  Pause one moment.  If someone can go off mute and let me know if what you're seeing is ADA Title II disparate impact.

>> Yes.

>> ERIN NGUYEN NEFF: So disparate treatment is when you're obviously discriminating against someone with a disability saying you can't come in this building because you're disabled.  Disparate impact may seem that a policy is equal but applied to people differently and have a disparate impact on people with disabilities.  The way it's been described is a facially neutral government policy or practice has the effect of denying meaningful access to public services to people with disabilities.

This is where reasonable accommodations and modifications can come in to alleviate the disparate impact or the way the law is should be changed so that the disparate impact isn't affects people with disabilities.

When you bring a disparate impact claim, the burden of proof is on the person with the disability to show there is an disparate impact.  In order to bring this claim you don't need to show a discriminatory intent.  Oftentimes the response is, oh, this law is applied the same to everyone, this policy is applied the same to everyone.  Everyone in the encampment is being swept, not just people with disabilities.  We have no problem with people with disabilities.  We have a disability outreach person who helps out.  That doesn't matter.  You don't need to show discriminatory intent.

The point of the disparate impact is it is a neutral law and applied the same but needs to be applied differently to people with disabilities so that it's not -- so it doesn't disproportionately burden them.

Here's a few examples of how certain anti-camping laws might impact a person with a disability.  One thing I'll say is that I think that, you know, in the time before the green decision we saw anti-camping laws trying to get around the 8th amendment but now we're seeing a blanket camping bans.  But to the extent, you know, different cities might have different requirements, some of this might be relevant to the areas you all work in.  Some of it might not.

But so there are anti-camping laws that will have requirements to move every -- at certain time intervals.  So every 24 hours.  I think San Joaquin County passed a law where people have to move every hour.  So this is going to have a disparate impact on people with mobility disabilities.  So if you are in a wheelchair, if you cannot lift, you know, items beyond 5 pounds, it's going to take you much longer to move than a person who doesn't have a disability.  You may not be able to comply with a requirement to move every 24 hours.  In a way that may not impact someone without a disability because if you can't comply you're likely to lose your things because you haven't moved it, you're likely to be arrested or to be find.

And then of course, that, in turn, is going to have huge financial implications and stress in a person's life moving forward.

The requirement to move 24 hours puts a disproportionate burden on people with intellectual disabilities being in a different environment can be very distressful for someone with an intellectual or developmental disability.  The lack of familiarity, the constant stress can be triggering. Also people with mental health disabilities.

So you can't add all of that to the slide but really the laws is not just affecting people with physical disabilities but multiple types of disabilities.  And of course there are people with physical disabilities or mental health disabilities or IDD.

Limitations on the number of people in an encampment.  The ways some cities have tried to address encampments is saying, you know, most people are very concerned about the large encampment.  Some say you camp outside but you can't have more than two people together or something like that.  So that can also have a disparate impact on people with disabilities if you're camping with other people for emotional support and protection because you have PTSD, that's going to be a disparate impact.

So that would be harder to establish if you can't camp with other people.  If you're with people who are acting as a home health aide and providing support for daily activities, you might be in a situation where you need someone to help dress you, someone to help feed you, give you water.  That kind of help requires someone to be there consistently.  And that can't be accomplished if you can't camp with other people.

So again, that is a disproportionate burden on people with disabilities.

Limitations on where a person can camp.  So again, we're seeing more sort of blanket like no public property, no private property.  That's obviously going to have a disparate impact.  Sometimes we see ones that are a little more narrow.  You can't be near schools, can't be near critical infrastructure, parks.  For a person with a disability, if you're really forcing them out of the main areas of a town, a lot of times that's going to mean they are not going to have access to public transit.  So if they need to -- if they have a mobility disability and can't drive a car and rely on public transportation, that's going to be a disproportionate burden.  It forces people into unfamiliar places.

If you have an intellectual or developmental disability, that can cause a lot of stress.  You may not be able to camp or be near doctors' offices or treatment centers that are essential for you disability.  All of this creates a disparate impact that could make up the basis of an ADA claim against an anti-camping law.

