TESTIMONY

OF

ARLENE B. MAYERSON
on behalf of the

DISABILITY RIGHTS EDUCATION & DEFENSE FUND

CONCERNING THE

AMERICANS WITH DISABILITIES ACT OF 1989

BEFORE THE

COMMITTEE ON LABOR AND HUMAN RESOURCES

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I. INTRODUCTION

The general public does not associate the word "discrimination" with the segregation and exclusion of disabled people. Most people assume that disabled children are excluded from school or segregated from their non-disabled peers because they cannot learn or because they need special protection. Likewise, the absence of disabled co-workers is simply considered confirmation of the obvious fact that disabled people can't work. These assumptions are deeply rooted in history.

Most people are never forced to examine their assumptions or stereotypes about disabled people unless they themselves or a family member become disabled, or they have a disabled child. At that point the falseness of the stereotypes and the injustice of the policies based on those stereotypes become all too apparent.

Historically, the inferior economic and social status of disabled people was viewed as an inevitable consequence of the physical and mental limitations imposed by disability. Over the years, this assumption has been challenged by policy makers, professionals, disabled citizens, the courts and by Congress. Gradually, disability public policy has recognized that many of the problems faced by disabled people are not inevitable, but instead are the result of discriminatory policies based on unfounded, outmoded stereotypes and perceptions and deeply embedded prejudices toward disabled people. These discriminatory policies and practices affect disabled people in every aspect of their lives.

The first major challenge to the notion that being disabled meant life-long economic dependency was prompted by the return of a vast number of disabled World War I veterans and the ever increasing incidence of industrial accidents. Recognizing the social and financial benefit of returning these injured persons to work, Congress passed the original landmark federal rehabilitation legislation, the Smith Fess Act of 1920. The prevalent view of disabled people as "helpless" and "hopeless" was challenged by legislation designed to enable disabled people to become productive, contributing members of society. Most importantly, by the mid 1960's the explicit goal of rehabilitation policy was the integration of disabled people into the mainstream of American life.[1] This "integrationist" goal set the stage for an examination of the social barriers that impede the attainment of equal opportunity for disabled Americans.

From a civil rights perspective, a profound and historic shift in disability policy occurred in the 1970's.[2] Following

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[1]See H. R. Rep. No. 432, 89th Cong. 1st Sess. 2 (1965).

[2]This shift in public policy is well portrayed in a statement made by Senator Williams prior to the enactment of the 1973 Rehabilitation Act:

> For too long, we have been dealing with [the handicapped] out of charity . . . . This is medieval treatment for a very current problem . . . . Most of us see the handicapped only in terms of stereotypes that are relevant for extreme cases. This ancient attitude is in part the result of the historical separation of our handicapped population. I wish it to be said of America in the 1970's that when the attention at last returned to domestic needs, it made a strong and new commitment to equal opportunity and equal justice under law; . . . The handicapped are one part of our Nation that have been denied these fundamental rights for too long. It is time for the Congress and the Nation to

the powerful civil rights activism of the 1960's, the 1970's produced a more fundamental change in the social and legal status of disabled people than any prior era of American history. Through landmark litigation[3] and legislation,[4] disabled Americans were recognized for the first time as a legitimate minority subject to discrimination and worthy of basic civil rights protections.

This major shift in disability public policy culminated in the passage of a broad anti-discrimination provision, Section 504 of the Rehabilitation Act of 1973. Section 504 evidences Congress' recognition that while there are major physical and mental variations in different disabilities, disabled people as a

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assure that these rights are no longer denied. 118 Cong.Rec. 3321-22 (1972).

[3]Two landmark cases Pa. Assoc. for Retarded Citizens v. Commonwealth of Pa., 334 F.Supp. 1257 (E.D. Pa. 1971); and Mills v. Bd. of Education of the Dist. of Columbia, 348 F.Supp. 866 (D.D.C. 1972), held that disabled children who had previously been excluded from public education had the right to a public education appropriate to their educational needs.

[4]In addition to the 1973 Rehabilitation Act, Congress enacted several other pieces of legislation designed to promote equal opportunity and integration of disabled people into the mainstream of American life. Chronologically, these statutes included: 1968--Architectural Barriers Act, 42 U.S.C. Section 4151 et seq. (required federally funded or leased buildings to be accessible); 1970--Urban Mass Transportation Act, 49 U.S.C. Section 1612 (required eligible jurisdictions to provide accessibility plans for mass transportation); 1975--Education for All Handicapped Children Act, 20 U.S.C. Section 140 et seq. (provided that each handicapped child was entitled to a free appropriate education in the least restrictive environment); and 1975--National Housing Act Amendments, 12 U.S.C. Section 1701 et seq. (provided for barrier removal in federally supported housing).

group faced similar discrimination in employment, education and access to society. As with racial minorities and women, Congress recognized that legislation was necessary to ameliorate widespread institutionalized discrimination.[5]

Nothing is more central to the goal of independence than employment. As demonstrated below, disabled Americans face widespread discrimination in seeking to secure equal employment opportunities. The Rehabilitation Act covers private employers only when they receive federal funds or federal contracts. It is now time to finish the work begun in 1973--to recognize the basic civil rights of people with disabilities by providing the same protection against employment discrimination as is afforded other minorities and women. Passage of the ADA is essential to assure Americans with disabilities equal employment opportunity.

II. THE NATURE AND HISTORY OF PREJUDICE TOWARDS DISABLED PEOPLE

The roots of prejudice against and stereotypes about disabled people reach far back in history and persist today. Disabled people have throughout history been regarded as incomplete human beings--"defective." In early societies this

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[5]That Section 504 was intended to include disability within the general corpus of federal anti-discrimination law is unmistakable. As stated in the Senate Report accompanying the 1974 amendments:

> Section 504 was patterned after, and is almost identical to, the anti-discrimination language of section 601 of the Civil Rights Act of 1964 . . . and section 901 of the Education Amendments of 1972 . . . . The section therefore constitutes the establishment of a broad government policy that programs receiving Federal financial assistance shall be operated without discrimination on the basis of handicap. Id. at 39, reprinted in 1974 U.S. Code Cong. & Ad. News at 6390.

view of disabled people resulted in persecution, neglect and death.[6] These practices gradually gave way to the more humanitarian belief that disabled people should be given care and protection. Persecution was largely replaced by pity, but the exclusion and segregation of disabled people remained unchallenged.[7] Over the years, the view of disabled people as incompetent and dependent upon charity, custodial care and protection became firmly embedded in the public consciousness. The invisibility of disabled Americans was simply taken for granted. Disabled people were out of sight and out of mind.

The discriminatory nature of policies and practices that exclude and segregate disabled people has been obscured by the unchallenged equation of disability with incapacity and by the gloss of "good intentions." The innate biological and physical "inferiority" of disabled people is considered self-evident. This "self-evident" proposition has served to justify the exclusion and segregation of disabled people from all aspects of life. The social consequences that have attached to being disabled often bear no relationship to the physical or mental

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[6]For an historical overview of persecution of disabled people in early societies, See Burgdorf and Burgdorf, A History of Unequal Treatment: The Qualifications of Handicapped Persons as a 'Suspect Class' Under the Equal Protection Clause, 15 Santa Clara Law. 882-86 (1975).

[7]Interestingly, a positive relationship has been established between tendencies to pity blind people on the one hand, and the tendency to espouse community segregation for the blind on the other. Lukoff & Whiteman, Attitudes Towards Blindness, 55 The New Outlook for the Blind 39, 42 (1961)

limitations imposed by the disability. For example, being paralyzed has meant far more than being unable to walk--it has meant being excluded from public school,[8] being denied employment opportunities,[9] and being deemed an "unfit" parent.[10] These injustices co-exist with an atmosphere of charity and concern for disabled people.

It is only within the last decade that a fundamental challenge to traditional notions about disability has been launched. Increasingly, the social science and psychological literature has explored the implications of a socio-political

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[8]"Many of the physically handicapped children do have the mental ability to attend public school but are denied that right due to architectural barriers and-or transportation problems." 117 Cong. Rec. 42293 (1971).

[9]In Heumann v. Bd. of Education of the City of N.Y., 320 F.Supp. 623 (S.D. N.Y. 1970) plaintiff was denied a license to teach "on the grounds that being confined to a wheelchair as a result of polio, she was physically and medically unsuited for teaching.

[10]"Historically, child-custody suits almost always have ended with custody being awarded to the non-disabled parent, regardless of whether affectional or socio-economic advantages could have been offered by the disabled parent." I. Vash, The Psychology of Disability 155 (1981).

This issue was eloquently addressed in a landmark decision by the California Supreme Court, Carney v. Carney, 24 Cal. 3d 725, 598 P.2d 36, 157 Cal. Rptr. 383 (1979). In that case the lower court awarded custody to the mother of two boys after the father was injured and became a quadriplegic. The California Supreme Court reversed, stating that ". . .the court's preconception . . . also stereotypes William as a person deemed forever unable to be a good parent simply because he is physically handicapped. Like most stereotypes, this is both false and demeaning." Id. at 737, 598 P.2d at 42, 157 Cal. Rptr. at 389.

definition of disability that recognizes the critical impact of social factors on the lives of disabled Americans.[11] There is a growing awareness of the similarities between racial prejudice and the prejudice experienced by disabled people.[12] And like women, disabled people have identified "paternalism" as a major obstacle to economic and social advancement.

III. DOCUMENTATION OF THE REALITY OF DISABILITY-BASED EMPLOYMENT DISCRIMINATION

Employers, like other members of the general public, hold stereotypes and prejudices about disabled people that impede their ability to objectively evaluate the qualifications of disabled applicants and workers. Disabled people face discrimination in employment in a variety of ways. Many disabled people are excluded from the outset by medical requirements that screen out all people with specific disabilities or by inflated physical or other job requirements that bear no relationship to the successful performance of the job. Disabled people who are not completely excluded at the outset are often channeled into disability-stereotyped dead-end jobs or denied promotional opportunities. These discriminatory policies affect all disabled people, whether their disabilities are severe, moderate or

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[11]For a look at works which have utilized the socio-political definition of disability see Hahn, Disability and Rehabilitation Policy: Is Paternalistic Neglect Really Benign? (Book Review), 42 Pub. Ad. Rev. 385 (1982); Bowe, Rehabilitating America: Barriers to Disabled People (1978); Gliedman & Roth, supra p. 14; and Eisenberg, supra p. 12.

[12]See p. 11, infra

perceived. The unemployment rate among persons with disabilities is staggering. While 88% of working-age men and 69% of working-age women are employed, only 33% of disabled working-age Americans work--only one disabled woman out of five and four disabled men out of ten have jobs.[13]

The presumption that these figures reflect the actual inability of disabled people to work is refuted by the many sociological, psychological and government studies that have documented that employment opportunities for disabled adults are severely impeded by misconceptions and generalizations about disabilities, unfounded fears about increased costs and decreased productivity,[14] and outright prejudice toward disabled people.

A recent report by the U.S. Advisory Commission on Intergovernmental Relations[15] stated:

> Probably the most significant barriers faced by persons with disabilities relate to the attitudes, predispositions, and behaviors of nondisabled persons. Such attitudes range from negative views of disability to discomfort in associating with people who experience some form of disability. The nature and extent of attitudes about disability have been documented through an extensive set of research studies conducted in many settings. One common finding is that nonhandicapped people tend to be preoccupied with disabling conditions and often incapable of seeing beyond these conditions to the whole person. Such predispositions lead

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[13]Jay Rocklin, President's Committee on Employment of the Handicapped, will provide additional statistical information on the participation of persons with disabilities in the workforce.

[14]The studies that address these concerns are discussed on pp. 17, 20, infra.

[15]Federal and State Government Compliance with Disability Rights Mandates: Policy Issues and Performance Contrasts, Oct. 14, 1988.

nondisabled persons to overlook and ignore the full range of abilities possessed by persons with disabilities.

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Researchers have shown that negative and discriminatory attitudes extend to the employment capabilities of disabled individuals. Both potential employers and coworkers have been shown to have negative views and expectations about the productivity and reliance of workers who experience some form of mental or physical disability. As Peter Jamero has noted, "employers, more often than not, appear more inclined to judge handicapped persons on the basis of disability rather than on what they are capable of performing." The reluctance of employers to hire persons with disabilities is rooted in common myths and misunderstandings, including the notions that the employment of disabled workers will increase insurance and worker compensation costs, lead to higher absenteeism, harm efficiency and productivity, and require expensive accommodations.

These attitudes, common to many employers in the United States, have persisted despite empirical evidence from several quarters that disabled workers perform at levels equal to or superior to other employees. (Footnotes omitted).

The 1973 Rehabilitation Act authorized a needs study, which was reported to Congress in 1976, Urban Institute, Report of the Comprehensive Service Needs Study (1975) (herein cited as Needs Study). The Needs Study summarized existing literature on employer attitudes as follows:

> Virtually all the studies on employer attitudes have found that large proportions of employers disfavor hiring disabled people. There are strong indications that these attitudes are in large part based on non-rational, negative feelings--prejudice, in other words. Id. at 324.

In keeping with the historical evolution of disability public policy, the Needs Study recommended:

> a major shift in research and development emphasis toward a focus on the interaction of the individual and

> the barriers in the environment . . . . The major problems seem to be not so much with the severely handicapped, as with the severely handicapping environment. Id. at 818.

Hence, stereotypes and prejudices rather than handicaps themselves were viewed as the most potent barrier to equal employment opportunity.

While few people would openly admit to feelings of hostility towards disabled people, the persistence of deeply rooted prejudices has been well documented. In one study reported in the Needs Study, the author probed the attitudes of employers by asking them to rank various groups in terms of which ones they believed most employers would be more likely to hire. Colbert, Kalish & Chang, Two Psychological Portals of Entry for Disadvantaged Groups, 34:7 Rehab. Literature 194 (1973), cited in Needs Study at 314-15. The list included physically and mentally disabled groups, minority groups, controversial groups (student militants, prison parolees), old people and "neutral" groups (e.g. whites, Canadians). The study found that "physical disability groups were clustered together and ranked lower than all minority groups and old people and higher than all . . . mentally disabled groups." Id. at 315. Employers were more willing to hire student radicals or prison parolees than people who were either physically or mentally disabled. Id. This finding is consistent with a frequently cited study that found that all disabled groups were subject to prejudice and that personnel directors would prefer to hire a former prison inmate

or mental hospital patient than an epileptic. Triandis & Patterson, Indices of Employer Prejudice Toward Disabled Applicants, 47 J. of Applied Psychology 52 (1963).[16]

Numerous studies have been conducted that conclude that disabled people are subject to the same type of prejudices and discrimination as members of racial and ethnic minorities. The earliest work in this area, Barker, the Social Psychology of Physical Disability, 4:4 J. of Soc. Issues 28 (1948), concluded that "the physically handicapped person is in a position not unlike that of the Negro, the Jew and other underprivileged racial and religious minorities; he is a member of an underprivileged minority." Id. at 31.[17] In a later study, Barker specifically reported that persons with various disabilities were unable to find adequate employment as a result of "irrational prejudice." Barker, Wright, Meyerson & Gonich, Adjustment to Physical Handicap and Illness: A Survey of the Social Psychology of Physique and Disability, 55 Bull. of the Soc. Science Research Council (1953).

Often reflective of the employer's own prejudices are the fears about the "reaction of others" to a disabled worker. In a

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[16]See discussion of employer bias against epileptics on p. 14 infra.

[17]See also Cowen, Underberg & Verillo, The Development and Testing of an Attitudes to Blindness Scale, 48 J. of Soc. Psychology 297 (1958); Wright, Physical Disability--A Psychological Approach (1960); Safilios-Rothschild, The Sociology and Social Psychology of Disability and Rehabilitation III (1970).

survey reported in the Needs Study, employers were found to believe that paraplegics were best suited for jobs requiring a minimum of public contact. Employers feared the negative "reactions of others to the disability." Felton & Litman, Study of Employment of 222 Men with Spinal Cord Injury, 46 Archives of Physical Med. and Rehab. 809 (1965) cited in Needs Study at 321 n.32.[18]

This rationale for not hiring disabled workers persists today. In a recent case a doctor with multiple sclerosis was denied admission to a psychiatric residency program because the admissions committee feared the negative reactions of patients to his disability.[19] Pushkin v. Regents of the Univ. of Col., 658 F.2d 1372 (10th Circ. 1981). The 10th Circuit found these fears to be based on general stereotypes rather than any actual

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[18]This response is reminiscent of "customer preference" cases brought under Title VII. See e.g. Diaz v. Pan American World Airways Inc., 442 F.2d 385 (5th Cir. 1971).

