

Adirondackers for Access and Justice for All

BY TED GALUSHA

My name is Ted Galusha and I am a disabled New York State Taxpayer. I spent the summer of 1988 on my back in the hospital, paralyzed, staring at a photo of Potash Mountain taped to the T.V. I told the staff that climbing Potash again was my goal. They told me that I was denying reality.

After a month in the hospital and two months at Sunnyview Rehabilitation Hospital, I was discharged, still confined to a wheelchair. I immediately went camping. I started with a developed, accessible campground then moved on to a less-developed one. About a month later, I was on top of that mountain and rough camping in Buttermilk, a favorite childhood camping spot.

Because of this experience, and many others, I learned not to take anything for granted because everything that we have in this life can disappear in a heartbeat. I can now truly appreciate everything that I experience. The warmth of the sun on my face, the smell of wild flowers or a pine forest. The sights and sounds of a stream cascading down a mountainside. The freedom of being able to be in that pine forest or to feel the coolness of that stream as I put my feet in it. Or simply how great it is just not being in a hospital. It was during the periods of my life when I've been confined to a wheelchair, or a hospital that I learned to appreciate these things.

Ted Galusha is a Co-Founder of Adirondackers for Access.

I know now that walking isn't an essential part of being alive. I can't control everything that happens in my life, but I can control how I react to these circumstances. We, as humans, do have the ability to adapt and make the best of any situation that we're confronted with. Part of that adaptation is learning to use the tools available to us to achieve our goals. That tool may be a brace, crutches, an electric wheelchair and, yes, even a motor vehicle.

On June 1, 1995 I received two tickets for driving on State Forest Preserve. A week later, I spoke to a Department of Environmental Conservation (D.E.C.) official who stated that, if I didn't make any waves, the charges would be dropped and I would be allowed to drive anywhere I wanted. I didn't feel that was fair to all the other disabled New York State residents, so I decided to become a wave machine.

Through the efforts of a lot of people the money was raised for an attorney to defend me. On June 19, we went to court. The courtroom was full of people in support of our cause. In fact, it seemed that the only people not there were the ticketing officer and someone to prosecute me. So of course, it was postponed.

On July 1, 1995 I filed a Federal Americans with Disabilities Act (ADA) Complaint and a State Human Rights Complaint over the issue of motorized access to Buttermilk in the Hudson River Recreation Area (H.R.R.A.).

On September 18, a meeting was held at D.E.C. Headquarters in Albany. It seemed to be a very productive meeting

and, for the first time, a dialogue was created between D.E.C. and the disabled. The first of many drafts to revise the policy to allow the mobility-impaired to use a motor vehicle on State Lands was created. Not long after, on November 8, the D.E.C. asked the judge to drop the charges against me "in the interest of justice." Their motion was granted.

Since then, there have been at least five meetings with D.E.C. with all interested parties involved including preservationists. Progress was so good, we were told at the February 13, 1996 meeting that the policy would be in place "by fishing season." We missed that, but when at last it all seemed settled at the May 29, 1996 meeting, we were assured that the policy would be in place "by hunting season."

I think it is very important to point out that we were all in agreement with the May 29th policy draft and that we stayed within the constraints placed on us by the A.P.A., The Master Plan, the N.Y.S. Constitution and all the related laws. This compromise did not include motorized access to "wilderness."

In a letter dated July 11, 1996, the U.S. Department of the Interior said, in response to my A.D.A. Complaint:

We understand that you have met with representatives of the N.Y.S.D.E.C. and provided consultation on accessible design for this area. We also understand that from your efforts and the efforts of the N.Y.S.D.E.C. staff,

accessible roads, picnic areas, and restrooms have now been provided in the H.R.R.A.

We commend both of you and the staff of the N.Y.S.D.E.C. for working together to voluntarily resolve these issues. With this finding, we are now closing the case.

During the course of all these meetings and letters, my faith in a government "of the people, by the people and for the people" was restored. We all got to express our views equally no matter what our "rank" or station in life. The matter seemed to have been settled and I had a real sense of accomplishment — it was like climbing Potash Mountain again.

I was told in September that the Governor himself was going to sign the new policy, even though it is only a policy change and his signature isn't actually required. So, on September 18 (one year from the date of our first meeting), I loaded up my family and off to Lake Placid we went to see the culmination of everyone's efforts and to see our government in action. But all we saw was the Governor and his people pushing their Bond Act all day. Then we were informed that he wasn't going to sign it then, "but it would be signed this week." It wasn't.