So one example of this in a decision based on a motion to discuss in the case of Bloom very was San Diego.  This case was specifically challenging an RV parking ordinance that was prohibiting RVs.  So again, this -- the law applied to disabled and nondisabled people in the same way.  It didn't say -- the law didn't have any language of, you know, RVs are banned for these people, including disabled people but not nondisabled people or had any sort of real nuance or mention of disability as part of it.

So it's a neutral law.  It wouldn't be disparate treatment claim but there is a disparate impact claim because enforcement of the RV camping ban was disproportionate for people with disabilities.  Because people with disabilities are oftentimes uniquely dependent on people -- excuse me, living in RVs.  It might be that the local shelter is not accessible for people with disabilities but someone has designed their RV or car to be accessible to their needs.

One thing a lot of shelters are congregate shelters.  Everyone is staying in one big room, you're staying with multiple people.  For some people with anxiety disorders, giving in a condition like that is difficult.  So it's better to live in a vehicle or an RV and better to have the cover than being outside.

So ruling against the motion to dismiss the court ruled that the city's ordinance effectively denied these persons meaningful access to the city's services, programs and activities which are easily accessible by others.  And, you know, this is taken out of context but these persons referring to people with disabilities.  So it's a little bit of an example of how that played out in a court decision on a motion to dismiss.

All right.  So the next thing we're going to review real quick before getting to the Q&A is bringing claims based on reasonable modifications.  So I'm not going to go into too deep about this because we have other trainings that go into exactly what a reasonable modification is and how to request it.  But again, it's basically asking the government, the city government to change the way a service, a benefit or policy is implemented to help a person with a disability.  It's affirmative.  It's not discretionary on the part of the government.  If the request is reasonable and they have no defense to it, they need to be granting it to you.  It's not completely up to them.

So some common examples of a reasonable modification is more time to move before and encampment sweep.  Stopping a person from being swept and giving them additional time.  Assistance in moving the belongings.  Maybe moving them to a particular location for a person with disabilities.  Exception to anti-camping laws, exceptions to, you know, if it says you can't park, can't camp near a park, an exception to that based on a disability, if it says you can't camp with other people, an exception to that based on disability.  Sometimes this can be a way to alleviate the disparate impact mentioned earlier, although it is two distinct claims under the ADA.

Obviously this is not an exhaustive list.  You know, really it's a case-by-case analysis.  You want to talk to your client about the disability they have, what it is that they need, how the two things are connected and that would make up your reasonable modification.

So reasonable modifications are very fact specific.  So something that's a reasonable modification in one instance might not be a reasonable modification in another instance.  So it really depends on the services being provided by the city and the law and the context and the person's individual experience and disability.

So I think in trying to -- in bringing a claim under the ADA for the failure to provide a reasonable modification, I think it's really important to first identify the benefit, the service that is being denied to the person with the disability and then identifying how that modification that you're requesting enables a person to actually obtain that benefit.

So this was done really well in the case of Prado.  I think this is a really good example of how the benefit was identified, the modification mitt within that benefit and made a solid fact pattern that made it much harder for the city to say no, this is a fundamental alteration, this isn't a reasonable modification request.

In this situation the reasonable modification request was to include mental health professionals as part of the housing navigation services that Berkeley was providing.  So the benefit that was denied are these housing navigation services, these outreach services.  People with mental health disabilities couldn't really access these benefits in the same way as people without mental health disabilities could.  So the reasonable modification request was for mental health professionals that enabled -- that would be there as part of the outreach services and could enable people to actually make advantages of the navigation and outreach services.

And the court decision on this case mentioned that without the outreach services the modification would likely be a fundamental alteration.  So in the exact same scenario, let's say, for example, you know, there's another city that just came in and southwest people and didn't provide any sort of housing or navigation services, there's no legal requirement for them to provide those services.  They simply would come in, give a notice to people that, you know, they have 72 hours to move and that was it.  That's all they did.

In a situation like that had an unhoused person requested a reasonable modification for mental health professionals to come out to provide housing outreach services, that would likely be a fundamental alteration because the city wasn't already providing housing outreach services.  That is beyond what they were already doing.