[19]Fears of the "reactions of others" have served to justify the exclusion of disabled people from many aspects of life. In 1971 one million handicapped children were excluded entirely from public school. 117 Cong. Rec. 45974 (1971). As stated by Congressman Vanick:

> [I]n the past, the reason for excluding these children from their right to an education has never been very clear . . . In one case a court ruled that a cerebral palsied child, who was not a physical threat and was academically competitive, should be excluded from public school, because his teacher claimed his physical appearance "produced a nauseating effect" on his classmates. Id.

Similarly, in 1972, Congressman Vanick commented on an airline rule that allowed carriers to "refuse transportation to 'crippled' persons on the grounds that they make passengers uncomfortable." 118 Cong. Rec. 11363 (1972).

information about the disabled applicant. After evaluating the evidence, the 10th Circuit affirmed the district court's order directing the admission of the plaintiff to the residency program.

The study referred to above on the attitudes toward and experiences with hiring paraplegics also found that most employers believed that paraplegics were best suited for non-professional jobs. This stereotype was directly contrary to the fact that paraplegics are actually found to be employed most frequently as professionals. Felton, supra p. 20, at 321.

In recent years, a new group of people with a disability has been the target of misconception and fears. People with Human Immunodeficiency Virus disease (which includes people infected with HIV, those who show some symptoms of the infection, and those with full-blown AIDS) have been the target of discrimination in employment. Despite the fact that such individuals wish to and can continue to work, they are often fired without any medical justification.

Often the image of what disabled people "should" do or can do has no basis in reality. Different stereotypes attach depending on the disability involved. See Himes, Measuring Social Distance in Relations with The Blind, 54 Outlook for the Blind 54 (1960). ("Each physical disability--deafness and crippleness as well as blindness--is significantly, though differently, stereotyped." Id. at 55.) Another study cited in the Needs Study indicated "that most employers would not consider

people with most kinds of disabilities for production and sales jobs, but would for clerical and, to a lesser extent, managerial jobs; (and) that over 50% of the employers would never consider hiring a blind or mentally retarded person for any type of job . . ." Williams, Is Hiring the Handicapped Good Business, 38:2 J. of Rehab 30 (1972) cited in Needs Study at 312.

Discriminatory employer attitudes are manifested in a variety of ways. Most obvious is the continued use of medical standards that exclude all persons with particular disabilities from employment opportunities. The individual who has a disability that is exempted has no opportunity to prove his/her individual abilities to perform the job. Medical standards that are not formalized in writing are utilized in practice. Disabled people are rejected for employment as a result of pre-employment medical exams that merely reveal the existence of a disability without demonstrating any actual job-related limitation.

Although at least 85% of people with epilepsy have obtained control of their seizures, through medication, a significant number of employers flatly refuse to hire epileptics without any consideration of the effect the condition will have on safety and job performance.[20] Likewise, employers frequently refuse to hire persons who have cancer. A study performed in 1972 by the

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[20]See U.S. Dept. of Labor, D.O.L. Bull. No. 923, The Performance of Physically Impaired Workers in Manufacturing Industries, 116-117 (1948); Sands & Zalkind, Effects of an Educational Campaign to Change Employer Attitudes Toward Hiring Epileptics, 13 Epilepsia 87, 99 (1972).

California Division of the American Cancer Society concluded that most corporations and governmental agencies in that state discriminated in hiring against job applicants for an average period of five years after treatment for cancer.[21] The study revealed that this discrimination by employers stemmed from concerns that applicants with cancer, or a history of cancer, might not survive long enough to justify the training, that they might need extended periods of sick leave, and that they would cause increases in the cost of health insurance, workers compensation, and life insurance. Some employers believed that other employees would object to employees who were cancer victims because of the mistaken belief that cancer is contagious.

All of these reasons were proven false in a study performed in 1972 by the Metropolitan Life Insurance Company of its employees who were known to have had treatments for cancer. The study indicated that their work records were good relative to employees who had never had cancer. The conclusion was that hiring persons who have been treated for cancer for jobs for which they are qualified is sound industrial practice.[22] Hence, a significant percentage of persons who have had treatment for cancer suffer unjustifiable and discriminatory loss of job opportunities.

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[21]R. McKenna, Employability and Insurability of the Cancer Patient, 2-3 (Nov. 25, 1974).

[22]Wheatley, Cunnick, Wright & Van Keuren, The Employment of Persons With a History of Treatment for Cancer, 33 Cancer 441, 445 (1974).

Many employers require applicants to have back x-rays taken, and then disqualify anyone whose results are abnormal. However, studies show that there is no difference between the incidence of low back pain in groups with low back abnormalities discoverable by x-ray and groups without such abnormalities.[23] Hence, many qualified persons with abnormal back x-rays are unnecessarily precluded from working.

Seemingly more objective, but no less discriminatory, are job "requirements" that in fact bear no relation to the successful performance of the job. Moreover, "employers frequently underestimate the capabilities of disabled workers" to perform legitimate job functions. Nagi, Work, Employment & the Disabled, 31 Am.J. Econ. Soc. 21 (1972), cited in Needs Study at 314.[24]

The Needs Study cited two pioneering studies that confirm that private employers, as well as state and local governments, utilize job "requirements" that bear no relationship to the

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[23]Rockey, Fantel, Omenn, Discriminatory Aspects of Pre-employment Screening: Low Back X-ray Examinations in the Railroad Industry, 5 Am. J. of Law & Med. 197, 202 (1979).

[24]The use of stereotypes about the physical abilities of women are analogous to the stereotypes about disabled people. For example, Weeks v. Southern Bell Telephone & Telegraph Co., 408 F.2d 228 (5th Cir. 1969), involved a regulation that prohibited women from lifting over 30 pounds. The court overruled the regulation because it was based on general presumptions instead of individual ability. See also LeBlanc v. Southern Bell Telephone & Telegraph Co., 333 F.Sup. 602 (E.D. La., 1971), aff'd, 460 F.D 1229 (5th Car. 1972) cert. denied, 409 U.S. 990 (1972); Rosenfeld v. Southern Pacific Co., 444 F.2d 1219 (9th Car. 1971).

successful performance of the job. Viscardi, The Adaptability of Disabled Workers, 2:3 Rehab. Rec. 3 (1981), cited in Needs Study at 326 n.45; Greenleigh Associates, Inc., A Study to Develop a Model for Employment Services for the Handicapped (1969), cited in Needs Study at 326 n.46. Examples given are requiring employees to stand up for jobs that "can just as easily--or more easily--be performed sitting down" and requiring the "taking of written civil service tests that mentally retarded people cannot pass for jobs that they are capable of performing." Id. at 326. The Needs Study also reported a situation where "workers suffering upper limb amputations on the job were retained after a job analysis performed by the union involved discovered that, contrary to popular belief, over 80 percent of the work required on the job did not require the use of both arms." Id. at 804.

Outmoded stereotypes whether manifested in medical or other job "requirements" that are unrelated to the successful performance of the job, or in decisions based on the generalized perceptions of supervisors and hiring personnel, have excluded many disabled people from jobs for which they are qualified. The function of anti-discrimination laws is to assure that decisions are made based on individual merit.

Employers often attempt to justify the rejection of disabled applicants by claiming that hiring disabled workers will cause decreased productivity and safety, and increased absenteeism and costs. An examination of the literature on the actual performance of disabled workers reveals the fallacies those

rationalizations contain.

According to the Needs Study, the best and most comprehensive study of the job performance of disabled workers was conducted by the Bureau of Labor Statistics, U.S. Dept. of Labor, and appears in Bull. No. 923, The Performance of Physically Impaired Workers in Manufacturing Industries (1948), cited in Needs Study at 318. In this comprehensive study Department staff examined the employment records of 11,000 disabled and 18,000 carefully matched non-disabled workers in manufacturing plants throughout the country. Data on productivity, absenteeism, nondisabling injuries, disabling injuries and quits were abstracted. Company records rather than supervisors' impressions were the data source. For each disabled worker, one to three non-disabled workers were matched, not only for sex, age, and occupation but also for plant, shift, and particular job within the same plant and shift.

As reported in the Needs Study:

> The most important finding was that differences between impaired and unimpaired workers in any of the performance categories measured were slight . . . . Impaired workers had significantly higher involuntary termination (firing) rates. The authors attribute this to postwar practice of firing disabled workers to hire returning (able-bodied) war veterans . . . . One of the conclusions that the authors draw is that the physically impaired worker is not necessarily a handicapped worker. The results of this major study are strong evidence that employers' fears of low performance rates among disabled workers are

unjustified. (emphasis added) Id. at 318-19.[25]

Interestingly, the authors found that many of the manufacturing plants surveyed reinstated policies against hiring disabled workers after having relaxed such policies during the war years. See Needs Study at 296-97. The reinstatement of exclusionary policies, despite the positive employment records of disabled workers, is strong evidence that these standards are not related either to functional skill or ability required for job performance or to a concern for the safety of workers.

Other government studies have also found that handicapped workers performed as well as, or better than, their non-handicapped co-workers. U.S. Bureau of Labor Standards, Dept. of Labor, Bull. No. 122, Proceedings of the National Conference on Workmen's Compensation & Rehabilitation 19 (1950). All studies on the subject support the fact that disabled workers have as good as or better safety records than non-disabled workers. U.S. Dept. of Labor, Bull. No. 122 at 8.[26] Government studies have

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[25]For example, the study specifically stated:
The data suggest that. . . an orthopedic impairment left more abilities than it took away. A man who has lost an arm was not necessarily incapable of performing jobs that required the use of two hands. Nor. . . did the survey indicate that the worker who had lost a leg necessarily had to be confined to sedentary occupations. . . . Men who had lost a hand were found engaged in machine operations or in handling materials; and workers who had lost a leg were engaged in work requiring considerable walking and moving about. Bureau of Labor Statistics, Bull. No. 923, supra p. 27, at 59.

[26]See also Pati and Gopal, Countdown on Hiring the Handicapped, 57:3 Personnel J. 144 (1978); Ellner & Bender, Hiring the Handicapped (1980); Kalaenik, Myths About Hiring the Physically Handicapped, The Ca. Governor's Comm. for Employment

also concluded that the employment of handicapped persons does not affect the premium rates either for non-occupational benefit plans or for workers' compensation. U.S. Bureau of Labor Standards, Dept. of Labor Bull. No. 234 at 10.[27]

Over the last twenty-five years the Dupont Corporation has conducted a number of studies on the performance of its handicapped employees. The most recent report, E. I. DuPont de Nemours & Co., Equal to the Task (1981) (DuPont Survey of Employment of the Handicapped), concluded "Dupont studies over a period of twenty-five years have shown that the performance of handicapped employees is equivalent to that of their unimpaired co-workers. In safety, job duties and attendance, the handicapped hold their own." Id. at 4.

IV. THE REHABILITATION ACT MODEL

The anti-discrimination in employment sections of the ADA are modelled after Section 504 of the 1973 Rehabilitation Act. The primary difference in the ADA and Section 504 is scope, not content. While Section 504 applies only to recipients of federal funds, the ADA would extend employment coverage to all entities covered by Title VII of the 1964 Civil Rights Act. The purpose is simple--to complete the commitment begun in 1973 to extend to Americans with disabilities the same protections against

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of the Handicapped, A Blueprint for Action (1980).

[27]See also National Institutes on Rehabilitation and Health Services, Report of the National Workshop on Rehabilitation and Workmen's Compensation 105 (1971.

discrimination as that afforded other minorities and women.

The statutory framework is designed to ensure that persons with disabilities are treated as individuals and that employment decisions are not made on the basis of stereotypes about certain disabilities. Only those individuals who are qualified to perform the job in question are protected. Hence, employers are not required to employ an unqualified individual simply because he or she has a disability.

Section 201(5) of the ADA defines a "qualified individual with a disability" as "an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." The term "reasonable accommodation" is a term of art from the Section 504 regulations. The ADA also incorporates the Section 504 limitation on reasonable accommodation, which is that of "undue hardship." Section 202(b)(1) states that the term discrimination includes the failure to make reasonable accommodation <u>unless</u> the covered entity "can demonstrate that the accommodation would impose an undue hardship on the operation of its business." The Section 504 regulations establish a context for determining whether an accommodation is reasonable or poses an undue hardship. The relevant section, 45 C.F.R. section 84.12, provides:

> (b) Reasonable accommodation may include (1) making facilities used by employees readily accessible to and usable by handicapped persons, and (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other

similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employee, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce, and

(3) The nature and cost of the accommodation needed.

Hence, reasonable accommodation is a flexible standard that balances the rights of the applicant or employee with the employer's legitimate business interests. The determination of undue hardship must therefore be made on an individual basis. As explained in the "Analysis of the Final Regulation," 42 Fed. Reg. 22685, 22688 (1977):

> Paragraph (c) of this section sets forth the factors that the Office for Civil Rights will consider in determining whether an accommodation necessary to enable an applicant or employee to perform the duties of a job would impose an undue hardship. The weight given to each of these factors in making the determination as to whether an accommodation constitutes undue hardship will vary depending on the facts of a particular situation. Thus, a small day-care center might not be required to expend more than a nominal sum, such as that necessary to equip a telephone for use by a secretary with impaired hearing, but a large school district might be required to make available a teacher's aide to a blind applicant for a teaching job. Further, it might be considered reasonable to require a state welfare agency to accommodate a deaf employee by providing an interpreter, while it would constitute an undue hardship to impose that requirement on a provider of foster home care services.

In determining whether an individual is qualified under the ADA, an employer may not use selection criteria that identify or

limit persons with disabilities unless the criteria can be shown by the covered entity to be necessary and related to the ability of an individual to perform the essential functions of the particular employment position. Sec. 202(b)(3). As stated in the Section 504 Analysis, supra at 22688, "[t]his paragraph is an application of the principle established under Title VII of the Civil Rights Act of 1964 in Griggs v. Duke Power Company, 401 U.S. 494 (1971)." It is well accepted under Title VII that selection procedures that have a disparate impact on racial minorities and women must be necessary to safe and efficient job performance. The ADA extends that protection to persons with disabilities who, as demonstrated earlier, are often subject to disqualifying physical or mental criteria that bear no relationship to job performance.

To assure that qualified applicants are not excluded because of a physical or mental condition, it is critical that the selection procedure not included pre-employment inquires that serve solely to identify a person's disability. It has been common practice for pre-employment questionnaires to include sweeping questions such as: do you have any physical defect; have you ever been treated for mental illness; have you ever been hospitalized; do you ever experience seizures. These types of intrusive inquiries identify a person's disability without serving any legitimate job-related purpose. In order to insure that improper bias does not enter into the selection process, it is critical to limit employers' inquires to those that evaluate

a person's ability to perform job-related functions. As explained in the Section 504 Regulations, Analysis, supra, 42 Fed. Reg. at 22689, "an employer may not ask on an employment form if an applicant is visually impaired but may ask if the person has a current driver's license." This type of procedure assures that subjective stereotyping about disabling conditions, which as shown above is prevalent, does not enter into the determination of whether an applicant is qualified for the job.

As in Section 504 and Title VII, the ADA's non-discrimination provisions extend to "job application procedures, the hiring or discharge of employees, employee compensation, advancement, job training, and other terms, conditions and privileges of employment. Sec. 202(a).

In order to provide uniform enforcement procedures, the ADA makes the EEOC the enforcing agency. It is expected that the EEOC and other federal agencies with jurisdiction over the employment practices of private employers will work cooperatively to enforce the anti-discrimination provisions. This has been done in instances where there is over-lapping jurisdiction in employment discrimination cases under Title VI, Title VII, Title IX and Executive Order 11246. Procedures for Complaints of Employment Discrimination Filed Against Recipients of Federal Financial Assistance, 28 C.F.R. 42.601-613 (January 25, 1983). Both the Office of Civil Rights and the Office of Federal Contract Compliance refer individual cases of employment discrimination to the EEOC.

Finally, under the ADA a private right of action is available and the remedies of Title VII and 42 U.S.C. section 1981 are available, as in race and national origin employment cases. Section 1981 damages are limited to cases of intentional discrimination. Punitive damages require a showing that the defendant acted "wantonly, maliciously or in bad faith." Section 605 of the ADA allows for attorney's fees to the prevailing party. This provision has long been recognized as essential to the right of protected groups, in order to fully utilize anti-discrimination statutes. As Senator Cranston stated when enacting the attorney's fees provision in the 1978 Amendments to Title VII, "a right without a remedy is no right at all."

V. The Anti-Discrimination in Employment Sections of the Rehabilitation Act Have Created Workable Standards Which Take Into Consideration the Rights of Workers With Disabilities and the Business Interests of Employers

A review of the case law prohibiting employment discrimination under the 1973 Rehabilitation Act provisions demonstrates a reasoned approach that considers both the rights of workers with disabilities and the business interests of employers. The cases also illustrate the drastic need for anti-discrimination provisions to assure that people with disabilities who are qualified to work are not forced onto the welfare rolls by employer ignorance and prejudice.