A few days later, on September 23, 1996 I was informed that the D.E.C. would not be issuing any new permits for handicapped access until the new policy went into effect. My permit expired October 5. I reapplied then anyway and it was denied. I was told the policy wouldn't be signed until after Election Day because the administration might lose some support for the Bond Act. Well, Election Day came and went. The Bond Act passed. I reapplied for a permit on November 26, and was denied again. For me, that meant another season in the woods gone forever. We're another \$1.7 billion in debt. I wonder how much of that money is going to improve access to our State Forests?

In early December, I was informed that the policy would be effective January 1, 1997. I saw a report in the December 18, 1996 *Environmental News Bulletin* that read:

Statewide the NYSDEC, as lead agency, has determined that the proposed policy for motor vehicle access to certain DEC lands by people with disabilities will not have a significant environmental impact. . . . The department has determined that controlled use of suitable motor

vehicles will not have a significant deleterious effect on the trail, road or area, the land's natural resource values or the experience of other users.

Well, what happened? The new year came and the D.E.C. still wasn't renewing our permits. The policy seemed to be stalled in the Governor's Office. We couldn't get any answers from anybody. The lines of communications had been cut.

Now we had a problem. What could we do to let the State know that we found their behavior and the closed door dealings unacceptable? A peaceful protest seemed the next logical step, so we started to organize a protest at the Santonini Great Camp. It seemed to be a good location for the protest because: 1) some people still had unexpired permits for that road; 2) it was a well-groomed road, only five miles long, and to a Great Camp; 3) the D.E.C. regularly drove on the road anyway.

On May 2, a meeting was held in Warrensburg at the D.E.C.'s request between Maynard Baker and myself, as co-founders of Adirondackers for Access, and Commissioner Cahill and Deputy Commissioner Donohue to discuss our



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planned protest. We had their attention now.

We explained that the protest was going to take place unless the May 1996 policy — that everyone had agreed to — was put into effect; that the “working group” be reassembled and meet every 6 months to update the list of roads and trails; and that whoever runs the meetings will have the authority to decide any issues that may arise. They agreed to everything except the important thing — putting the May 1996 policy into effect.

Instead, they showed us a different policy and a new list of roads. As I reviewed the new policy and list of roads I noticed that a road, in the small area that I am familiar with, wasn't on list. I brought this to the Commissioner's attention. He responded that the road in question (Gay Pond Road) was impassable due to washouts. I explained to him that someone I knew had been there just the day before with their pickup truck and drove all the way to the pond. He agreed to investigate and did eventually include Gay Pond Road on the list but there were clearly errors in the new policy and list of roads. The protest rally had to go on.

In a letter dated May 29, 1997 Frank Dunstan, Acting Deputy Commissioner, told all holders of Temporary Revokable Permits to access land to reapply for a new permit under the new policy. Of course, he apologized for any inconvenience this may cause.

On June 9, my wife and I decided to get away from the press and escape to the woods for a little peaceful solitude. We drove to one of our favorite spots in Buttermilk (H.R.R.A.). We weren't there 15 minutes when who should come along but my favorite Forest Ranger, ticket book in hand. While he was issuing me a ticket for operating a motor vehicle on Forest Preserve land I asked him about

the new limit for trout. He said he didn't know. I didn't know then just how often D.E.C. takes the Sergeant Shultz approach, “I know nothing.”

On the day before our protest rally I got a call from a D.E.C. official trying to “dissuade” me from going to the protest for my own “personal safety.” He even brought up Kent State. The expense of a bullet-proof jacket prevented me from following one of his proposed precautions.

On Flag Day, June 14, 1997 Adirondackers for Access and some of our supporters met at the Newcomb Town Hall for our trip to Santinoni. We had been told that Encon would be there in force, but we were not prepared for what actually confronted us: numerous surveillance cameras; tons of concrete

barriers to keep us from the parking lot; an amphibious landing vehicle; a mobile command post; and hundreds of state troopers, conservation officers, and forest rangers. By the way, these were the only people I saw with weapons.

The D.E.C. had actually shut down the Santinoni area to the public. This was an over-reaction to some reports about the possibility of bloodshed. All of this just to stop a group of disabled people and their supporters from accessing a “wild forest” road the State drives on and the disabled were recently allowed to drive on. Just how does the Governor and Commissioner justify spending the hundreds of thousands of dollars for all this? They say they were just “enforcing the law.” What law? There are provisions in the Master Plan that specifically allow this type of access. We were not violating the wilderness concept.

We were physically stopped at the gate and we decided not to let the State push us into a physical confrontation. We wanted tickets, not a fight or bloodshed. We wanted to file A.D.A. Complaints and to fight it out in court. So we had

our picnic in a nearby State campground and planned another protest rally for the next month. The rally would be at Buttermilk (H.R.R.A.), where I had been ticketed three times already.