I think in the context of community organizing and being an advocate for homeless people, I think it's okay to make a request like that but it would not be a good basis to bring a lawsuit.  It doesn't hurt to ask but when you're considering fact patterns and evidence and documentation to bring a case, you want to be able to identify like a clear benefit that was denied to people with disabilities.

So an example where it didn't work out is in the case of Glover v.  City of Laguna Beach.  This is specific to shelters, a little different than encampments.  But the local shelter was inaccessible to people with disabilities.  And in this case the benefit that was identified as being denied was a safe, legal place to sleep.  This is in the context of shelter.  Shelter is different from housing.  And the reasonable modification request was for permanent supportive housing to be provided to the plaintiffs in this case.

So the court denied this reasonable modification request saying that it was a fundamental alteration and the court decision said that plaintiff's lengthy list of grievances with the city's homeless program however well founded reaffirm that plaintiffs are not likely focusing their ADA claim on any particular service provided by the city but instead on the amorphous aim of the provision of a safe, legal place to sleep.

In helping people with these type of claims, I think people when they first hear about reasonable accommodations think this is a loophole that I didn't know exists.  And it's there to help people with disabilities but it's not a catch all.  It's not something that's going to fix everything.  It's not -- as much as I wish it was, it's not a magic button to get permanent supportive housing.  There are very few situations and none I can think of currently where permanent supportive housing would ever be considered a reasonable modification.  Of course we all want that but we're not going to get it by requesting a reasonable modification.

Housing that's permanent -- particularly permanent supportive housing has other resources attached to it.  Shelter, they're looking for a modification in the shelter, that's a temporary place to sleep.  I think, unfortunately, for the city in this case, it was very easy to make a claim that the request was a fundamental alteration.  I think had the request be people need to be able to stay at the shelter longer because with, you know, with -- I'll say a situation where say someone just got a doctor's note that said based on their disability they shouldn't be moving or lifting heavy items for a month and they're in a shelter that only allows them to stay for a week, they could ask for a reasonable accommodation to be able to stay at that shelter for a month.  In this situation I think that would have been a very -- easy to argue that that's a reasonable accommodation.

In this case, just as an example, if it's a situation where they don't have camps, don't have bars in the bathroom, places where people could sleep a little more isolated, that would make sense to provide as a reasonable accommodation in this context than a request for permanent supportive housing.

So these are generally the defenses and ways that a government entity can counter act a request for a reasonable accommodation.  So it's fundamental alteration which we sort of just went over.  It's basically kind of like you haven't adequately identified a benefit so the accommodation that you are seeking is essentially requiring the city government to do something new that they're not already doing.  Of course there's going to be a lot of times the city says, oh, this is a fundamental alteration when it's not.  So that's why it's important when you're bringing a lawsuit and analyzing a situation to identify that benefit that's being denied.  That will help you in being able to argue against a fundamental alteration claim.

There's undue financial burden, undue administrative burden. Basically like this is going to cost way too much and that's really going to be compared to, you know, the overall budget of whatever department or city that we're talking about.  And a decision like that can't be made just by a police officer on the street.  It has to be made by a department head.  Same with an undue administrative burden.

And then there's direct threat to health and safety.  So this might be if they're saying, oh, you know, we can't clear -- or we have to clear this encampment, we can't give you more time because it's a health and safety issue.  And that needs to be particularized.  It has to be based on research.  They can't just sort of say that oh, because it's dirty and messy, that's a health and safety hazard.  They really have to show that.  And they have to show an additional reasonable accommodation can't mitigate that health and safety, any threat to health and safety.

I'm not going to go into too much detail on this because we do have other trainings on this.  But there's a lot more detail in the toolkit.  So if you're unsure about these, definitely check out the toolkit.

And speaking of other trainings, if you want to know more about those defenses, more about the nuts and bolts of making a request for a reasonable accommodation, we did a training on this about a year ago.  So check out our website.  It's on YouTube.  These slides will be sent out to everyone afterwards.  If you want to know more about this, check out this other training that we did.

>> I just wanted to point out that those defenses are all affirmative defenses, right?  That the defendants have to prove, not that you have to discuss in your pleadings.