The threshold jurisdictional issue in Section 504 cases, as

in the ADA, is whether a person is "handicapped" or "disabled."[28] The U.S. Supreme Court's seminal decision on this issue is School Board of Nassau County v. Arline, 107 S.Ct. 1123 (1987). In that case the court was called upon to interpret the Rehabilitation Act definition of "handicapped" person, which is identical to that contained in the ADA. The term includes an individual who (i) has a physical or mental impairment, which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

The Arline Court stated that this definition:

> . . . reflected Congress' concern with protecting the handicapped against discrimination stemming not only from simple prejudice but from 'archaic attitudes and laws' and from 'the fact that the American people are simply unfamiliar with and insensitive to the difficulties confronting individuals with handicaps.' "...[t]o combat the effects of erroneous but nevertheless prevalent perceptions about the handicapped, Congress expanded the definition of 'handicapped individual' so as to preclude discrimination against 'a person who has a record of, or is regarded as having, an impairment [but who] may at present have no actual incapacity at all.'"
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> By amending the definition of 'handicapped individual' to include not only those who are actually physically impaired, but also those who are regarded as impaired and who, as a result, are substantially limited in a major life activity, Congress acknowledged that society's accumulated myths and fears about disability and disease are as handicapping as are the physical limitations that flow from actual

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[28]The definition of persons with disabilities in the ADA is not intended to be substantively different than the definition of "handicapped person" in Section 504. The substitution of disabilities for handicaps merely reflects a preference in terminology.

impairment.[29]

Since Arline, the Congress has adopted language that recognizes coverage of persons with contagious diseases and incorporates "direct threat to others" as a legitimate qualification standard. [See Civil Rights Restoration Act of 1987; Fair Housing Act Amendments of 1988 (not limited to contagious diseases)]. The ADA also adopts this approach. Sec. 101(b)(2)(B) states:

> The term qualification standard may include (B) requiring than an individual with a currently contagious disease or infection not pose a direct threat to the health or safety of other individuals in the workplace or program.[30]

As is true with contagious diseases, a review of the case law shows that the legitimate concerns of employers are taken into account in all types of cases. However, it is also clear that many employers utilize outmoded job criteria that screen out qualified workers. The employer always has the opportunity

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[29]The specific question in Arline was whether a person with a contagious disease could be considered a person with a handicap under the Act. The Court held in the affirmative stating that an exclusion for contagious diseases "would mean that those accused of being contagious would never have the opportunity to have their condition evaluated in light of medical evidence and a determination made as to whether they are 'otherwise qualified.'" After Arline, the Department of Justice issued an opinion that persons with HIV-infection are covered by the Act. As stated above, this conclusion has been endorsed by Congress.

[30]Sec. 101(b)(2)(A) states that a qualification standard may include "requiring that the current use of alcohol or drugs by an alcoholic or drug abuser not pose a direct threat to property of the safety of others in the workplace. This provision was originally included in the 1978 Amendments to Section 504. This type of provision is also included in the CRRA and the FHAA (not limited to drugs or alcohol).

to show that the criteria are job related and are consistent with business necessity and the safe performance of the job. If such a showing is made, the disabled person is disqualified unless alternative criteria that do not have an adverse impact would also meet legitimate business interests. The requirement of reasonable accommodation has also resulted in the employment of qualified persons with disabilities without compromising legitimate business interests. Finally, the case law reveals that persons with disabilities are still subject to outright prejudice and ignorance based on unfounded stereotypes. Clearly, employers have no legitimate interest in failing to employ on that basis.

Pushkin v. Regents of the University of Colorado, 658 F.2d 1372 (10th Cir. 1981), illustrates the pervasive use of stereotypes to deny qualified persons with disabilities employment opportunities. In that case a physician who had multiple sclerosis sought and was denied admission to the University's Psychiatric Residency Program. The Tenth Circuit agreed with the district court's determination that Dr. Pushkin was an otherwise qualified individual who had been rejected solely on the basis of his handicap, in violation of the Rehabilitation Act.

The evidence presented at trial indicated that the defendant had made the following assumptions about Dr. Pushkin: (1) that he was angry and emotionally upset due to his handicap, and would thus be unable to do an effective job as a psychiatrist, (2) that

he had difficulties with mentation, delirium and disturbed sensorium due to the MS and steroid use, (3) that his handicap would render him unable to handle the workload, and (4) that he would miss too much time away from work.

At trial the district court found that these assumptions were rebutted by evidence of Dr. Pushkin's past competence in dealing with his condition, and by witnesses' testimony that his emotional responses were normal and that he treated patients appropriately.

The Tenth Circuit affirmed the finding that the University's reasons for rejecting Dr. Pushkin "were based on incorrect assumptions or inadequate factual grounds." Id. at 1383. The appellate court opined that handicap discrimination usually results from "invidious causative elements and often occurs under the guise of extending a helping hand or a mistaken, restrictive belief as to the limitations of handicapped person." Id. at 1385. In this case, the University's actions were not "predicated on any known deficiency of Dr. Pushkin himself" but based on a general knowledge of MS that did not apply to Dr. Pushkin, the individual.

Likewise in Smith v. Fletcher, 393 F.Supp. 1366 (S.D. Tex. 1975), modified, 559 F.2d 1014 (5th Cir. 1977), a paraplegic who had a Master's degree in physiology was assigned menial clerical tasks because her supervisor had made "an arbitrary and unfounded decision as to her physical capabilities." The court ordered that she be promoted from a GS-9 to a GS-13.

Strathie v. Department of Transportation, 716 F.2d 227 (3rd Cir. 1983), illustrates that strict adherence to outmoded physical requirements serves to exclude qualified disabled employees. In that case, a hearing impaired person sought a position as a public school bus driver. He was denied the necessary driver's license on the grounds that he could not meet the Department of Transportation regulation requiring a specified level of hearing without the use of a hearing aid. With a hearing aid Mr. Strathie met the Department's standards.

The district court held that the regulation was valid and that Mr. Strathie was not therefore an "otherwise qualified" handicapped individual under the Rehabilitation Act. In support of this decision the court accepted defendant's arguments that the accommodation of a hearing aid was unreasonable because of the risks of dislodgement, mechanical failure, inability to localize sound, and the possibility that the wearer would lower the volume of the aid and thus decrease its usefulness.

The Third Circuit reversed, noting that the district court had failed to consider Mr. Strathie's proposed modifications that would reduce the risks. The modifications included frequent inspections of the aid and carrying a spare aid and batteries to minimize mechanical failures, pre-setting volume to avoid variability, and individualized assessment of ability to localize sound. With respect to the risk of dislodgement, the court noted that certain types of hearing aids are "less likely to become dislodged than are regular eyeglasses." The court emphasized

that it was anomalous for the Department to allow vision standards to be met with corrective lenses, yet did not allow candidates to meet hearing requirements with the help of a hearing aid. The opinion as a whole highlighted the need to address the realities of a given individual's situation, instead of relying on overly broad general assumptions.

The need for individualized determination under Section 504 with respect to the qualifications of persons with disabilities was also emphasized by the court in Jackson v. State of Maine, 544 A.2d 291 (Me. 1988). Mr. Jackson was an insulin-controlled diabetic who was prevented from taking the examination for public school bus driver on the basis of a regulation requiring him to be "free from...diabetes". Id. at 298. The Court noted that the denial of plaintiff's application "was automatic and based solely on his diabetes." Defendants offered no evidence that Mr. Jackson, as an individual, could not safely drive a school bus. The doctor who examined him concluded that he was "free from any condition that might affect his ability to safely operate a school bus." Moreover, at the time of the appeal Mr. Jackson was working successfully as a bus driver.

In Stutts v. Freeman, 694 F.2d 666 (11th Cir. 1983), the Eleventh Circuit found that the use of a written test as the sole criterion for a job as an equipment operator discriminated against Mr. Stutts, who had dyslexia (a learning disability).

Nelson v. Thornburgh, 567 F.Supp. 369 (E.D.Pa. 1983), illustrates the importance of reasonable accommodation to

maintain qualified disabled workers and the flexible approach taken by courts when considering the burden on defendants. Thounburgh involved blind income maintenance workers who alleged that the Department of Public Welfare had unlawfully discriminated against them, failing to accommodate their disability by providing part-time readers. The employees themselves had hired readers, and with the assistance of these readers were able to perform the job as well as their sighted colleagues. The court held that inability to read did not mean that the employees were not "otherwise qualified," as this was not essential to successfully meeting the requirements of the position. Several accommodations, including brailling forms and manuals, and using technology like a Versabraille, and possible schedule changes to make the most efficient use of readers, would insure that employees were able to function on the job.

The court acknowledged that "accommodation...will impose some further dollar burden upon an already overtaxed system of delivery of welfare benefits", but noted that "the additional dollar burden is a minute fraction of the DPW/PCBA personnel budgets." Moreover, the court emphasized that the failure to accommodate in the workplace would impose very real costs on American society and the American economy, in light of the consequence of having to support these employees on government benefits if they were not allowed to contribute their productivity as members of the workforce.

Finally, Chalk v. United States District Court Central

District of California, 840 F.2d 701 (9th Cir. 1988), illustrates how irrational fear of contagion can serve to deny a qualified disabled person his profession, unless court review is available. In that case Mr. Chalk, a certified teacher of hearing-impaired students, was barred from teaching after a diagnosis of AIDS. The Ninth Circuit reviewed all relevant medical literature and concluded that there was no significant risk of transmission in the classroom setting. Among the cited literature was a Surgeon General's Report that stated, "casual social contact between children and persons infected with the AIDS virus is not dangerous." The Court stated that "the basic purpose of Section 504 is to ensure that handicapped individuals are not denied jobs or other benefits because of the prejudicial attitudes or ignorance of others." The court therefore granted an injunction allowing Chalk back into his classroom position.

VI. REPORTS OF EMPLOYERS HAVE BEEN POSITIVE

Reports from employers demonstrate that many of the fears associated with passage of the Rehabilitation Act anti-discrimination provisions were unfounded. In addition to the studies that refute employers fears about productivity, absenteeism and safety,[31] a comprehensive study by the Department of Labor regarding accommodations to disabled employees by federal contractors demonstrates that accommodations that allow

[31] See, discussion, supra, pp. 17-20

participation can often be done without great expense.[32] Almost one-forth of the disabled employees in the study received some type of accommodation. Over fifty percent of the accommodations in the study cost nothing; an additional thirty percent cost less than $500; only eight percent cost more than $2000. The experience of providing accommodations was positive for employers. The report stated that "accommodation is seen by firms as sensible business practice to secure a reliable worker with needed skills, akin to the provision of tools or other aids to non-disabled workers to increase their productivity".

The Wall Street Journal reported on the change in federal contractor employer practices under Section 503 as early as January, 1976. More than 275,000 companies employing more than one-third of the work force were affected at that time.[33] As a result of Section 503, companies reviewed their hiring practices. The Wall Street Journal article provides interesting anecdotal evidence of the positive effect of the non-discrimination provisions on a number of major American enterprises:

> "We had a medical department that thought it was saving the company money by only hiring Greek gods," says a personnel officer for a large Midwestern manufacturing firm. "We have completely abandoned that approach." Now, he adds, "we're trying to fit a person

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[32]"A Study of Accommodations Provided to Handicapped Employees by Federal Contractors," Executive Summary, U.S. Department of Labor, June 1982.

[33]Unfortunately, the courts have not recognized a private cause of action under Section 503 and agency action has been hampered by back-logs and limited enforcement. Hearings before the Subcommittee on Employment Opportunities of the House Committee on Education & Labor, 96th Cong., 1st Sess., 25 (1979).

to a particular job." The company, for example, has begun considering applications from the deaf.

GTE Sylvania has changed more than its attitude toward former cancer patients. The company used to have rigid weight limits for all jobs. "We've thrown all those out the window," says John McKeith, who handles industrial relations.

International Telephone & Telegraph Corp. has scraped rules that barred applicants with epilepsy, cancer and some other health problems. An epileptic has been hired as a packer for an ITT subsidiary.

Bell Helicopter Co. of Fort Worth, Texas, became the target of a Section 503 complaint when it turned a man down for a position as a contract analyst. He had spinal curvature and it was corporate policy "not to hire anyone with a bad back," says Jim Kight, a Labor Department specialist in Dallas. The complaint was resolved when Bell changed corporate physicians - which, Mr. Kight says, was "the same thing as changing its policies."

Written tests, too, are sometimes being modified. In Chicago, officials at Continental Illinois National Bank & Trust Co. quickly devised a braille version of its computer-programming aptitude test because they feared that a blind applicant was about to complain under the federal law. He got the job.

For some firms, the new attack on job discrimination has altered stereotypes rather than formal hiring practices. In the past, says one personnel executive, "we were tempted to say, 'This girl can't type; she's blind.' We had preconceived notions." Now, [business] concerns are starting to explore their whole range of jobs, finding ways that disabled employes [sic] might perform them with minor changes in hours or duties.

Thus, Union Carbide Corp. is advertising sales-representative job openings in handicapped groups' newspapers, merely specifying that "car maneuverability" is required. U.S. Steel did recruiting last spring at the National Technical Institute for the Deaf, in Rochester, N.Y.; it was the school's first such visit in its seven-year history.

And in 1974, Sears, Roebuck & Co. hired Brad Shorser as its first blind management trainee despite a few officials' misgivings about his ability to deal

with customers. Now a successful assistant customer-service manager for the Hichsville, N.Y., store, 28-year-old Mr. Shorser says the federal law's existence "most definitely" helped him get the job.

Seven years later the Wall Street Journal again highlighted the advantages of employing persons with disabilities pursuant to non-discrimination provisions. The article, which appeared on November 22, 1983, noted that "[w]ork accommodations for the disabled often cost little and benefit others." It observed that a poll of 2,000 federal contractors found that "81% of changes made cost $500 or less." Moreover, modifications often helped able-bodied workers as well. For example, in addition to providing wheelchair access, "[w]idened doorways at Western Electric allow easier moves of heavy equipment. Scientific Atlanta likes its enlarged elevators for similar reasons." And the benefits are not limited to improved physical arrangements. "when Tektronic altered an assembly line supervisor's tasks to aid a mentally retarded man, all 12 workers' output rose and errors fell."

VII. A Uniform Federal Law Is Necessary to Protect Persons With Disabilities Who Are Qualified To Work From Discrimination

While 44 states have passed laws prohibiting employment discrimination against persons with disabilities, only twelve are comparable to the Rehabilitation Act in providing protections against discriminatory practices.[34] This demonstrates how

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[34]Handicap Discrimination Legislation: With Such Inadequate Coverage at the Federal Level, Can State Legislation Be of Any Help? 40 Arkansas Law Review, pp. 261, 322. (Five additional states prohibit state agencies and recipients of state funds from discriminating. (Only Delaware and Wyoming have passed no

unprotected persons with disabilities are from private employment discrimination. Persons with disabilities are now the only major group that, while recognized by Congress as face widespread discrimination in employment, still has no adequate federal protection. Until the ADA is passed, Americans with disabilities will continue to be kept out of the workforce because of stereotypes and ignorance.

The state statutes provide for coverage of private employers, at least to the extent of Title VII. The majority do not limit coverage to moderate sized employers as in Title VII. Hence, restrictions on the right of private employers to exclude disabled workers is not new to the ADA. However, the state laws vary widely, and do not provide as much protection as the Rehabilitation Act once the primary hurdle of coverage is overcome.

One major problem is the failure of many state statutes to cover mental disabilities. In addition, many state statutes have very restrictive definitions of "handicap." Many define handicap as a limitation on work. This type of definition gives rise to the anomalous result that a person whose disability was the cause of the adverse employment decision but does not affect the ability to work is not protected against employment discrimination. The same anomaly results when statutes cover only severe handicaps. Others list specific handicaps leaving

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legislation at all.)

all other subject to arbitrary employment practices. For example, New Hampshire excludes handicaps caused by illness and Arizona excludes handicaps that were first manifested after age 18. Many statutes require a presently disabling condition despite the fact the employers often use signs of a future disabling condition to disqualify an employee. It is estimated that between 150,000 and 1.2 million pre-employment lower back x-rays are given each year. Despite the fact that they have been totally discredited in the scientific literature, they are still widely used to screen out asymptomatic applicants.[35] Hawaii actually limits coverage to impairments which will last a lifetime without substantial improvement. Hence, a person with cancer may be excluded just because he may get better.