On July 12, 1997 we had our rally and picnic with no sign of D.E.C. officials (no overreaction this time). They finally showed up at 3:00 P.M. even though they had been reminded of the planned civil disobedience in the morning. Of course, by then most of our 125 supporters, 50 or so trucks and cars, and 18 ATV's had left. They issued tickets to 9 ATV operators and 2 people driving Sport Utility Vehicles. At least we had gotten what we wanted — tickets that we could fight in court — or so we thought at the time.

On August 18, 1997 I received a copy of a letter to Frank Dunstan from the U.S. Department of Interior concerning our A.D.A. Complaints. It mentioned the millions of dollars in federal assistance that D.E.C. has received and that in order to get those grants, they must agree to comply with Federal Civil Rights Laws. The letter went on to state:

In resolution of the previous complaints in 1995, the N.Y.S.-D.E.C. revised its special permit policy and opened many trails in the Adirondacks and other State Parks for the use of ATV's by individuals with disabilities. These trails continue to be open for horseback riding, snowmobiling, hiking and other uses. An Advisory Committee, which included individuals with disabilities, was formed to continue to evaluate and recommend additional trails to be opened for access to hunting and fishing areas. For more than a year, special permits were provided to qualified individuals with disabilities and the system worked well.

However, we understand that for the past few months, as permits became due for renewal, the State refused to renew them, indicating that a new policy was being developed which would

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close certain trails now being used by individuals with disabilities. Subsequently, the N.Y.S.D.E.C. issued, on June 4, 1997, [the new] policy. . . We are unclear as to the reason for such a restrictive policy after having had a successful experience over an extended period of time. . . .

The complainants have alleged that previous assessments were properly made by the D.E.C. officials in conjunction with the properly empowered access committee, which was activated to provide guidance and advice. Thus, they are puzzled by the sudden reversal in policy without data to support limiting access to the existing open trails.

We tend to agree with the complainants and are requesting any pertinent assessment data and other information, used to justify reduction in program modification. . . .

We finally had our local court trial on April 21, 1998. But it wasn't what we thought it would be. We were not allowed to even mention the A.D.A. or Federal Laws. The word disability wasn't allowed. We were found guilty and fined \$50 each. Then we found out that D.E.C. had pulled a fast one on us. They had issued us uniform traffic tickets, not D.E.C. tickets, which meant that if we

didn't pay the fines, we would lose our driver's licenses. So, of course, we paid our fines.

What could we do now? It was obvious that justice would not be found in our own New York State Court System. So we went the only way we could. We launched a precedent-setting federal lawsuit which could effect access to wild lands across the nation.

On July 28, 1998 the federal court issued a temporary restraining order forcing the D.E.C. to open the roads and trails previously opened to the disabled that D.E.C. drives on. It sounds good but the federal order is in limbo because D.E.C. claims it doesn't know what a trail or road is, or where their personnel drive (again with the "Shultz Approach").

We do not want unlimited, unregulated access to wilderness. We do want motorized access to all roads, trails and areas that will accommodate a motor vehicle and that D.E.C. allows their personnel, or anyone else, to drive on in Wild Forest areas. The very few wilderness areas we want to access are corridors that can be measured in feet to a particular lake or spot. We even understand the need for some sort of permit system to regulate use, but that permit system should: 1) allow us to access the appropriate roads, trails and areas; and, 2) not be so cumbersome that people won't apply for or use the permits.

I should mention that all of the acces-

sible features in Buttermilk (H.R.R.A.) agreed to and put in place by the D.E.C. in the 1995 resolution of my ADA complaint were removed last fall and never replaced. So these days, my time isn't spent enjoying the forest as I'd like. My days are filled answering questions about this case from people all over the country, talking to reporters, and going over the mounds of confusing paperwork from the State.

Here I sit pondering the happenings of the last few years, wondering why all this was necessary. The State has spent hundreds of thousands of our tax dollars to stop a few disabled people from accessing our State forests. Access that is called for in the Adirondack State Land Master Plan, written in 1972. Access that wouldn't cost a dime.

The D.E.C. chooses to lie to the public and do all their business behind closed doors, cowering from the light of truth. They will not hide from that light in the Federal Courtroom. I have faith that the federal judge will see through their sidestepping and lies, and truth will prevail.

Editor's Note: On October 9, 1998 the US District Court granted Ted Galusha's motion for preliminary injunctive relief. The preliminary injunction allows persons with disabilities access to the same roads in the Forest Preserve that are currently being used by the DEC and others in motorized vehicles.



MARK KURTZ