ERIN NGUYEN NEFF: Yes, that's correct.  Yes, thank you for clarifying that.

So now we're going to have a little bit of a -- I'm going to stop -- real quick we'll have a little Q&A with people who work with unhoused people and worked on some of these cases.  Brigitte Nicoletti, Staff Attorney at East Bay Community Law Center.  EmilyRose Johns, Attorney, Jason Sarris, a Community Activist, Robbie Powelson and Sabyl Landrum.  Can Robbie be added to our delightful panel here?  I see that your camera is on but I don't know if you're being -- there you go.

Okay.  Thank you all so much for agreeing to answer those questions.  I'm going to ask you all some questions and feel free to just introduce yourself a little bit in the beginning again.  And then we'll save some time for answers from the larger crowd of people.

So anyone can answer this, but particularly EmilyRose and Brigitte, if you want to jump in on this, in bringing ADA claims in the cases you've done in the past, what are some things you've learned in doing that process?  What are some common mistakes that newer attorneys might be more likely to make that you could give some good advice on how to avoid that in bringing ADA claims.

EMILYROSE JOHNS: I obviously was very excited to speak.  I'm EmilyRose Johns want as Erin said.  I am a senior associate at a small civil rights firm in Oakland.  And I think I learned a couple of lessons during my first ADA case, and one of them was already covered a lot by Erin which was trying to make sure that you define the program that you are intended to litigate over, define that as particularly as possible and then shape the either reasonable accommodation or the claim of disparate impact as closely as possible to what is already being provided.

One of the cases that's cited a lot in the materials -- you recall for all of its negative effects -- is a case I brought called "where do we go Berkeley versus Caltrans or state of California" and that was over some Caltrans encampments.  It consider it a success for a couple of reasons.  One, we got a very long injunction that it took Caltrans a long time to undue with the Ninth Circuit so our clients got the benefit of an injunction despite the appeal.

The second thing that I consider a victory is that that case said in the face of Caltrans saying sweeps are not a program activity or service for which ADA accommodations need to be made, the Ninth Circuit was like, yeah, right.  It absolutely is something that a municipality does or a state does, and that is a program activity or service that is covered by the ADA.

But we did not do a good enough job in developing that case in defining the program and because of that we were not able to really defend the connection that the injunction had to the program.  And so I think that case is worth highlighting for some lessons learned but also the idea that these sweeps, not just the law enforcement part of it but anything that they're doing, the way that they, in this instance Caltrans has a program where they kind of defined the threat level of an encampment based on its location.  And we didn't really explore that very well.  I think if we had explored that for the purposes of our injunction we would have found out a lot more about how they were -- how that program could have disproportionately impacted folks with disabilities.

I also think that we didn't have a lot of data on -- I was noticing that the toolkit has some data on people in California living in encampments with mental disabilities.  That wasn't something we had at the time.  We rely on folks to self-identify as a person with a disability.  I think in the terms of physical disabilities you'll see that a lot more easily offered than folks who may either not want to identify as a person with a mental health or intellectual disability or may not be able to identify as a person what a mental health or intellectual disability as a result of their disability or lack of access to any health care that's helped them identify that.

And I think the other thing that I didn't do but I was very lucky to have partners like Brigitte and others who were doing this is having a real connection to the communities that you're litigating on behalf of.  It's extremely helpful to spend times with folks.  I'm heartened to see how many folks are participating in this webinar.  I would encourage you as a human person to go out and provide, you know, food, clothing, companionship, right, to folks in your community who are unhoused because that is a form of mutual aid and that will help you understand how to litigate on behalf of folks experiencing homelessness in those communities if you find yourself using this incredible toolkit.

>> ERIN NGUYEN NEFF: Brigitte, did you have anything you wanted to add to that?

