UNITED SPINAL NOW

In Search Of Subway Access Origins

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United Spinal Association, which used to be called Eastern Paralyzed Veterans Association (EPVA), has received inquiries from people with disabilities and several reporters about the history of making the subway accessible to people in wheelchairs.

Pending litigation by disabled plaintiffs seeking more access to the subway makes the history extremely relevant.

In 1979, eleven years before the passage of the Americans with Disabilities Act (ADA), EPVA sued the Metropolitan Transportation Authority (MTA) using two New York State laws – the Human Rights law, which prohibits discrimination on the basis of disability and the New York State Public Buildings Law, which required buildings, including transportation stations and terminals, to be made accessible if built or renovated with state or municipal funds.

EPVA alleged that only inaccessible buses were being purchased in violation of the Human Rights Law, and stations were being renovated inaccessibly in violation of the Public Buildings Law and the Human Rights Law.

EPVA's argument was simple – the Human Rights Law required MTA to act in a non-discriminatory manner. The act of buying a bus should require the purchase of an accessible vehicle. Likewise, the act of renovating a station should require accessible renovation. The Public Buildings Law required accessible renovation, as well.

EPVA won the discrimination claim in the lower court, but lost on appeal. The court found that EPVA was seeking affirmative action, not non-discriminatory behavior from the MTA, i.e. EPVA wanted the MTA to act affirmatively to benefit people with disabilities. EPVA argued that we were not asking the MTA to act at all, but asserting that when it acts, it must act in a non-discriminatory way.

EPVA won the Public Buildings Law claim and got an injunction to stop renovation at ten stations unless elevators were included. Mario Cuomo, who ran against Mayor Ed Koch in a Democratic primary for Governor and won, was outspoken during the campaign about supporting access to buses and subways.

He said if elected he would force MTA to provide access. MTA fought back hard and was supported by every single editorial board that took a position. Radio and television stations, as well as newspapers, including the *New York Times*, opposed rail access.

In response to our injunction, the *Times* wrote an editorial called "There's a Wheelchair on the Tracks," and supported MTA's efforts to perpetuate inaccessibility. Cuomo got elected, appointed a new MTA chair and forced a settlement, which Mayor Koch accepted.

Forty subway stations would be made accessible, new buses would be accessible and Access-A-Ride would be created. If a station other than the 40 designated was renovated, it had to be made accessible as well, pursuant to the existing Public Buildings Law.

Stations were renovated slowly. MTA never bought an inaccessible bus again. Access-A-Ride got up and running, but was beset with operating problems and consumer complaints - sound familiar? Koch told the *New York Times* he could provide Access-A-Ride for every disabled person in New York City, without making subways or buses accessible, for $9 million a year. With every bus accessible and 90-plus subway stations accessible, Access-A-Ride is now costing $600 million a year.

EPVA was satisfied that we at least got a foot (or a wheel), in the door, and that since disabled children had been mainstreamed into public schools and would be educated and employed, evolving social mores would require more access to the subway even faster than the Public Buildings Law provisions would require.

Several years after the first stations were made accessible, New York City disability activists felt access was being provided to the subway too randomly. A station would be made accessible but it would not connect to another accessible station for years, according to MTA construction plans.

While the Public Buildings Law would have eventually required all stations to be made accessible, if they were renovated, the ADA, passed in 1990, required key stations to be made accessible by 2020. MTA wanted out from under the "100 percent of all stations made accessible eventually" requirement to key stations made accessible quicker. The community negotiated a change to the Public Buildings Law after passage of the ADA, in which 100 stations would be made accessible by 2020 but there would be a phase-in that made the stations usable.

The other stations would be exempt from the Public Buildings Law accessibility requirement, but would have to comply with the ADA station renovation provisions that require an amount equal to 20 percent of the renovation cost to be spent on access.

The evolution of the disability rights movement was slower than projected by EPVA and other activists. The public is only now clamoring for more access. Baby boomers have aged and people live and work longer than ever before. It is now popular for politicians to call for more subway access.

Several generations of MTA management have been cursed by MTA's shortsighted choice, supported by virtually all politicians and media at the time, to use Access-A-Ride and buses as the workhorses for transportation of wheelchair users and to limit expensive subway access substantially.

When EPVA sued, we were only looking to obtain bus and subway access, not to create paratransit (Access-A-Ride). Mayor Koch and the media forced Access-A-Ride on the disabled plaintiffs. The recurring and exponentially increasing Access-A-Ride costs have burdened MTA unnecessarily.

As EPVA indicated in 1979, the cost of people with disabilities using existing mass transit, after it is made accessible, will be far less than the recurring costs of specialized, segregated transportation services for people with disabilities.

We were right about the costs, wrong about when social mores would require MTA to provide more access, and are supportive of all efforts to make mass transit more accessible than required by EPVA's pre-ADA settlement.

Incidentally, EPVA's settlements with both MTA in New York City and SEPTA in Philadelphia, prior to passage of the ADA, made it possible to require rail access in the ADA since the two oldest and largest rail systems in the U.S. had already agreed to provide access.