

Benign Neglect, Not Animus



Alexander v. Choate

The Supreme Court explained that discrimination against people with disabilities is often "not of invidious animus," but of "thoughtlessness and indifference—of benign neglect."



Structural Barriers

The barrier is frequently structural: ordinary procedures applied to everyone, neutral rules that overlook functional reality, default scheduling and pacing assumptions, rigid participation expectations.



The Key Insight

The harm can be real even when no one is trying to harm. This observation tells courts what they are actually looking for.

Effect, Not Intent: The Doctrinal Bridge



Equal Protection vs. Disability Rights

Many lawyers and judges benefit from this reminder:

- **Equal Protection claims** generally require proof of discriminatory purpose, not just disproportionate effects
- **Disability civil-rights frameworks** focus heavily on whether a person has meaningful access and whether reasonable modifications are required—often violated through effects rather than intent

Choate rejects a narrow "animus-only" concept of disability discrimination while also warning that not every disparate impact is actionable. The question is whether the challenged practice denies meaningful access or requires reasonable accommodation.

Courts Are ADA-Covered Systems

01

Foundational Right

When the "program" is the courtroom itself, the stakes are obvious: access to judicial proceedings is foundational.

02

Tennessee v. Lane

The Supreme Court recognized Title II's application to the class of cases implicating the fundamental right of access to courts.

03

Not a Courtesy Issue

When a court's ordinary procedures foreseeably distort a disabled litigant's ability to participate, this is not a courtesy issue. It is an access issue.

Remedies Matter: Violation vs. Damages

1

Injunctive Relief

Plaintiffs may establish violations and obtain injunctive relief under the ADA and Rehabilitation Act without proving intent to discriminate.

2

Compensatory Damages

Compensatory damages generally require a showing most circuits treat as satisfied by deliberate indifference.

3

Why It Matters

Access-focused relief is not supposed to hinge on a judge's subjective confidence in someone's impairment. It hinges on whether the process is excluding or distorting participation.



? THE FRAMEWORK

The Copeland Questions

Instead of asking: Do I believe this person is impaired?

Courts should ask: Regardless of intent or belief, does this procedure have the effect of denying meaningful access or distorting participation for a disabled litigant?

If yes, process should adjust—without lowering substantive standards—so that the merits can be evaluated without procedural distortion.



Remember: Disability law does not ask courts to believe more. It asks courts to mistake less.

What to Do When the Answer Is Yes



Timing Adjustments

Allow additional time for responses, extended hearing periods, or scheduled breaks to accommodate processing needs.



Format Modifications

Remote appearance options, written submissions in lieu of oral argument, or alternative communication methods.



Communication Supports

Assistive technology, plain language explanations, visual aids, or support persons to facilitate participation.

The principle is clear: Adjust process, preserve standards. Reasonable modifications enhance accuracy without changing substantive legal requirements.

About Copeland Questions

What They Are

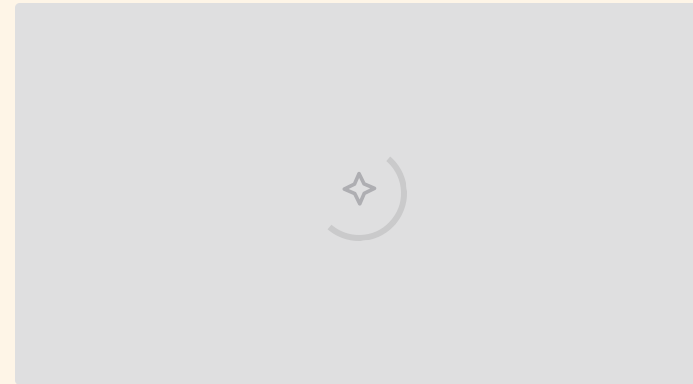
The Copeland Questions are short, belief-neutral prompts designed to help courts, clerks, and litigants analyze disability access issues with clarity and consistency.

What They Solve

They prevent a common category error in litigation: confusing how information is delivered with whether it is true or legally sufficient.

What They're For

- Bench cards and quick-reference tools
- Training and standard operating procedures
- ADA coordinator workflows
- Hearing management protocols
- Record-preserving analysis



- **Not** a request for special treatment
- **Not** a claim that disability excuses merit
- **Not** a substitute for evidence
- **Not** dependent on "belief" in impairment

They are a disciplined way to apply what *Choate* calls the core reality of disability discrimination: it is often the product of "benign neglect," not animus.