>> BRIGITTE NICOLETTI: Yes, EmilyRose shared what I was going to talk about.  Thank you for that.  But I think also possible mistake that's easily to make given that many of the cases that I've worked on have arisen out of emergency or spur of the moment situations where, you know, folks on the ground receive notice that their encampment will be cleared in a couple of days or at the end of the week or whatever.  And they may make a request on their own behalf or advocates will make a request or sometimes I've made requests that are not the most thought through and not the most explicit in the way that someone's disability is connected to the ask that we're making.  So just really trying to shore up from the beginning that the way that you are framing the nexus between the disability and the accommodation that you're requesting, that is really critical.  So I'm so grateful to Erin and other folks who are doing these trainings so it's not just attorneys who can be making these asks in a way that's effective.  Anyone can make an accommodation request on their own behalf or somebody else's behalf and they need to be honored.  If we're getting them in the proper format in the beginning it limits the back and forth over whether or not the accommodation request is reasonable, sort of like Erin was talking about.

So that's a big sort of mistake that I see.  And I think like maybe other folks can talk to this better than I can.  Potentially Robbie can talk about this more than me but using the administrative process used along with the accommodation request speaking some federal relief is another piece that gets left out especially when you're being forced to move very quickly by a city or state agency threatening harm and not being willing to engage in the interactive process.

>> ERIN NGUYEN NEFF: Thank you.  Also, Jason, I wanted to ask you as a person who is formerly unhoused, what's helpful for a lawyer to know when representing unhoused people.

>> JASON SARRIS: Hi.  Thank you.  Jason Sarris.  I was one of the lead founders of Camp Compassion in Nevada.  And we won a preliminary injunction when we sued the city of Nevada and we settled out in court for a two-year agreement for a sanctioned established camp that was self self-governed and city operated.  In the last years we've got people housed in permanent, supportive housing.

To answer your question, the more information a person, you know, that's unhoused or with a disability can provide or a lawyer and advocate can ask, the better.  A lot of times when we mount a defense in Marin County is to try to stop a sweep entirely, you know, with a lawsuit, or at least slow them down.  And we want to hold the city accountable.  And that's important, especially when you want to protect the right of people with disabilities.

I've put this in question form but these are some of the questions that I think help paint a picture of what people's needs are and why they're camped where they're camped, what would happen if they moved, those type of things, how that will affect them.  But like are you camping close to a grocery store to get food and water or close to a drugstore to fill your prescriptions.  Are you camping close to stores and services because of mobility issues.  Are you camping here because you are in close proximity to a bathroom.  Is the location of your camp and your tent structure providing you the protection from the elements.  Are you camping closer to other campers so they can help and assist, support you with your disabilities?

Like now if you have to move, if your camp gets swept, how will this affect you with your disabilities.  Where would you be able to get food, water and prescriptions if you're forced to move.  Where will you be able to have access to a bathroom.  Are you physically able to pack up and move your camp if you're forced to move?  Do you need help or assistance with that.  Do you need more time to move.  Where will you go when you're forced to move.  Will a shelter work for you, and if not, why, or is the shelter able to accommodate the needs of your disability, you know.  Stuff like that I think helps an advocate or a lawyer get the information they need to, you know -- these things will affect you.  If you get swept you're going to be in a worse position.

So we've used that in your lawsuits in Marin to kind of, you know, help, you know, build a good case that, you know, these people are going to get affected because where they're located they're protected.  If they're forced to move, they're going to suffer, you know, stuff like that.

But I think maybe Robbie might want to add to that a little bit.

>> ERIN NGUYEN NEFF: One thing, what you said, Jason, just made me think of.  I also want to emphasize when working with unhoused people and people in general, a lot of times people don't self-identify as a person with a disability.  May not have received a diagnosis.  There's a lot of stigma attached to it.  So I think Jason's approach to listing this information is also really helpful when I'm trying to figure out if someone does have a disability.  Instead of asking, are you clinically depressed and they've never had the opportunity to see a doctor or psychiatrist to get that diagnosis, they might say no.  Asking like do you find yourself feeling expressed often.  Do you feel anxiety.  How does camps outside make you feel.  That reminded me of that, too.

Robbie, if you have anything that you want to add.  And then on top of that -- this gets to what Jason was saying so I want to add another question to that too, is that what sort of advice do you have or difficulties you found in gathering evidence to prove disability claims when talking to people in encampments.

And Robbie, if you want to start and then anyone else who wants to add on to that after.