Over one-half of the states do impose a reasonable accommodation requirement. However, several define the term restrictively. In Minnesota, a $50 cap is provided. Many restrict the requirement to employers of over a certain number. This makes no sense, when the accommodation may involve simple readjustments of work space (lowering a desk). With the undue burden protection of federal law, there is no reason to exempt employers or limit the type of accommodation which can be made. Finally, nearly one-half of the states do not require any reasonable accommodation despite extensive documentation that

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[35] Id. at 288.

accommodations are most often not costly.[36] Yet for many disabled people the willingness to accommodate can make the difference between fruitful employment and welfare.

Now is the time for Congress to make a national commitment to the equal employment opportunities of persons with disabilities. The federal law is too limited in coverage and state laws vary widely and are often too restrictive. The result is the sanctioning of widespread proven employer bias and the exclusion of millions of Americans from jobs that they can perform and deserve to hold.

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[36]Dupont study, supra, Wall Street Journal, Nov. 22, 1983, at 1 col. 4.

STATEMENT OF EDWARD D. BERKOWITZ AND DAVID H. DEAN ON THE AMERICANS WITH DISABILITIES ACT OF 1989 PREPARED FOR THE COMMITTEE ON LABOR AND HUMAN RESOURCES, MAY 9, 1989

I am Edward Berkowitz, and I direct the Program in History and Public Policy and serve as a Professor of History and Public Policy at George Washington University. I am joined in this statement by David H. Dean, who is an Assistant Professor of Economics at the University of Richmond.

Professor Dean and I speak in support of the Americans with Disabilities Act of 1989. We believe that the Act represents an appropriate direction for the nation's disability policy, and that now is the time for the Congress to act on this matter.

Each of us has devoted much of his career to understanding the costs of disability. Professor Dean has worked closely with the Bureau of Economic Research at Rutgers University and Professor Monroe Berkowitz on studies related to the costs of disability and the efficiency of rehabilitation. Our statement draws on those studies.

My research on disability policy has resulted in the publication of Disabled Policy: A Twentieth Century Fund Report (Cambridge University Press, 1987). I have also written a series of reports on the structure and function of America's disability programs. These include an edited book, Disability Programs and Government Policies, (1979) that summarized a major study of disability policy undertaken by the Assistant Secretary for

Planning and Evaluation of the Department of Health, Education, and Welfare, a report to the Senate Special Committee on Aging on "Emerging Issues in Disability Policy," published in 1985, and a special report on "Incentives for Reducing the Costs of Disability," prepared for a task force of the Committee on Economic Development and published this year. I have also consulted on disability policy for such groups as the Milbank Memorial Fund and the Hastings Center on Biomedical Ethics.

Other of my publications in the field of disability policy include "The Cost Benefit Tradition in Vocational Rehabilitation," in Monroe Berkowitz ed. Measuring the Efficiency of Public Programs (Philadelphia: Temple University Press, 1988) and "Benefit Cost Analysis," Rehabilitation Research Review, 1983 [with Monroe Berkowitz]. Other peer-reviewed articles and essays related to disability policy have appeared in academic journals such as The Journal of Social History, The Journal of Policy History, The Journal of Economic History, Social Science Quarterly, The Social Service Review, and The American Journal of Economics and Sociology.

The Costs of Disability

The costs of disability are, all too often, simply that: the costs of maintaining inactivity rather than the costs of investing in peoples' productivity.

This nation already spends a significant amount of money on

disability. The best available estimates, prepared by the Rutgers Bureau of Economic Research, put the level of 1986 disability expenditures for the working age population at 169.4 billion dollars. This figure includes $75 billion in federal expenditures for such programs as Social Security Disability Insurance, Supplemental Security Income, Medicare, Medicaid, Food Stamps, and Veterans Compensation.

The $169.4 billion equals 4% of the nation's gross national product, and it amounts to $1,136 for each person between 18 and 64 years of age. I enclose a "fact sheet" at the end of this testimony that summarizes the nature of our disability expenditures.

These numbers reflect a substantial increase in disability expenditures that has taken place in recent years. In 1970, this nation spent 19.3 billion dollars on disability. Even if we take inflation into account, the rise has been impressive. In real dollars, we now spend three times as much on disability as we did in 1970, when "only" 1.9% of our gross national product went for disability.

Such figures, by themselves, should not scare us. What is distressing, however, is that we spend most of the money in the form of subsidizing inactivity. We insist that a person withdraw from the labor force before we will come to the person's aid. In many cases, we ask people to retire before we offer to rehabilitate them or provide them with medical care. Such an approach fails to recognize the capabilities of people with

disabilities; it fails to credit the American people with the ingenuity of which they are capable.

Consider in this regard just where our disability dollars go. In 1970, this nation spent a nickel of each of its disability dollars on direct services, such as rehabilitation, that were designed to encourage people to reach their maximum potential. In 1986, this nation devoted only two cents of each of its disability dollars to direct services. By way of contrast, we spent over half of our 1986 disability dollars on monetary payments from the rest of society to people with disabilities and 47 cents of each disability dollar for medical care.

These trends reflect, in part, the stringency in the federal budget and the rising costs of medical care. Discretionary dollars, such as fund the vocational rehabilitation program, have been squeezed, as the nation has struggled to manage its public debt and still meet its public obligations. The prospects are for the continued diminution of direct services within our disability budget. We will, therefore, need to find other means to facilitate the participation of the handicapped in American life. Of these means none is more important than the extension of civil rights.

We should not think of these disability expenditures only as public expenses. In fact, many of our disability expenditures originate through the private sector. In 1986, for example, we spent $31.8 billion for monetary payments that were made by the private sector. These included $3 billion for disability

expenditures arising through private insurance policies and $1.9 billion consumed by private pensions. Let us be clear about the nature of these expenditures: These were payments that private employers made to people for not working.

Such payments were the private counterparts to the benefits that we pay through our Social Security Disability Insurance Program to 2.8 million workers who have been judged "unable to engage in substantial gainful activity." Such payments cost $20.1 billion in 1986, in addition to the $8.8 billion in Medicare payments for Social Security Disability Insurance beneficiaries. In addition, the nation spent $5.4 billion in disability-related SSI expenditures and $15.6 billion for Medicaid expenditures related to disabled SSI beneficiaries.

These were all components of the $169.4 billion bill that the nation paid for disability, but the true costs of disability were even higher. These costs of disability included the income lost and extra expenses incurred by people with disabilities.

Research in this area is tentative, but the best evidence, compiled by the Rutgers Bureau of Economic Research, suggests that in 1977, the only year for which this type of data is available, the economic losses resulting from disability, which must be counted in addition to the direct expenditures on disability, were 100.3 billion dollars. More than 85% of those losses came in the form of lost earnings.

The American with Disabilities Act of 1989 should, therefore, be considered in relation to the money already being

spent on disability. No longer would we make retirement the chief weapon in our arsenal of disability programs; instead our public policies would point consistently toward participation.

A popular health guide quotes a woman as saying, "We are not disabled; it is society which disables us by being so unsupportive." Perhaps this unsupportive attitude helps to explain the troubling association between people with disabilities and poverty. The average earnings for people with disabilities in 1980 was $6,000, compared with $11,300 for the nondisabled. About 7% of working-age nondisabled households had family income below the poverty level. By contrast, some 24% of households with a family member who was severely disabled had family income below the poverty level (and that includes the help that they may get from the government).

One way to think of the effects of the Americans with Disabilities Act is to recognize that as people with disabilities realize earnings commensurate with their productivity, the disincentives to work will be lessened. A higher earnings level, quite simply, will make working more attractive and will point our social welfare policy toward the participation of people with disabilities rather than their withdrawal from the mainstream of American life.

Why the Time is Now

Each generation of legislators has only a few opportunities

to contribute in a positive way to the content of public laws and the conduct of public policy. In the field of disability legislation, I believe that now is the time to take definitive measures to combat prejudice and discrimination.

Each generation of legislators works within the contours of the possible. For the state legislators of the progressive era that meant a chance to modify the tort system and implement a no-fault workers' compensation program. For the Congressmen of the New Deal, that meant a chance to start the nation's social security system. For the policymakers of the Eisenhower era, that meant the opportunity to extend the social security system to cover the risk of disability. For the law makers of the 1970s, that meant the chance to salvage Supplemental Security Income from the wreckage of welfare reform.

Each of these opportunities has helped to define our present approach to disability policy, an approach that, in the interests of humanity, has relied on providing people with tickets out of the labor force. Now we have a realistic opportunity to bring our nation's disability policy to a new level, one that does not require people with disabilities to cope in futility with the existing environment so much as it provides a means of altering the environment so as to lessen the effects of prejudice and discrimination. No longer does public policy need to focus exclusively on tickets out of the labor force. Now we have the means to provide tickets into the labor force that will give people with disabilities the chance to participate in the

nation's work force. This legislation, then, is a law in aid of the free market and not a creature of the welfare state. It is, in short, legislation that suits the temper of the times.

Demography also favors passage of this law at this moment. We know that the population is aging and that disability and age are strongly correlated. We are virtually certain that the median age of the population should rise between 1990 and 2040 from 33 to 42 years. The best estimates also conclude that the percentage of the population 65 years or older should grow from 12.7 in 1990 to 21.7 (or about 67 million people) in 2040.

From the perspective of disability, it is the years just before the retirement age that are critical. The average age of Social Security Disability Insurance beneficiaries has been about 52 years old; the median age has been higher. Right now the largest single group in the general population is between 28 and 32 years old. This group will reach the critical point for going on disability insurance when its members reach age 50. That will happen in about 18 years, the year 2007.

We know from foreign experience just how costly the aging of the population can be. West Germany, for example, has experienced a spectacular rise in its disability rolls from 1965 to 1984, from one million to just over 2.25 million recipients. Comparable declines in the labor force participation of older workers and increases in the percent receiving disability transfer payments were experienced in the Netherlands and Sweden for this general period.

Right now we are in a benign period before the baby boom approaches the disability years and then the retirement years. The labor force has completed the job of absorbing the baby boom and of making room for the increased participation of women in the labor force. Some even speak of a coming labor shortage, as the baby bust age cohort enters the work force. Trouble in the form of increased social welfare expenditures, however, looms right around the corner. The percentage of people 55 to 64 in the population was 9.6 in 1980, but the percentage will decline to 8.4 in 1990. By 2010, the percentage will rise again, to a level of 12.3 (which represents 35 million people).

Now, in the interlude between the baby boom and its echo, is the time for us to create constructive alternatives to people declaring themselves "unable to engage in substantial gainful activity." Now is the time for a new approach toward people with disabilities. Such an approach will help to alleviate the coming labor shortage, and it will do much to reduce the "disability crunch" that should arrive within a few years.

The Americans with Disabilities Act, I believe, is an important piece of legislation on which this generation of legislators should put its stamp.

TESTIMONY OF JOSEPH F. DANOWSKY
BEFORE THE SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES
REGARDING THE AMERICANS WITH DISABILITIES ACT OF 1989 (ADA)
MAY 9, 1989

I am giving this testimony in support of the Americans with Disabilities Act of 1989 (ADA), the aim of which is to prohibit employment discrimination against the disabled. This statement serves to illustrate my own job search difficulties as a visually disabled person and summarizes how I feel this bill may alleviate some of these problems for other disabled persons.

I first should explain that I have been legally blind since birth. This disability prevents me from, among other things, reading printed material, recognizing faces, and reading street signs. No vision aid or magnification devices are of any help to me.

I undertook my college and professional school education with the assistance of readers and recorded books. In 1980, I graduated from the University of Pennsylvania with a B.A. degree in Economics, summa cum laude, and as a member of Phi Beta Kappa. I then entered Harvard Law School and in 1983, with a B average, graduated with a J.D. degree.

While at Harvard Law School, I knew six other blind students, all of whom had extremely frustrating experiences in seeking employment. When I first arrived at Harvard, blind upperclassmen told me that I would never get a job in a private law firm and that I should resign myself to the fact that only government positions would be available to me. They told me that, in their collective recent memory, no blind Harvard Law School graduates had been able to secure positions with law

firms. Positions with law firms are the most common summer and post-graduate employment positions obtained by sighted Harvard Law School students.

Nonetheless, during my first year of law school, I persevered in attempting to obtain a summer position with a law firm. I applied to well in excess of 100 law firms throughout the country. To the amazement of my blind peers, I obtained employment with one law firm--a large firm in Pittsburgh, Pennsylvania--which provided me with a reading assistant. As a result of my work there as a summer associate, I received an offer from that firm for full-time employment as an associate upon graduation.

In fairness, I must note that all first-year students, blind or not, have more difficulty finding summer employment than do upperclassmen, because Harvard's full job-placement services are not available to first-year students. However, the degree of difficulty my sighted classmates had was simply not comparable to mine.

The second-year interviewing season at Harvard Law School provided quite a different experience for the average student. Over 900 law firms conducted on-campus interviews. I knew of no sighted law student who did not, from the on-campus interviews, have numerous offers from several law firms in the cities of his or her choice. However, my second-year experience and that of my blind peers was quite different. Personally, I spent almost every class day from the beginning of October through the first week in December attending interviews, any and

all that I could fit into my schedule. I interviewed with firms from almost every major city in the United States. In the end, I received only two job offers and accepted a summer position with a major firm in Philadelphia, Pennsylvania, from which I received an offer for full-time employment after graduation and for which I worked for three years subsequent to graduation. The firm provided me with a reading assistant.

I ultimately decided to seek a job in a corporate legal department. From previous experience, I knew that a job search would be particularly difficult for me. I knew that I did not have a choice of cities, but would have to embark on a nationwide campaign. I did so beginning in 1985, at which time I was a member of two state bars. This search included responding to newspaper advertisements and contacting placement agencies. I quickly learned that most placement agencies were unwilling to work with me once they learned of my visual disability, since they desired to place persons as quickly and easily as possible. I therefore concentrated my efforts solely on advertisements and direct, unsolicited inquiries by letter.

It is significant to note that the resume accompanying my letters prominently noted an award I had received from Recording for the Blind, Inc., as one of three outstanding blind college graduates in the country in 1980. I chose to note this award on my resume not only because I was proud of it, but also as a way of making clear to potential employers that I did have a visual disability. I believed, and still believe, that the best way for a disabled person to deal with possible employment

problems relating to his disability is to confront the issue directly.

Over the summer of 1985, I wrote directly, i.e., by name, to those in the position of General Counsel at every Fortune 500 company and at over 100 additional companies. I wrote follow up letters to the same individuals twice, in the fall and in late winter.

As a result of this job campaign, I received approximately 20 telephone responses from companies throughout the United States. Only two or three of these potential employers realized, before our conversation, that I had a visual impairment. Most apparently missed the reference to my disability on my resume. However, once learning of my disability during our initial telephone conversations, several of these employers immediately withdrew their invitations for me to visit their offices, and most others became noticeably uncomfortable in tone and manner.

The end result of this campaign--of writing to 600 companies three times in the course of a year and of having 14 interviews--was that I did not receive one job offer.

From my conversations and the interviews that I did have, I surmised several reasons why these corporate law departments were unwilling to hire a blind attorney. These employers seemed to believe that a blind person could not handle legal work, work so heavily dependent upon reading and writing. In addition, hiring attorneys seemingly did not want to take what their superiors might perceive as a "risk" in hiring a blind

individual. And perhaps most significantly, they did not want to bear the expense of hiring a reading assistant. Apparently, the fact that I had excellent credentials and references from two successful employment experiences was not enough to overcome their misconceptions and concerns.

Such prejudice seemed likely to bar my ever obtaining employment with a corporation. By April of 1986, I felt left with no choice but to take a new approach to my job search, an admittedly aggressive and ambitious approach. I then wrote directly to the chief executive officers of almost every Fortune 500 company. I described my qualifications and the difficulty that I, as a blind lawyer, was having in seeking employment. I highlighted the general unwillingness on the part of corporate law departments to hire blind individuals for responsible positions.

My purpose in appealing directly to the chief executive officers, who were ultimately responsible for hiring policies throughout their corporations, was to make them aware of the reluctance on the part of their managers to hire disabled persons. I hoped that the chief executive officers would make it known to their managers that hiring disabled persons was not something to be avoided and that the unusual expenses associated with accommodating a disabled person's employment should not be the determinative factor in a hiring decision. As a result of my appeal, I received numerous invitations for interviews, some from the very same companies that, only a few weeks earlier, had written to me and said no positions were available.

One of the companies that offered me an interview was my current employer, the New York securities firm of Bear Stearns & Company, Inc. I would like to point out that, as Bear Stearns had just become a public company, it was not among the 600 companies to whom I had written in 1985.

I currently practice in a legal department of fifteen attorneys. My work consists of, among other things, advising brokers and operations personnel on various aspects of securities regulation, and drafting and negotiating various agreements relating to the brokerage business and general corporate law matters. I do my work with the assistance of a reader provided by the firm.