>> ROBBIE POWELSON: Yeah, well, I think proving -- usually because we go in for restraining orders.  We don't go too deep into discovery or having to prove that much.  Usually it's declarations.  The thing I want to highlight is our recent case, one of the first junctions since Johnson versus Johnson that we stopped the sweep indefinitely.  They're not allowed to move this woman who has severe disabilities if they provide her a shelter.  Under the 14th amendment state created danger doctrine.

Even though the prelim injunction is based on the 14th amendment, the ADA process was important in getting the result.  Even though the judge denied our ADA claim because we had -- we basically turned the interactive process into a deposition.  And we had, you know, sit-down meeting with the city attorney where basically we were able to establish and deliver indifference for the sweep.  And by posing lots of questions, like asking for accommodations about the building code, violations asserted against her home that she had built for herself, asking about property rentals, where should she go that has water, bathroom, all of these things.

The judge said it's a fundamental alteration of the program.  But look at this interactive process.  Look at how they're deliberately indifferent to her disability that is going to put her at increased risk of harm.  That was the same thing that we did with -- me and Jason worked on boys versus San Rafael.  We were meeting every week, had all of these sit-down meetings.  It was very helpful even though, again -- because we forced them through the preliminary junction for them to go through the interactive process.  It was very helpful.  And it got us information from the opposing side to establish all of our claims, not just the ADA.

>> JASON SARRIS: It really gave us a chance to -- you really want to slow down the city's rolls as much as possible.  It gummed them up for a while.  We were able to make two appeals on that as well, that took more time.  And that, you know, helps people with more stability and gives them a chance to hopefully get in a better situation because of it.

>> ROBBIE POWELSON: Yeah.

>> ERIN NGUYEN NEFF: And then Jason someone in the chat asked for the list of questions.  So Jason, if you send those to me, when we send out the follow-up with everyone we'll make sure to add that to it.

>> JASON SARRIS: Sure.

>> ERIN NGUYEN NEFF: So, if people have questions, feel free to -- I know there's a Q&A section, but put it in the chat just because that's easier for me to see.  And I'm going to continue to ask from the list of questions I have but I'll check out the chat too.

So are there any tips that you all have for litigating specifically against city governments and city attorneys?

Let me circle back over to EmilyRose on that and then we can go around if anyone else has additions.

>> EMILYROSE JOHNS: Well, I don't know about specific tips necessarily.  But one thing that's nice when you're dealing with public entities in general is that they have to respond to public records act requests.  And so one way to, in a prelitigation stance, find out more about what your city's, programs, activities and services are with respect to people experiencing homelessness, is to do public records act requests like trying to find out who their service providers are and what the scope of services are.

So ask for their contracts with homeless outreach services.  With shelters.  We.

We had a successful case against the city of Emeryville because it revolved -- there's not orders that you can point to for your benefit.  But we did resolve the case by identifying that the city had a program for referring people to shelters but they only had one shelter.  And we found that out by following the money.  They only had one shelter that they referred people to.  It was a shelter in Oakland.  It was a congregate shelter.  And it was a shelter that kicked people out during the day.  And our clients with disabilities could not access that shelter.  They could not sleep in congregate settings because of their disabilities.  They could not reliability be counted upon to come back to the shelter at the time that they needed to come back to the shelter in order to receive that shelter bed for the night.

And so by doing some discovery into the way they spent their money and the contracts they had, we were able to understand the program and litigate to a successful resolution for our clients the -- litigate that case.

I would say that's one powerful tool.

I'm trying to think if there's anything else that's unique to public entities, right.  It depends sometimes on whether you're dealing with a private firm that the city or municipality has hired versus the city attorney's, how you might engage with folks and get, you know, success for your clients.  There's obviously -- we've done a lot in the cases that Brigitte was talking about where things become very emergent because, especially with injunctions, the harm that you are seeking to enjoin must be imminent.  So you do have to wait until there is an order to move or notice to move usually before the harm being threatened on your client is sufficiently imminent.  Those things do move quickly and that's why I encourage folks the more you like -- if you're interested in doing this litigation, the more you spend time with your homeless neighbors and be engaged with your community in that manner, the quicker you can move if you want to try to enforce the individual's rights then the city comes in to do sweeps.