The proposed bill, I believe, will help ameliorate discrimination in the job market such as that which I experienced. Were such legislation passed, a strong signal would be sent to the private sector that discrimination against disabled persons is just as wrong as discrimination against any other minority group. Moreover, as such legislation would require companies to put in place definite policies with respect to hiring the disabled, it would enable hiring personnel to be more comfortable about their decisions to hire the disabled, whereas now hiring personnel seem to feel they are stepping outside the corporate mainstream--and thereby jeopardizing their own positions--by hiring a disabled individual. In addition, the aspect of the bill requiring employers to make reasonable accommodations would encourage employers to think of and create ways to make an employment relationship with a disabled person

succeed, whereas, in the absence of such legislation, employers seem more inclined to find reasons as to why such a relationship would not succeed.

Respectfully submitted,

Joseph F. Danowsky
431 Riverside Drive, Apt. 7J
New York, New York 10025
Day Phone: (212) 272-2563

United States Senate

Committee on Labor and Human Resources

May 9, 1989

Testimony of Amy Dimsdale

My name is Amy Dimsdale. I live in Arlington, Texas and am 28 years old. I'm here to tell you my personal story of employment discrimination, which happened not just once but time after time after time, because of my disability.

I graduated five years ago from the University of Texas at Arlington with a degree in Journalism and have diligently sought employment since my graduation. However, the doors of opportunity never opened for me, and I have yet to be seriously considered for a job.

All my life I was told I need a college degree to get a job, so I got a degree. Then, potential employers told me I needed experience, so I spent several years doing double duty, looking for jobs and also volunteering time to keep my skills current: writing and fundraising for a number of organizations and causes. Tirelessly, I continued applying for jobs, attending job fairs, reading newspaper ads, following every lead and utilizing every network I could think of.

Over time, a pattern established itself. Employer after employer told me that I have outstanding qualifications, but

they found someone better suited for the position. Again and again and again.

After being dismissed without serious scrutiny time after time, it began to dawn on me that maybe it wasn't something deficient in my skills and experience that caused this treatment. The understanding grew in me that I was not being considered seriously for employment because I use a wheelchair.

I submitted over three hundred resumes and more than one hundred applications. I've indicated my willingness to be flexible, work at home, relocate, and use my own special equipment, all to no avail. I need virtually no special accommodations to work, as long as I can get in the building. But the stigma about disability is so strong in our society that my potential employers ignored me.

Frustrated by my lack of success, I made sure the last group of letters stressed the Targeted Jobs Tax Credit, hoping that companies would seize an opportunity to save money by hiring an energetic, qualified employee. But again, the response was dismal: I received one reply from seventeen tries with the usual, lame explanation that I am well-qualified and experienced, but they found someone better suited for the position.

I earnestly want to work. In preparation for my adulthood, the government invested considerable resources in me so that I could land a job. My college expenses were paid. I received services through the Texas Rehabilitation Commission. I now receive Supplemental Security Income, food stamps, Medicaid and Medicare benefits. Section 504 of the Rehabilitation Act of 1973 was implemented, partially so I could go to college at an accessible campus and receive services that gave me an equal shot at gaining an education. But still, the door of opportunity slams shut in my face, because of the final, so-far-insurmountable barrier: the attitudes of employers who are under no mandate whatsoever to consider me fairly.

I feel useless, powerless, and demeaned. I feel that all my energy has gone into a black hole. And I know I'm not alone; most of my friends with handicaps experience the same exhausting process. It is enough to make someone give up and accept life-long dependency on benefits instead of productive work. I know many educated, capable, and intelligent disabled people who have given up in this way.

Discrimination hurts not only those people with disabilities whose potentially productive lives go wasted, but the rest of

society as well, because everyone pays the price for economic dependency.

I want to work, like millions of my fellow disabled Americans want to work. I'm not asking for charity; I'm just asking for opportunity.

Thank you for listening to my story.

TASK FORCE ON THE RIGHTS AND EMPOWERMENT OF AMERICANS WITH DISABILITIES

907 6th Street, S.W., Suite 516C, Washington, D.C. 20024
(202) 488-7684 Voice (202) 484-1370 TDD

Appointed by Congressman Major R. Owens, Chairman, House Subcommittee on Select Education

TESTIMONY PRESENTED BY JUSTIN DART, CHAIRPERSON OF THE TASK FORCE ON THE RIGHTS AND EMPOWERMENT OF AMERICANS WITH DISABILITIES, BEFORE THE SENATE SUBCOMMITTEE ON THE HANDICAPPED HEARING ON THE AMERICANS WITH DISABILITIES ACT OF 1989, MAY 9, 1989

MR. CHAIRMAN, IT IS A PRIVILEGE TO APPEAR BEFORE THIS DISTINGUISHED COMMITTEE, WHICH HAS BEEN A STAUNCH SUPPORTER OF AMERICANS WITH DISABILITIES OVER THE YEARS. I BELIEVE THAT I SPEAK FOR ALL OF MY FELLOW MEMBERS OF THE DISABILITY COMMUNITY WHEN I COMMEND YOU FOR YOUR COURAGEOUS PERSONAL LEADERSHIP IN ADVOCATING FOR OUR RIGHTS, INCLUDING THE CIVIL RIGHTS RESTORATION ACT, THE FAIR HOUSING ACT AMENDMENTS, AND NOW THE AMERICANS WITH DISABILITIES ACT. I WOULD ALSO LIKE TO COMMEND SUBCOMMITTEE CHAIRMAN SENATOR HARKIN, AND ALL YOUR DISTINGUISHED COLLEAGUES ON THE COMMITTEE AND THE MEMBERS OF YOUR STAFFS. BOB SILVERSTEIN AND OTHERS HAVE BEEN TOWERS OF STRENGTH FOR JUSTICE.

I SPEAK TODAY AS CHAIRPERSON OF THE TASK FORCE ON THE RIGHTS AND EMPOWERMENT OF AMERICANS WITH DISABILITIES, TO GIVE OUR REPORT ON THE MOST IMPORTANT DISABILITY-RELATED LEGISLATION IN THE HISTORY OF THIS NATION, THE AMERICANS WITH DISABILITIES ACT.

AMERICANS WITH DISABILITIES

DISABILITY HAS BECOME A MAJOR FACTOR IN THE LIVES OF ALL THE MEMBERS OF OUR SOCIETY. PRESENTLY THERE ARE AN ESTIMATED 43 MILLION AMERICANS WITH DISABILITIES. THIS FIGURE IS INCREASING RAPIDLY AS MODERN MEDICAL SCIENCE ENABLES MORE AND MORE PEOPLE TO SURVIVE PREVIOUSLY FATAL BIRTH DEFECTS, INJURIES AND ILLNESSES AND TO LIVE MANY POTENTIALLY PRODUCTIVE AND HAPPY YEARS WITH SIGNIFICANT DISABILITIES. THESE DISABILITIES RESULT FROM NUMEROUS PHYSICAL AND MENTAL CONDITIONS, INCLUDING THE NORMAL PROCESS OF AGING AND IMPAIRMENTS OF VISION, SPEECH, HEARING, LEARNING, INTELLECTUAL FUNCTION AND MOBILITY. ALTHOUGH NOT ALL CHRONIC ILLNESS IS DISABLING, MUCH DISABILITY IS A CONSEQUENCE OF DISEASES OF THE CIRCULATORY, RESPIRATORY, URINARY, NEUROLOGICAL, SKELETAL, MUSCULAR, GLANDULAR, DERMATOLOGICAL, AND DIGESTIVE SYSTEMS; OF ARTHRITIS, CEREBRAL PALSY, EPILEPSY, DIABETES, MENTAL ILLNESS, CANCER, TRAUMATIC BRAIN INJURY, MULTIPLE SCLEROSIS, MUSCULAR DYSTROPHY, AIDS, AUTISM, ALLERGIES, AND MANY OTHER DISORDERS. SOME RESEARCHERS ESTIMATE THAT THE

PROPORTION OF OUR POPULATION WITH DISABILITIES, NOW MORE THAN 15%, WILL DOUBLE WITHIN THE NEXT 30-50 YEARS. IT IS HIGHLY PROBABLE THAT ANY PERSON BORN IN 1989 WILL EXPERIENCE AT LEAST TEMPORARY DISABILITY DURING HIS OR HER LIFETIME. IT IS VIRTUALLY CERTAIN THAT ONE OR MORE MEMBERS OF ALMOST EVERY AMERICAN FAMILY WILL BECOME DISABLED.

ALTHOUGH THIS DRAMATIC INCREASE IN THE LIFE SPAN REPRESENTS AN HISTORIC ENLARGEMENT OF THE HUMAN POTENTIAL, OUR CULTURE HAS NOT YET MODIFIED ITS PRACTICES TO FULFILL THAT POTENTIAL, OR EVEN TO MEET THE BASIC LIFE SUPPORT REQUIREMENTS CREATED BY THE NEW CHARACTERISTICS OF ITS MEMBERS. MAJOR PROBLEMS HAVE DEVELOPED.

THE TASK FORCE

IN THIS CONTEXT, THE TASK FORCE ON THE RIGHTS AND EMPOWERMENT OF AMERICANS WITH DISABILITIES WAS ESTABLISHED ON MAY 2, 1988, BY CONGRESSMAN MAJOR R. OWENS, CHAIRMAN OF THE HOUSE SUBCOMMITTEE ON SELECT EDUCATION. COMPOSED OF 34 DISTINGUISHED REPRESENTATIVES OF MAJOR SEGMENTS OF THE DISABILITY COMMUNITY, THE TASK FORCE IS MANDATED TO COLLECT INFORMATION AND TO MAKE RECOMMENDATIONS WHICH WILL ASSIST CONGRESS AS IT CONSIDERS THE HISTORIC AMERICANS WITH DISABILITIES ACT, AND OTHER LEGISLATION DESIGNED TO IMPLEMENT THE RIGHTS OF AMERICA'S CITIZENS WITH DISABILITIES.

THE TASK FORCE WISHES TO ACKNOWLEDGE THE MAGNIFICENT SUPPORT IT HAS RECEIVED FROM NUMEROUS MEMBERS OF CONGRESS, PARTICULARLY TASK FORCE FOUNDER CONGRESSMAN MAJOR OWENS AND THE MEMBERS OF THE HOUSE SUBCOMMITTEE ON SELECT EDUCATION, SENATORS TOM HARKIN AND LOWELL WEICKER AND THE MEMBERS OF THE SENATE SUBCOMMITTEE ON THE HANDICAPPED, AND ALL THE SPONSORS OF THE CIVIL RIGHTS RESTORATION ACT, THE FAIR HOUSING ACT AMENDMENTS OF 1988, THE TECHNOLOGY-RELATED ASSISTANCE FOR INDIVIDUALS WITH DISABILITIES ACT AND THE AMERICANS WITH DISABILITIES ACT.

THE TASK FORCE HAS NO PUBLIC FUNDING OR PRIVATE GRANTS. PARTICULAR RECOGNITION IS DUE TASK FORCE MEMBERS, STAFF AND VOLUNTEERS, AND THE LITERALLY THOUSANDS OF PATRIOTIC CITIZENS AND ORGANIZATIONS IN EVERY STATE AND TERRITORY WHO HAVE CONTRIBUTED SERVICES, MONEY AND TIME TO MAKE THE DEMOCRATIC SYSTEM WORK.

FINDINGS

THE MEMBERS OF THE TASK FORCE, THE ORGANIZATIONS WITH WHICH THEY ARE AFFILIATED AND MORE THAN 8,000 PERSONS WITH DISABILITIES, FAMILIES, ADVOCATES AND SERVICE PROVIDERS ATTENDING 63 TASK FORCE FORUMS IN 50 STATES AND TWO CONGRESSIONAL HEARINGS HAVE PRODUCED OVERWHELMING VERBAL AND WRITTEN EVIDENCE THAT:

- ALTHOUGH AMERICA HAS RECORDED GREAT PROGRESS IN THE AREA OF DISABILITY DURING THE PAST FEW DECADES, OUR SOCIETY IS STILL INFECTED BY THE ANCIENT, NOW ALMOST SUBCONSCIOUS ASSUMPTION THAT PEOPLE WITH DISABILITIES ARE LESS THAN FULLY HUMAN AND THEREFORE ARE NOT FULLY ELIGIBLE FOR THE OPPORTUNITIES, SERVICES AND SUPPORT SYSTEMS WHICH ARE AVAILABLE TO OTHER PEOPLE AS A MATTER OF RIGHT. THE RESULT IS MASSIVE, SOCIETY-WIDE DISCRIMINATION.

- MILLIONS OF OUR CITIZENS WITH DISABILITIES SUFFER UNCONSCIONABLE INFRINGEMENT OF THEIR HUMAN RIGHTS. THEY ARE SUBJECTED TO DEFECT GUARDIANSHIP, DETENTION, AND CONFISCATION OF PROPERTY WITHOUT DUE PROCESS OF LAW. THEY ARE OFTEN DENIED ESSENTIAL LIFE SUPPORT SERVICES. THEY SUFFER FREQUENT HUMILIATION AND REJECTION, AS WELL AS PHYSICAL AND PSYCHOLOGICAL DEPRIVATION AND ABUSE. THEY ARE OFTEN UNREASONABLY EXCLUDED FROM SIGNIFICANT OPPORTUNITIES FOR SOCIAL PARTICIPATION, INCLUDING ACCESS TO PUBLIC AND PRIVATE FACILITIES, EDUCATION, EMPLOYMENT, HOUSING, TRANSPORTATION, COMMUNICATIONS AND RECREATION.

- PIONEER MEDICAL, EDUCATIONAL, REHABILITATION AND INDEPENDENT LIVING SERVICES DESIGNED TO ENABLE PEOPLE WITH DISABILITIES TO PARTICIPATE FULLY IN THE PRODUCTIVE MAINSTREAM OF SOCIETY HAVE PROVEN TO BE EFFECTIVE AND PROFITABLE. HOWEVER, IN SPITE OF THE VALIANT EFFORTS OF THE CONGRESS AND OF MANY DEDICATED SERVICE PROVIDERS, THESE PROMISING PROGRAMS HAVE BEEN SEVERELY LIMITED BY TRADITIONAL DISCRIMINATION. THEY HAVE BEEN UNDERFUNDED, FRAGMENTED, UNCOORDINATED, AND CONTINUALLY CONSTRAINED BY OBSOLETE ATTITUDES AND INACCESSIBLE ENVIRONMENTS. THE NEEDS OF THE MAJORITY OF PEOPLE WITH DISABILITIES ARE NOT BEING MET.

- BLOCKED BY DISCRIMINATORY PRACTICES FROM FULFILLING THEIR PRODUCTIVE POTENTIAL, 43 MILLION AMERICANS WITH DISABILITIES FORM THIS NATION'S MOST IMPOVERISHED LARGE MINORITY. THEY RECEIVE THE LEAST EDUCATION. THEY HAVE THE LOWEST INCOMES AND AMONG THE HIGHEST RATES OF UNEMPLOYMENT, SUBSTANDARD HOUSING, HOMELESSNESS, SUICIDE AND PREVENTABLE ILLNESS AND DEATH.

- A CALIFORNIA WOMAN WITH A HEAD INJURY WRITES:

"I HAD BEEN A CPA, AND WAS A PRODUCER & DIRECTOR FOR CNN AND PBS IN LONDON UP UNTIL ACCIDENT, JUNE 1987. NOW NOTHING. MY CHILDREN ARE HURT, FRUSTRATED AND CONFUSED. WHAT WILL HAPPEN TO THEIR MOTHER THAT WAS SUCCESSFUL, INTELLIGENT, HAPPY, LOVING, GIVING?

I'VE BEEN FLOUNDERING AND SEARCHING LONG ENOUGH. WE CAN GO JUST

SO LONG CONSTANTLY REACHING DEAD ENDS. I'M BROKE, DEGRADED AND ANGRY. HAVE ATTEMPTED SUICIDE THREE TIMES. I KNOW HUNDREDS. MOST OF US TRIED, BUT WHICH WAY AND WHERE DO WE GO? WHERE CAN WE LIVE? WHAT AND WHO CAN WE BE? IF I WERE UNDERSTOOD, CARED FOR, EDUCATED FOR A NEW LIFE AND CAREER, I WOULD HAVE SOMETHING TO LIVE FOR.

WHO HAS THE DEPTH, DETERMINATION, INTUITION, PLAN TO HELP US?"

- ON DECEMBER 28, 1988, IN TACOMA, WASHINGTON, TWO YEAR OLD DYLAN DAY AND HIS GRANDFATHER HOLLIS DAY WERE FOUND SHOT TO DEATH, AN APPARENT MURDER-SUICIDE. ACCORDING TO THE CHILD'S MOTHER, HER FATHER HAD BEEN "VERY, VERY CONCERNED ABOUT MY CHILD'S CONDITION." DYLAN HAD "A MILD FORM OF CEREBRAL PALSY, AND WAS CONSIDERED TO BE DEVELOPMENTALLY DISABLED." MR. DAY, A RETIRED COMPANY PRESIDENT, COULD NOT BEAR THE THOUGHT THAT HIS DAUGHTER AND GRANDSON WOULD HAVE TO FACE THE DEVASTATING LIFETIME OF DISCRIMINATION AND DEPRIVATION THAT HE FORESAW FOR THEM.

- A WOMAN IN CALIFORNIA WHO IS BLIND WROTE TO THE TASK FORCE: "I AM A TRAINED NEWS REPORTER AND HAVE BEEN APPLYING FOR JOBS AT RADIO STATIONS THROUGHOUT THE COUNTRY. I HAVE BEEN REPEATEDLY TOLD THAT I AM THE MOST QUALIFIED CANDIDATE, BUT SINCE THERE HAS NEVER BEEN A BLIND REPORTER BEFORE, THEY CANNOT HIRE ME. I WOULD LIKE THE CHANCE TO SUCCEED OR FAIL BASED ON MY ABILITY AS A REPORTER RATHER THAN MY LACK OF VISION."

- A SERVICE PROVIDER TO HEARING IMPAIRED PEOPLE IN ILLINOIS TESTIFIED: "WE HAVE CLIENTS WHO ARE ADMITTED TO HOSPITALS, UNDERGO SURGERY, AND ARE RELEASED WITHOUT THE BENEFIT OF A SIGN LANGUAGE INTERPRETER TO RECEIVE INFORMATION CRITICAL TO THEIR HEALTH. WE HAVE CLIENTS WHO HAVE BEEN ARRESTED AND HELD IN JAIL OVER NIGHT WITHOUT EVER KNOWING THEIR RIGHTS NOR WHAT THEY ARE BEING HELD FOR. WE HAVE CLIENTS WHOSE CHILDREN HAVE BEEN TAKEN AWAY FROM THEM AND TOLD TO GET PARENT INFORMATION, BUT HAVE NO PLACE TO GO BECAUSE THE SERVICES ARE NOT ACCESSIBLE. WHAT CHANCE DO THEY EVER HAVE TO GET THEIR CHILDREN BACK?"

223 YEARS AFTER OUR FOUNDING FATHERS DECLARED THAT ALL MEN "ARE ENDOWED BY THEIR CREATOR WITH CERTAIN UNALIENABLE RIGHTS," 25 YEARS AFTER THE CIVIL RIGHTS ACT OF 1964, AMERICANS WITH DISABILITIES STILL DO NOT ENJOY THE COMPREHENSIVE PROTECTION AGAINST DISCRIMINATION WHICH HAVE BEEN PROVIDED TO ALL OTHER MAJOR MINORITIES. EXISTING LAWS PROVIDING FOR PARTIAL RIGHTS ARE VERY POORLY IMPLEMENTED AND ENFORCED.

THE TASK FORCE CONCLUDES THAT:

DISABILITY HAS BECOME A NORMAL CHARACTERISTIC OF HUMAN EXPERIENCE. MOST PEOPLE WITH DISABILITIES HAVE THE POTENTIAL TO BECOME FULLY PRODUCTIVE PARTICIPANTS IN THE MAINSTREAM OF SOCIETY. VIRTUALLY ALL PEOPLE WITH DISABILITIES HAVE THE POTENTIAL TO BECOME MORE SELF-RELIANT, AND TO CONTRIBUTE TO THE PRODUCTIVITY AND QUALITY OF LIFE OF THOSE AROUND THEM. HOWEVER THIS VAST HUMAN POTENTIAL IS BEING SEVERELY SUPPRESSED BY TRADITIONAL DISCRIMINATION, RESULTING IN UNCONSCIONABLE INJUSTICE TO INDIVIDUALS, AND UNAFFORDABLE ECONOMIC AND MORAL BURDENS FOR THE NATION.

AMERICANS WITH DISABILITIES WILL NEVER BE ABLE TO FULFILL THEIR POTENTIAL TO BECOME FULLY CONTRIBUTING, PRODUCTIVE CITIZENS OF THE FIRST CLASS UNTIL THIS NATION EMPOWERS THEM BY TAKING DECISIVE ACTION TO ELIMINATE DISCRIMINATORY PRACTICES AND THE FALSE ASSUMPTIONS ON WHICH THOSE PRACTICES ARE BASED. HISTORY DEMONSTRATES THAT THIS CAN ONLY BE DONE THROUGH A FIRM, ENFORCEABLE STATEMENT OF LAW THAT PEOPLE WITH DISABILITIES HAVE THE SAME INALIENABLE RIGHTS AS OTHER PEOPLE, AND THAT HENCEFORTH THEY ARE TO BE ACCORDED EQUAL OPPORTUNITY IN ALL ASPECTS OF LIFE.

THE TASK FORCE URGES:

- THAT CONGRESS TAKE PROMPT ACTION TO CONSIDER AND TO PASS THE AMERICANS WITH DISABILITIES ACT OF 1989, WITH VIGILANCE THAT THE PRINCIPLE OF EQUALITY NOT BE COMPROMISED. THE FINAL PRODUCT OF THE LEGISLATIVE PROCESS MUST ENSURE THE PROTECTION AND ENFORCEMENT OF THE CIVIL RIGHTS OF ALL PEOPLE WITH DISABILITIES TO PARTICIPATE FULLY AND EQUALLY IN THE MAINSTREAM OF SOCIETY.

- THAT THE PRESIDENT AND THE EXECUTIVE BRANCH PROVIDE VIGOROUS PUBLIC AND ADMINISTRATIVE LEADERSHIP ON BEHALF OF THE PASSAGE AND THE IMPLEMENTATION OF THE AMERICANS WITH DISABILITIES ACT.

- THAT ALL CITIZENS WHO LOVE JUSTICE ADVOCATE FOR THE ENACTMENT OF THE AMERICANS WITH DISABILITIES ACT, AND TAKE DECISIVE ACTION TO MAKE THE RIGHTS WHICH ADA MANDATES REAL IN THEIR HOMES AND COMMUNITIES.

SUPPORT AND CONCERNS

THE AMERICANS WITH DISABILITIES ACT HAS BEEN ENDORSED SPECIFICALLY OR IN PRINCIPLE BY THE LEADERS OF BOTH MAJOR POLITICAL PARTIES: PRESIDENT BUSH, VICE PRESIDENT QUAYLE AND GOVERNOR DUKAKIS; AND BY MORE THAN ONE HUNDRED AND FIFTY DISTINGUISHED MEMBERS OF THE LAST CONGRESS. IT HAS BEEN ENDORSED BY INDIVIDUALS AND ORGANIZATIONS REPRESENTING EVERY MAJOR SEGMENT OF THE DISABILITY COMMUNITY. OF THE LITERALLY THOUSANDS OF

PEOPLE WITH DISABILITIES, THEIR FAMILIES, SERVICE PROVIDERS AND ADVOCATES PRESENTING EVIDENCE TO THE TASK FORCE, NOT ONE INDIVIDUAL EXPRESSED OPPOSITION TO ADA.

HOWEVER CONCERNS HAVE BEEN EXPRESSED BY PERSONS AND GROUPS UNFAMILIAR WITH OUR PROBLEMS AND POTENTIAL, WHO FEAR THAT PROVISIONS OF ADA MIGHT NEGATIVELY IMPACT THEIR INTERESTS.

THE TASK FORCE BELIEVES THAT THE MAJORITY OF THESE CONCERNS, ALTHOUGH SINCERELY HELD AND WELL MEANING, ARE BASED LARGELY ON TRADITIONAL ASSUMPTIONS AND LACK OF INFORMATION.

MOST OFTEN EXPRESSED IS CONCERN ABOUT THE COST OF IMPLEMENTING ADA. DOES ADA IMPOSE UNAFFORDABLE ECONOMIC BURDENS ON THE NATION?

EQUALITY UNAFFORDABLE IN AMERICA? WOULD THIS QUESTION BE ASKED ABOUT BLACK, HISPANIC OR JEWISH PEOPLE? THE VERY EXISTENCE OF THE QUESTION REVEALS THE EXTENT TO WHICH ANCIENT ASSUMPTIONS ABOUT DISABILITY HAVE BEEN INTERNALIZED. THE VERY QUESTION IS INCONSISTENT WITH THE PRINCIPLES SET OUT IN THE DECLARATION OF INDEPENDENCE, THE CONSTITUTION AND THE PLEDGE OF ALLEGIANCE TO THE FLAG. THE VERY QUESTION DEMONSTRATES DRAMATICALLY THE ABSOLUTE NECESSITY FOR A NATIONAL MANDATE OF EQUALITY.

NOT SINCE THE ABOLITION OF SLAVERY HAVE AMERICANS BEEN DENIED EQUALITY FOR ECONOMIC REASONS. THE PRINCIPLE OF EQUALITY IS NOT NEGOTIABLE IN THE UNITED STATES OF AMERICA.

ADA IS NOT ONLY AFFORDABLE, WE CANNOT AFFORD NOT TO HAVE IT.

IT IS THE STATUS QUO THAT IS UNAFFORDABLE. IT IS THE OBSOLETE STATUS QUO PRACTICES OF DISCRIMINATION AND SEGREGATION THAT ARE PREVENTING PERSONS WITH DISABILITIES FROM BEING PRODUCTIVE, AND ARE DRIVING US INEVITABLY TOWARD THE ECONOMIC AND MORAL DISASTERS OF GIANT PATERNALISTIC WELFARE BUREAUCRACIES. WE ARE ALREADY PAYING UNAFFORDABLE BILLIONS IN PUBLIC AND PRIVATE FUNDS TO MAINTAIN MILLIONS OF POTENTIALLY PRODUCTIVE AMERICANS IN UNJUST, UNWANTED WELFARE DEPENDENCY. FEDERAL, STATE AND LOCAL GOVERNMENTS ARE ESTIMATED TO SPEND WELL OVER $100 BILLION ANNUALLY. EXPENDITURES BY PRIVATE INDIVIDUALS AND ORGANIZATIONS AND LOST TAXES AND PRODUCTIVITY, PROBABLY TOTAL AT LEAST ANOTHER 200 BILLION. THOUSANDS OF FAMILIES ARE BANKRUPTED ANNUALLY. AND THESE MASSIVE COSTS ARE ESCALATING EXPLOSIVELY WITH THE RAPIDLY INCREASING POPULATION OF CITIZENS, ESPECIALLY ELDERLY PERSONS, WITH SIGNIFICANT PHYSICAL AND MENTAL IMPAIRMENTS.

BUT WON'T ADA REQUIRE MASSIVE EXPENDITURES BY GOVERNMENT AND THE PRIVATE SECTOR? HOW CAN WE AFFORD SUCH EXPENDITURES NOW, IN A TIME OF PROPOSED BUDGET CUTS BY GOVERNMENT, AND INCREASING COSTS FOR BUSINESS AND INDIVIDUALS?

EQUALITY DOES REQUIRE A RECOGNITION OF COMPETING EQUITIES AND A BALANCING OF INTERESTS. ADA HAS BEEN WRITTEN ON PRINCIPLES OF FAIRNESS TO THE ADVANTAGED AS WELL AS TO THE DISADVANTAGED.

WHILE IT IS TRUE THAT EQUAL OPPORTUNITY FOR PEOPLE WITH DISABILITIES WILL REQUIRE CERTAIN INITIAL COSTS, INCREASED GOVERNMENT SPENDING TO IMPLEMENT ADA WILL BE MINIMAL, LIMITED PRINCIPALLY TO ENFORCEMENT ENTITIES WHICH ALREADY EXIST. THE PRIVATE SECTOR WILL NOT BE REQUIRED TO SPEND ENORMOUS SUMS ON INSTANT TOTAL RENOVATIONS OF EXISTING FACILITIES, BUT RATHER TO MAKE REASONABLE EFFORTS TO MAKE SUCH FACILITIES ACCESSIBLE, AND TO ACCOMMODATE EMPLOYEES WITH DISABILITIES. MAJOR EMPHASIS IS GIVEN TO CREATING NEW FACILITIES AND SYSTEMS THAT WILL BE COMPLETELY ACCESSIBLE. WITH APPROPRIATE PLANNING, THIS WILL, IN MOST CASES, REQUIRE ONLY MODESTLY INCREASED INVESTMENTS SPREAD OVER A REASONABLE PERIOD OF TIME.

WHAT WILL BE NECESSARY IS NOT GREAT INCREASES IN SPENDING, BUT RATHER CREATIVE, COURAGEOUS ACTION TO CHANGE TRADITIONAL PRACTICES, AND TO REALLOCATE PUBLIC AND PRIVATE RESOURCES FROM PROCESSES THAT FORCE SEGREGATION AND DEPENDENCE TO PROCESSES THAT PRODUCE PRODUCTIVE INVOLVEMENT IN THE MAINSTREAM OF SOCIETY.

JUST AS THE PREVENTION OF DRUG ABUSE COSTS LESS IN THE LONG RUN THAN ITS CURE, SO WILL THE PREVENTION OF THE DEPENDENCY OF PEOPLE WITH DISABILITIES COST LESS THAN THE PUBLIC AND PRIVATE COSTS OF ITS CONSEQUENCES.

THE PAYMENTS AND REALLOCATIONS REQUIRED BY ADA WILL NOT BE OVERHEAD COSTS, BUT WILL CONSTITUTE THE TYPE OF INVESTMENTS THAT HAVE ALREADY PROVEN TO BE PROFITABLE TO EVERY CITIZEN, AND TO THE NATION AS A WHOLE.

THE APPROPRIATE QUESTION IN REGARD TO THE ECONOMIC IMPACT OF ADA IS NOT "HOW MUCH WILL IT COST?," OR EVEN "HOW MUCH WILL IT SAVE?," BUT RATHER, "HOW MUCH WILL IT PROFIT THE NATION IN THE LONG RUN?" THE PROBABLE ANSWER IS, "HUNDREDS OF BILLIONS."

DOES ADA INITIATE AN AGENDA WHEREBY PEOPLE WITH DISABILITIES WILL BE ENTITLED TO GOVERNMENT SOLUTIONS FOR ALL THEIR PROBLEMS?

CERTAINLY NOT. THAT IS NOT ONLY UNDESIRABLE, IT IS IMPOSSIBLE. PROBLEMS ARE SOLVED BY THE CITIZENS THEMSELVES, OR THEY ARE NOT

SOLVED AT ALL. INDEED, RESPONSIBILITY FOR IMPLEMENTING ADA ON A DAY-TO-DAY BASIS WOULD LIE PRINCIPALLY WITH THE PRIVATE SECTOR. BUT GOVERNMENT IS INESCAPABLY RESPONSIBLE TO PROVIDE LEADERSHIP WHICH RESULTS IN CITIZEN SOLUTIONS. ADA AUTHORIZES GOVERNMENT AT SEVERAL LEVELS TO PROVIDE THAT LEADERSHIP TO END DISCRIMINATION.

WILL ADA REQUIRE EMPLOYERS TO EMPLOY UNQUALIFIED PEOPLE?

ADA SPECIFICALLY STATES THAT EMPLOYERS WILL NOT BE REQUIRED TO EMPLOY UNQUALIFIED PERSONS. HOWEVER THEY WOULD BE REQUIRED TO MAKE REASONABLE ACCOMMODATIONS FOR QUALIFIED CANDIDATES WITH DISABILITIES.

SUMMARY.

EVER INCREASING MILLIONS OF AMERICANS WITH DISABILITIES SUFFER MASSIVE DISCRIMINATION IN ALL ASPECTS OF SOCIAL PROCESS WHICH CONDEMNS THEM TO LIFETIMES OF SEGREGATION, POVERTY AND UNPRODUCTIVE DEPENDENCY ON PUBLIC AND PRIVATE WELFARE. THIS IS MORALLY INTOLERABLE AND ECONOMICALLY DISASTROUS.

ADA WILL NOT SOLVE ALL OF THE PROBLEMS OF AMERICANS WITH DISABILITIES, BUT IT IS AN ESSENTIAL FOUNDATION FOR ALL OPTIMAL SOLUTIONS. BECAUSE UNTIL WE ELIMINATE THE INSIDIOUS ASSUMPTION THAT PEOPLE WITH DISABILITIES ARE LESS THAN FULLY HUMAN, AND ESTABLISH THE CONCEPT AND PRACTICE OF THEIR EQUALITY, THERE WILL BE NO MORE THAN TOKEN ACTION TO ENABLE THEM TO PARTICIPATE FULLY IN THE PRODUCTIVE MAINSTREAM OF SOCIETY.