>> BRIGITTE NICOLETTI: That is also right, EmilyRose.  The only additional thing I want to add against litigating against public entities is to mention the deference, in cases I've worked on, in terms of giving public entities.  Giving much more deference to their statements than by statements by unhoused folks.  Aye had many instances where the city attorney for different cities or Caltrans has claimed something and we've done our investigation and it has not been true.  That's kind of after the harm has already happened.  The court gives deference to these agencies and you to follow up and backtrack and show it's not the case.

Being aware of the deference and trying to do as much groundwork as you can before you're in front of the judge but also in making sure that your communications with city attorney and government officials is in writing because there's often a lot more deference given to the perspective of the state officials.  So being really thoughtful in the way you're getting those communications.

>> ERIN NGUYEN NEFF: Jason, Robbie, is there anything you want to add?

>> JASON SARRIS: I would say that lawyers definitely misrepresent a lot of what's going on.

>> ERIN NGUYEN NEFF: Let's say city lawyers.

>> JASON SARRIS: My bad.  Yes.  And I have a different category for them as well.  What I've learned is that, you know, you really have to have all of that documentation, all of that evidence.  The more evidence the better.  Especially like we've noticed with judge Jett, if you give them all of the information it helps, you know, in the northern district.

But yeah, you really got to combat that city attorney speak.

You know, in Nevada they kept on saying there was shelters available for every one of our camp residents.  And I called every day for a month and called the shelter, let them -- you know, is there a shelter available.  No.  I did that every day for a month and every day I called they said no.  So I recorded all of the information, published it online on social media in a Facebook group designated for Nevada and sent it to, you know, our lawyer, Anthony Prince.  We showed that there was no shelter beds available.

You know, that proactive stuff can really make a difference.

>> ERIN NGUYEN NEFF: I just noticed a question in the chat.  I think this can be our last question.  Sorry.  For some reason I'm not -- sorry.  I'm going to go with Daniel's question.  There's something wrong with my chat.  But I will also try to answer Franca's question.

I would appreciate any thoughts on whether/how strategies could or should differ if challenging an anti-camping ordinance as opposed to an upcoming sweep.  I would say in looking at ADA claims that when you're challenging an ordinance, that's where a disparate impact claim could come in.  Sometimes people find reasonable accommodation claims to be a little easier.

I think sometimes when it comes to a sweep we find that people have made reasonable accommodation claims before and so I think sometimes if people are experiencing sweeps, it's easier to bring that kind of claim.  I think when you're challenging an ordinance and trying to do an on-its-face challenge, trying to -- obviously in that situation it may not be that someone has requested a reasonable modification yet for the ordinance, if it hasn't been implemented yet.  So you might try to find a way to bring a disparate impact claim.

Does anyone want to add to that?

>> ROBBIE POWELSON: I want to add that all of the big injunctions that I've seen -- like in Marin county we challenge ordinances themselves but as an implied challenge to a specific encampment.  And when we challenge ordinances we get long injunctions.  Most of our camps have been up for like over a year for the big restraining orders.  It's important to challenge rather than the sweep itself.  It gets deeper to the bone.

>> ERIN NGUYEN NEFF: Sorry.  I'm just putting in an answer to the chat too.

So Franca had a question specific to property that I answered in the chat.  But I don't want to keep people over too much.  It's 1:01.  Thank you so much for participating in this panel.  It's really great to hear all of your answers.  It's super valuable.

For people who are attorneys on the west coast, there is also an upcoming event on March 23rd, 24th, talking about in the wake of grant, how do we talk about bringing lawsuits without the benefit of the eighth amendment.  If you've interested in being a part of it, please e-mail me.  I've put my e-mail out a couple of times.  I'll do it one more so it's the last thing on the chat.

In doing a similar discussion on disability at that event too.  And please, if you are working up a case and you want some expertise on bringing ADA claims, anything like that, please reach out, send me an e-mail.  We're here as a support center.  We're happy to help.

Thank you all and thank you for everyone in attendance.  And enjoy the rest of your day.  We'll be following up with evaluations and CLE certificates and sending out materials too.  So look out for that.  Thank you all.

[End of transcript]