THE ECONOMIC AND MORAL GREATNESS OF AMERICA IS BASED ON A HISTORY OF EXTENDING EQUAL OPPORTUNITY TO WAVE AFTER WAVE OF PREVIOUSLY OPPRESSED AND DEPENDENT GROUPS. PROVIDING SUCH OPPORTUNITY TO AMERICANS WITH DISABILITIES WILL RESULT IN YET ANOTHER PERIOD OF DYNAMIC GROWTH IN THE PRODUCTIVITY, PROSPERITY AND QUALITY OF LIFE OF THE NATION. IT WILL REINFORCE AMERICA'S TRADITIONAL LEADERSHIP FOR DEMOCRACY AND HUMAN RIGHTS THROUGHOUT THE WORLD.

THE TASK FORCE URGES ALL WHO BELIEVE IN THE DREAM OF LIBERTY AND JUSTICE FOR ALL TO UNITE IN SUPPORT OF THE IMMEDIATE ENACTMENT AND THE VIGOROUS IMPLEMENTATION OF THE AMERICANS WITH DISABILITIES ACT.

Justin Dart
Chairperson

Dr. Elizabeth Boggs
Co-chairperson

Lex Frieden
Coordinator

Statement of Mary DeSapio

United States Senate

Committee on Labor and Human Resources

Hearing on the Americans with Disabilities Act of 1989

May 9, 1989

My name is Mary DeSapio. I would like to thank you for this opportunity to testify. I am a cancer survivor. During my lifetime I have never experienced a more difficult and challenging road to recovery. My journey was fraught with a new reality: discrimination. Cancer survivors are discriminated against by the outside world in both the private and public sectors. I represent over five million Americans with a history of cancer. My story is not unique. Unfortunately many cancer survivors have had experiences that are similar to mine.

My background encompasses an extensive and diversified experience as a financial analyst. I am a member of the Financial Analysts Federation and the New York Society of Security Analysts, as well as many other professional societies. I have established a solid reputation as a financial analyst, with extensive experience in the transportation area. My experience as a financial planner has included senior positions with major investment banking and brokerage firms, including Shearson Lehman Brothers, Inc., Lehman Brother Kuhn Loeb and Carl Marks. I have also served as a financial consultant to the Department of Transportation and appeared as an expert witness on its behalf.

I became employed on a full-time basis as Vice President in charge of transportation by Josephthal and Company, Inc. on March 11, 1987. On January 29, 1988, I was diagnosed as having breast cancer. I immediately informed my superiors at Josephthal. On February lst, I was hospitalized for treatment, a lumpectomy and auxilliary nodes were excised. My superiors knew that my recovery would take about a month. During my recuperation I would report daily by phone, even while I was in the hospital, to advise my clients as to market strategy. After I returned home, I often dropped by the office to pick up mail and work on any urgent matters.

One month later, on March lst, I returned to Josephthal, ready to resume my life and my employment on a full-time basis. I scheduled my radiation treatments at the earliest possible time in the morning so that they would not interfere with my daily work schedule. My superiors were aware of this treatment schedule. Immediately upon my return I was asked to attend a meeting with the Director of Research and the Senior Vice President. At that meeting I was told that I was terminated, effective immediately. They told me that I was no longer needed.

Josephthal had consistently recognized my expertise and my job performance rating had been outstanding throughout my employment. Together with all other employees, in January, I had agreed to a 10% cut in salary in order to insure my position. This policy was announced to the Josepthal staff and we received a confirmation notice on February 19, along with our paychecks, which included the salary cut. After the October '87 crash, many Wall Street firms utlized this policy. However this notice said that I would have a job. Despite this agreement they fired me.

I was shocked. It's hard enough to go through the trauma of cancer, but losing my job, I wasn't ready for that. I was the same person. I had the same skills I had prior to my surgery. I tried to seek full-time employment with other Wall Street firms but, because Wall Street is a close community, everyone was aware of the circumstances of my termination. Words cannot describe the emotional and mental distress I have experienced. I have also sustained tremendous economic loss, including lost income, lost benefits and career loss. Potential employers see me not only as a cancer survivor but also a woman who has seen many decades. This makes resuming my career much more difficult.

I feel like I have been unfairly branded for life. Cancer does not discriminate. What happened to me could happen to anyone, in any profession, at any time. Much to my astonishment, all of my expertise was not an effective shield against discrimination.

I, like millions of my fellow cancer survivors, am not famous like Betty Ford. In order to protect cancer survivors against humiliating experiences like mine, we need a federal law to prohibit employment discrimination in the private sector. The Americans with Disabilities Act of 1989 will give us an opportunity to fight for equality.

SENATOR ORRIN G HATCH

STATEMENT

ADA HEARING - May 9, 1989

Thank you, Mr. Chairman. The story of America is one of ever growing inclusiveness. It is a story of more and more people being drawn into the great American mainstream and of increasing numbers of Americans being able to participate in the activities of a free society to the fullest extent of their God-given abilities. Persons with disabilities are writing a wonderful new chapter of this quintessentially American story every day.

I support a comprehensive civil rights bill for persons with disabilities. I favor extending the substantive protections of Section 504 of the Rehabilitation Act of 1973 to employment; to public accommodations as that term is defined in the 1964 Civil Rights Act; to state and local governments, including their public transit activities; and to television broadcasters in the broadcast of videotapes. I have an open mind on the telecommunications relay services section and the coverage of private transportation.

As you know, Mr. Chairman, we have had conversations about disability civil rights legislation as have our staffs, and I hope these conversations will continue.

I continue, however, to have serious concerns with the Americans with Disabilities Act, as I understand it will be introduced today. In terms of its coverage of public accommodations, it sweeps far beyond its parallel provision in Title II of the 1964 Civil Rights Act. It appears to encompass virtually the entire private sector by its definition of "public accommodation," which includes "establishments that are used by the general public as customers, clients, or visitors or that are potential places of employment, and whose operations affect commerce." This includes not only theaters, restaurants, and hotels but also all sales establishments, grocery stores, drug stores, factories and plants in all industries, clothing stores, appliance stores, office buildings, professional services such as dentists, doctors and others, private schools including private religious schools, and much more of the private sector which is not covered by Title II of the 1964 Civil Rights Act. They are swept in under this bill, even though they receive no federal aid or federal contracts. If this provision remains remotely as is, I see no way to pass such legislation in this Congress.

I am concerned that the bill does not contain adequate exemptions for small entities. For example, there is no exemption in the public accommodations section.

I am also concerned that the requirements of the bill, in a number of places, exceed the requirements of Section 504.

The remedies imposed under this bill in several instances are too harsh and far exceed relief available under parallel civil rights statutes. We need to strike a reasonable balance whenever we extend government regulations and mandates on the private sector and state and local governments. Again, these relief provisions render the bill unlikely to gain passage. For example, and this is just one example, a black person discriminatorily turned away from a public accommodation like a bar or hotel can obtain injunctive relief and attorneys fees under Title II, and the Attorney General can obtain injunctive relief only. The relief available to a person with a disability discriminatorily turned away from a bar or hotel or other public accommodation under this bill includes, in a private action, not only injunctive relief, attorneys fees and costs, but actual

and punitive damages. In an Attorney General action under this bill, relief may include not only injunctive relief, attorneys fees and costs, but also monetary damages to aggrieved persons, and civil penalties of up to $50,000 for a first offense and up to $100,000 for subsequent offenses. This is not parallel enforcement.

Relief in the employment context for discrimination on the bases of disability should parallel the relief available under Title VII of the 1964 Civil Rights Act. This bill, however, adds to that relief the remedies and procedures available under 42 U.S.C. 1981. This statute affords all persons "the same right...to make and enforce contracts, to sue, be parties, give evidence...as is enjoyed by white citizens..." It is privately enforced. Thus, under this bill, relief for employment discrimination includes not only up to two years' back pay, the next available job, and retroactive seniority, as is available under Title VII, but backpay which is not limited to two years, compensatory and punitive damages, and the right to a jury trial available under Section 1981. Once again, this bill unnecessarily exceeds the obvious model, Title VII.

In light of my concerns about the Americans with Disabilities Act and my strong conviction that Congress

should enact a comprehensive bill, I may find it necessary to introduce my own bill or join one offered by another collegue.

Mr. Chairman, I look forward to hearing from witnesses during these hearings on these and other areas of my concern.

Thank you.

STATEMENT OF

DR. I. KING JORDAN, PRESIDENT
GALLAUDET UNIVERSITY

ON
THE AMERICANS WITH DISABILITIES ACT OF 1989

BEFORE THE

SUBCOMMITTEE ON THE HANDICAPPED
COMMITTEE ON LABOR AND HUMAN RESOURCES
UNITED STATES SENATE

MAY 9, 1989

Mr. Chairman and Members of the Subcommittee, I want to thank you for this opportunity to testify in support of the Americans with Disabilities Act of 1989.

My name is I. King Jordan. I am president of Gallaudet University here in Washington. On April 8, 1864--125 years ago--President Abraham Lincoln signed a bill passed by the Congress which established our University, giving deaf people the opportunity to achieve a college education. During the past 125 years, conditions of deaf and other disabled Americans have slowly improved but, I regret to state, we remain today far short of the American dream so eloquently proclaimed by Dr. Martin Luther King.

A little more than one year ago, the Gallaudet protest focused world attention on deaf and other disabled Americans. It instilled in each of us a resolve to see change occur. We disabled Americans know that the time for our civil rights is here. It is long overdue. The time is now and an Americans with Disabilities Act is a tremendous step in the right direction. For us there is no turning back.

The Deaf President Now movement at Gallaudet gained worldwide attention, captured the hearts of people throughout the nation and generated more support than we had anticipated in our wildest dreams. As events unfolded at the University, the interest in the

appointment of a deaf president became far more than just a Gallaudet issue or even the issue of the presidency. Rather, it became a symbol and an opportunity for deaf persons to achieve a level of self-actualization that heretofore had been denied us. For deaf persons the problem was not so much one of segregation, but one of paternalism and communication isolation. We were not so much relegated to the back of the bus for the last 125 years, but rather, told that we were not capable of becoming its driver. Such an assertion will not be made of us again.

It is my hope that we can build upon this heightened level of sensitivity not only for the benefit of Gallaudet University and for deaf people, but for the benefit of all members of disabled and minority groups everywhere. We should not fail to take full advantage of this opportunity.

During, and following the protest, thousands of Americans sent us messages. Their messages reflected a shocked American public that was surprised, confused and angry to learn that patronizing attitudes and discrimination still exist in this country. We were touched by their understanding and support. One message said that the protest was a "symbol of hope and inspiration to people everywhere." We must convert that "symbol of hope" into action. We cannot let it flicker and die.

I had a vivid example of that hope several months ago. I was in Rhode Island visiting the School for the Deaf and had the opportunity to speak to a class of five-year-olds. I sat in one of their small chairs (my knees folded up to my shoulders!) with the little children sitting on the floor in a semi-circle around me. As I talked with the youngsters, one little fellow got up and came around to my side and put his elbow on my shoulder. I looked at him and he looked at me. I smiled and he smiled. We formed an instant bond. I felt his pride that we had something in common--we were both deaf. I doubt if he knew who I was. But with all the attention I got when I came to the school, he sensed that I was someone important. I sensed that he felt he could be someone important, too, and achieve what he wanted in life. For me that was one of the crowning moments in my first year as president.

I want that little boy to grow up in an America where he can be judged on his individual ability. We must stop sending disabled youth conflicting signals. America makes substantial investments in the education and development of these young people, then we deny them the opportunity to succeed and to graduate into a world that treats them with dignity and respect.

My appointment to the Gallaudet University presidency sends a message to disabled youth everywhere that they, too, can aspire to the heights if they are willing to work hard and prepare

themselves for whatever they want to become. I keep reminding the students at Gallaudet and those I meet around the country that they can do it.

I have said, "Deaf People Can do Anything . . . Except Hear." The successful Gallaudet protest showed deaf people that this is true. Deaf people and disabled people now have greater expectations that they can achieve based on their individual ability. But all too often, deaf people and other disabled people are not given an equal chance to show that we are capable.

I want to share with you a conversation I had with a Gallaudet faculty member the night I was named President. He is a deaf man who has deaf parents. With tears in his eyes, he said to me: "There's no way you can ever understand what this means to me personally." And he began to tell about one of his earliest memories of his father, about the pain and frustration his father experienced in the workplace. His father was responsible for hiring people and for training those people. But year after year, time after time, his father would watch with dismay and disbelief as those very people were promoted past him. And always, the company line for holding this young man's father back was that he was deaf -- he couldn't use the telephone, he wouldn't be able to communicate with the people in the company.

In my travels, disabled people have often told me they were denied jobs or promotions because of similar discrimination. Sometimes employers refused to consider them out of fear or ignorance. Many times, little attention is given to how a reasonable, relatively minor and inexpensive accommodation could enable them to do the essential functions of the job.

Discrimination occurs in every facet of our lives. There is not a disabled American alive today who has not experienced some form of discrimination. Of course, this has very serious consequences. It destroys healthy self-concepts and slowly erodes the human spirit. Discrimination does not belong in the lives of disabled people.

A civil rights bill for disabled people would give us the tools to combat this discrimination. It would afford us the protection minorities have had for over 25 years. Most important, a bill such as the ADA must become law to demonstrate that disabled people, like the five-year-old deaf boy I met at the Rhode Island School for the Deaf, can have the same aspirations and dreams as other American citizens. Disabled people know that their dreams can be fulfilled.

I would like to take a minute to focus on a section of the ADA which is of extreme significance to the deaf community--that

portion of the bill requiring telephone relay service for calls made within and between states. A relay system enables deaf callers who use telecommunication devices for the deaf (TDDs) to make calls to and receive calls from individuals using voice telephones.

Over one hundred years ago, Alexander Graham Bell invented the telephone in the hope of closing the communication gap between deaf and hearing people. Not only did the telephone not help, in many ways it widened the gap and has become an additional barrier. I have often received complaints about the frustrations and inconveniences of not being able to use the telephone and, being a deaf person myself, I know well those frustrations. The simplest task often becomes a major burden when we do not have access to the telephone. Take, for example, the person who needs to call the doctor; or the worker who must inform his employer that he or she cannot come to work; or the homeowner who needs to contact a plumber to fix a leak; or the theatergoer who wishes to order tickets and make dinner reservations. These are very simple tasks. They **are** simple, if you can hear. What should be a five-minute task often becomes a long trip through the city for those of us who do not have access to the telephone.

I know how important the telephone is. It is so important in my work that I have installed a TDD in my car. I may have the only

car in the world equipped with a TDD! Yet, I cannot imagine a day without having ready access to my car telephone. With my schedule the way it is, I would be lost without this phone. The phone is a necessity. It is a necessity for all of us, deaf or hearing. Without a relay service, we can call only those other people who own TDDs, a limitation unacceptable to me personally and to deaf people in general.

Last year I testified on the Telecommunications Accessibility Enhancement Act of 1988. That Act set up a relay system within the federal government -- a wonderful first step toward our goal of full telephone access. However, it is just that--only a first step. The ADA will complete the task at hand. By requiring nationwide relay systems, it will help deaf people achieve the level of independence in employment and public accommodations sought by other parts of the ADA.

I believe strongly that the Gallaudet protest brought the entire disabled community together. Today, we are witnessing a cohesiveness that has never before been so strong. Our success at Gallaudet has given all of us a resolve to see this struggle for equal rights through to success. We are confident we will win and we will win together. Forty-three million disabled Americans will not let this opportunity slip by.

Passage of a bill such as the Americans with Disabilities Act will tell disabled Americans that they are indeed equal to other Americans and that discrimination toward disabled persons will no longer be tolerated in our country. It will also make a powerful statement to the world that America is true to its ideals. That is the full measure of the American dream.

Thank you, Mr. Chairman.

INVITED TESTIMONY ON THE "AMERICANS WITH DISABILITIES ACT"

FRANK G. BOWE, Ph.D., LL.D.

HOFSTRA UNIVERSITY
111 MASON HALL
HEMPSTEAD, NY 11550

Good morning. It is a pleasure to be here to testify about the "Americans with Disabilities Act of 1989".

The Chairman has stated that this bill is "the most critical legislation affecting individuals with disabilities ever considered by the Congress", and he is correct.

It is important because it explicitly establishes rights implied in our Constitution and Bill of Rights but never implemented or protected in our 200-plus years as a nation. Enacted and enforced, the Americans with Disabilities Act would help us to fulfill our mission as a nation: to treat all men and women equally under law.

It is important because -- with the rights and services

established under this bill -- we may at last move to help millions of people with disabilities to live a life worth living -- a life of independence, gainful employment, and full integration into society.

It is important because it does all this in a fair and equitable way. The bill provides protection to a long-neglected population but does so without infringing on the rights of others in America. It establishes no goals, no timetables, no quotas: it will not diminish in any way the rights and opportunities available to other minority groups in our nation.

And it is important because it is one of the key tools we need to reduce federal and state spending. Today, the Federal Government alone spends in excess of $60-billion, or one-third of the budget deficit total, maintaining some six million Americans with disabilities. This bill, together with the Education of the Handicapped Act being reauthorized this year, the Rehabilitation Act reauthorized three years ago, the Fair Housing Act Amendments enacted last year, the access to air transportation legislation recently enacted, and other federal laws, helps to complete a tapestry I have long wanted to create: the foundation upon which people with disabilities may prepare for, compete fairly for, get, perform, and live off productive and gainful employment as fully contributing members of society.

The importance of this bill is hard to over-state. It extends nondiscrimination rights in employment for people with disabilities to several millions of employers where we currently enjoy no federally guaranteed rights. It requires access to, and equal services in, millions of places of public accommodation, where once again we have no federally guaranteed rights at present. And it corrects one of the great injustices of this century -- the denial to people who are deaf of equal access to the telecommunications network of which this nation is so proud.

In Title I, the Congress wisely has chosen a definition for the term "disability" that is clear and well-understood. You have adopted the definition of the section 504 term "handicap". We have more than a decade of case history behind that definition. Title I also explains that the intent is for "equal" treatment -- not preferential treatment, not substandard treatment. And Title I lays out the "effect" standard that will be followed: actions which have the effect of discriminating on the basis of handicap are outlawed.

These are crucial provisions. It matters little to me, or to any other person with a disability, exactly why some person or entity denies me, him or her equality of opportunity. It is the effect that is so destructive. I have been told, for example, that "We don't hire deaf people." To learn that, and to have no answer to it, after two decades of preparing myself for gainful employment, is just devastating. Why did I try? Why should others younger

than I even bother, if that is what will happen at the end?

Title II does something this nation long ago should have done. If we believe, as I think we do, that vulnerable individuals and groups should have protection, we should offer to them a single, fair standard of protection. To do otherwise is actually to legalize discrimination of one kind while outlawing another. Since the Civil Rights Act of 1964, some protected groups have enjoyed a much higher, much better-enforced, much more meaningful level of protection than have others. As of today, only some 10% of employers in this nation must, by federal law, afford people with disabilities nondiscriminatory treatment in employment. This bill corrects that inequity.

In Title II, we find well-known, widely understood standards in employment. Such terms as "reasonable accommodation", "undue hardship", and "nondiscrimination" are well-established, with thousands of case histories behind them. In Title II, also, we find a clearly set-forth private right of action. Such a right does not exist under most interpretations of section 503 of the Rehabilitation Act of 1973, as amended; section 503 is, of course, the only federal statute governing employment of people with disabilities in private business. Again, the Congress has acted wisely by selecting remedies and procedures that are familiar to all of us -- those of Title VII of the Civil Rights Act of 1964.

In Title III, we find extremely important provisions governing access to ground transportation. Ten years ago, when I headed the American Coalition of Citizens with Disabilities (ACCD), I gave over a great deal of my time and attention to the issue of access to transportation, ultimately failing in my mission. We have not made public transit in this country accessible. Without the Americans with Disabilities Act, it will not become accessible, certainly not in my lifetime. Title III also does something that makes a lot of sense. It explicitly calls upon state government to follow the same rules as do federal agencies. Again, the Congress is moving wisely to make things more fair, more understandable, and, yes, more simple: that is what a uniform standard does. With a single set of rules to follow, government on all levels can understand, apply, and enforce them.

Title IV is crucial to a meaningful quality of life. As someone who travels frequently, I resent having to put my life at risk every time I stay in a hotel or motel. I am literally trapped in the event of a fire or other emergency, because no one has any way of alerting me to the danger short of coming into the room itself. I resent watching other hotel guests receive courtesy rides from airports when I must pay for a cab, simply because the only way to get the courtesy van to come is to make a voice telephone call.

In Title V, we find language correcting a century-old injustice.

Alexander Graham Bell had a deaf mother and a deaf wife; he was trying to help them when he invented the telephone. Ironically, no other invention ever has done more to hurt deaf people. Relays are important. I have had to drive thousands of miles more every year than my neighbors, because it is only by visiting a store that I can find out what products it carries, at what prices; they just call around town, pick what they want, and make one short trip. I remember one time when my wife and children were hours late getting home from a car trip. My neighbors in that situation would have called the local and state police, area hospitals, looking for any report of an accident. I had to drive 30 miles to the nearest state police building. It turned out they had been delayed by a traffic snarl.

It is important to me that the Congress understand that what we have now in California, New York and a few other States -- a TDD-to-voice and voice-to-TDD relay -- is <u>not</u> something that provides equal access to telecommunications for deaf people as compared to the level of service enjoyed by hearing people. The relays required under section 502 (a) and (b) of the bill would, as all relays do, limit me to short conversations, impose upon me an invasion of privacy by having someone else listen in on both ends of my conversations, and limit my ability to make connections on the first try far more than is true for hearing people. Such relays are certainly better than nothing. But the language in section 502 (c) offers opportunities that should not be neglected or ignored. We have now, and are researching more,

exciting systems which would offer to me and others like me direct, unlimited, and truly private telecommunication services. I should add here that these potentially not only are higher-level services but they also may well be much less expensive than are relays. The bill should encourage, in all possible ways, the application by the scientific and technical communities and by telecommunications companies of innovative techniques and technologies; it should not allow a technology that has been around since the mid-1970s to become the de facto standard when others in America are benefiting from devices and services taking full advantage of state-of-the-art knowledge in the 1990s and beyond.

The provisions in Title VI complete what is a powerful and well-rounded piece of legislation. Rights, Stuart Scheingold once wrote, "are declared as absolutes but ripple out into the world in an exceedingly contingent fashion". To become real, they must be enforceable. To become understandable, they must be interpreted in regulations. To be enforced, counsel must be accessible and affordable.

Mr. Chairman, it has been a distinct pleasure and privilege for me to offer this testimony. I will be delighted to respond to any questions you may have.

Thank you.

NFIB

National Federation of
Independent Business

STATEMENT OF

Sally L. Douglas
Assistant Director of
Federal Governmental Relations
for Research and Policy

NATIONAL FEDERATION OF INDEPENDENT BUSINESS

Before: Senate Subcommittee on the Handicapped

Subject: Americans with Disabilities Act of 1989

Date: May 10, 1989

On behalf of the 570,000-plus small and independent business owner members of the National Federation of Independent Business (NFIB), I welcome the opportunity afforded NFIB by the Chairman and members of the Subcommittee to express our views on the proposed "Americans with Disabilities Act of 1989" (ADA).

For those of you who aren't familiar with NFIB, we are a member-driven organization, comprised of more than a half million owners of small, independently-owned businesses across the nation. Our membership profile closely parallels the national business population: roughly 50% of our members own retail or service enterprises; another 25% are in manufacturing and construction; the remaining 25% operate agricultural,

Suite 700
600 Maryland Ave. S.W.
Washington, DC 20024
(202) 554-9000
FAX (202) 554-0496

The Guardian of
Small Business

transportation, mining, wholesale, and financial, insurance, or real estate enterprises. NFIB's average member has 13 employees and grosses about $350,000 in annual sales.

The proposed ADA represents both a significant expansion of existing civil rights protections for persons with disabilities, and an equally significant expansion of federal regulatory authority over private enterprises. To date civil rights statues have targeted specific entities to shoulder the responsibilities of ensuring equal protections and opportunities to minorities, women, persons with disabilities, and other groups which, for one reason or another, have suffered from discrimination. The ADA's scope, however, is far broader and will impose requirements and enforcement procedures uniformly across the broad spectrum of the business community, affecting thousands, if not millions, of businesses which have not heretofore been affected directly by the Civil Rights Act of 1964, the Fair Housing Act, or the Rehabilitation Act of 1973.

Such sweeping legislation merits -- if not demands -- deliberative analysis and consideration by the Congress and all affected parties. Since our membership ranges across the entire spectrum of American business, the proposed ADA would have a profound impact on the

day-to-day operations of these firms. The stakes are high. The right of every American to have the opportunities to realize his or her full potential cannot and should not be denied. Nor should we deny any American the right to conduct his or her life in a reasonable manner, without undue interference from the government. Achieving the proper balance between the rights and needs of persons with disabilities and the rights and needs of American businesses is the challenge we face, and I believe we can succeed if we can work together in the spirit of cooperation.

There is an old Chinese curse which says, "May you live in interesting times." The times we live in are, at the very least, interesting. We are in the midst of the greatest peacetime expansion in our economic history. Vast numbers of new entrants into the labor force have been accommodated, new businesses have been created in record numbers, and in their wake have come new opportunities, new jobs. The small business sector has been termed "the American miracle" by observers in other countries. Many, if not all, Americans have benefitted in some way from this dynamic process.

Yet there are substantial problems facing us today, and more are coming in the near future. There are still disadvantaged groups within our society who have not

shared equally in the economic boom. Businesses will be facing an acute labor shortage in the next few years. Noone can predict with any certainty how long our economic expansion will continue, nor can anyone predict with accuracy when our federal budget crisis will be stabilized. Challenges all, and no easy solutions for any of the component parts.

One of the challenges we face is integrating persons with disabilities into the mainstream of American life. Certainly discrimination exists, but in fairness not everyone -- not even all business owners -- willfully and intentionally discriminate against the disabled. This fact needs to be recognized and understood, for it is key to our accomplishing the worthwhile goal of providing the opportunities for persons with disabilities to be judged by their abilities and not their disabilities.

NFIB has been requested to focus our comments about the ADA on Title IV, "Public Accommodations and Services Operated by Private Entities." If I understand correctly the intent of the authors of this legislation, the objective of the ADA is to afford persons with disabilities the same protections currently contained in other federal civil rights laws prohibiting discrimination on the basis of race, sex, national origin, and religion. This is an objective with which hardly anyone could

disagree. Yet as written, Title IV appears to go well beyond these protections, introducing new, more expansive concepts for the treatment of persons with disabilities.

First, the scope of coverage is significantly greater than current law. The Civil Rights Act of 1964 covered in essence establishments which lodged transient guests, public eating places, and public entertainment facilities. Subsequent court cases have refined the accommodation list to include businesses which obviously cater to tourism.

Other businesses which have been covered by other civil right statutes are establishments that receive federal assistance in one form or another, and firms that contract with the federal government. Title IV of the ADA, however, covers virtually every business in America. By definition in Section 401(2)(A), businesses that are brought within the scope of the bill are:

> ...privately operated establishments --
>
> (i)(I)that are used by the general public as customers, clients, or visitors; or
>
> (II)that are potential places of employment; and
>
> (ii)whose operations affect commerce.

The bill then explicitly lists the types of businesses included within this definition. I would be hard put to find a kind of business that is not covered by this list.

Further, the coverage under Title IV extends to "potential places of employment", so Title II and Title IV would appear to be inextricably linked. Clarification is therefore needed as to the exemption expressly delineated in Title II for businesses with fewer than 15 employees (itself an extension from the original 25-employee threshold contained in the Civil Rights Act of 1964). No explicit exemption is included in Title IV. Does this mean that the exemption only applies to the hiring practices of smaller firms (Title II), or does it also apply to "potential places of employment" with fewer than 15 employees (Title IV)? Is there an exemption from coverage in effect under Title IV if the person with a disability enters an establishment with the purpose of gaining employment, and does not apply if he/she enters the same business as a client, customer, or visitor? If the exemption for smaller businesses is meant to apply to both titles, or indeed to the entire bill, might it not better be placed either in the definitional section of the preamble or in Title VI - "Miscellaneous Provisions"?

There is a distinct philosophical difference between the ADA and Title VI of the Civil Rights Act, and the

practical implications could well be overwhelming for many small firms. Title VI requires acceptance as its standard of accommodation. The ADA requires much more, requiring specific restructuring of "architectural and communication barriers, removal of transportation barriers, provision for "auxiliary aids and services," and the like.

All of these requirements would incur financial costs of varying amounts, some of which could be substantial for a smaller business. In addition, these firms would be expected to provide different "accommodations" to overcome different disabilities. The language in Title IV demands, in effect, that business owners be prepared for any and all contingencies, since the bill affords protection to all "customers, clients, or visitors" who are persons with a wide range of disabilities.

Further complicating the situation, since by definition Title IV covers all "potential places of employment," all these businesses seem to be required to go to great lengths to "accommodate" persons with disabilities -- even when there is no disabled worker requiring such accommodation.

What is being asked of small businesses is that they perform structural modifications, buy special equipment, provide qualified interpreters, readers, taped texts,

other "effective methods", or "alternative methods" aid persons with disabilities -- whether or not any such persons ever make contact with these businesses. Business owners will be perceived as discriminating against persons with disabilities not only if they willfully exclude such individuals, but if they "fail" to make the modifications or provide the services required in accordance with Title IV, unless they can demonstrate that modifications would "fundamentally alter the nature of such privileges, advantages, and accommodations", or they can show that providing auxiliary aids and services would result in "undue burden", or that removal of architectural and communication barriers is not readily achievable. On the last point, however, they must also be prepared to adopt "alternative methods" to achieve accommodation.

What these alternative methods would be would, I presume, have to be decided on a case-by-case basis, but might include items such as a business initiating home delivery of goods and services if the business simply cannot retrofit the facility to overcome barriers. What does the business owner do, for example, as a "potential employer" if the place of business cannot readily be modified? Does he allow the disabled worker to work at home? And doesn't this contravene the requirement in Title I that an individual with a disability must be afforded "an equal opportunity to obtain the same result, to gain the same

benefit, or to reach the same level of achievement, "in the most integrated setting appropriate to the individuals' needs" (emphasis added)?

The business owner is subject under the dictates of this bill to the same onerous requirements and enforcement procedures whether discrimination is intentional or unintentional. And since Title IV defines a business as a "potential place of employment", presumably the owner is also subject to the prohibition in Title II against "potential discrimination", that is, the claim of a person with a disability that he/she is "about to be" discriminated against.

All of this is daunting enough to the small business owner, but the enforcement procedures contained in this bill raise even more serious concerns. Different remedies are contained in each title of the bill, and access to multiple remedies is assured. I have already stated that no distinction is made between acts of intentional and unintentional discrimination, and there is nothing in the bill to suggest that first instance violations would be treated any differently than pattern and practice violations.

In Title IV, remedies include private cause of action, possible intervention by the Department of Justice, actual

and punitive damages, recovery of attorney fees, and civil penalties. These are significant penalties, particularly for the business owner who neither willfully, intentionally, or with malice discriminates against someone with a disability.

The tone of the bill is substantially different from Title VII of the Civil Rights Act, even though we are told that ADA is intended to afford the same protections as Title VII. Where Title VII encourages conciliation and cooperation, the ADA encourages adversarial relations. No attempt is made to highlight administrative remedies as the first step in reviewing discrimination. Direct resort to civil litigation is the preferred approach in the ADA. Such procedures are a deterrent to conciliation and as such, will prove counterproductive to the purposes of the proposed legislation. Inducements for civil litigation will further clog our courts and result in substantial new grey areas of liability for small business owners who, over the past few years, have already been hit with overwhelming liability insurance rate increases, and in some instances loss of coverage.

There are other, significant problems with this bill: inconsistent standards; direct contravention of the employers' ability to define qualifications for and essential components of jobs in his/her workplace; lack of

any clear language to determine who carries the burden of proof in which instance; inconsistencies between Acts, such as the inclusion of drug abusers as disabled individuals under the ADA versus the strict requirements imposed on employers by the drug-free workplace statute; requiring that equal, not comparable, means and outcomes be used in achieving accommodation for the individual with a disability; and the like.

One final general comment remains to be made. The ADA is intended to be implemented in addition to, rather than instead of, existing civil rights statutes pertaining to persons with disabilities. What is being created is a regulatory maze through which small business owners are expected to navigate, with no false steps or detours allowed. In addition to the federal requirements, businesses will also have to comply with pertinent state and local laws. Opportunities for duplication and/or conflicting requirements are rife within this context.

I urge the Subcommittee to deliberate carefully over this legislation. The ADA, if enacted, will be a landmark statute, affecting the day-to-day lives of millions of people. It is critical that a reasonable balance be achieved between the rights of persons with disabilities and the small business community. Let us not, in attempting to provide equal rights to the disabled, create

new and different types of disabilities within the job-generating sector of our economy.

I referred earlier to the impending labor shortage, most notably delineated in the Hudson Institute's Workforce 2000 and Opportunity 2000. The shortage promises to have a devastating impact on small firms, by nature labor intensive and traditionally the group that hires new entrants into the labor force.

Even in boom labor markets, small businesses face heavy competition with their larger counterparts. All too often the small business owner hires the new entrant and provides him/her with the on-the-job training he/she needs to build a career. Many skilled workers are enticed away by larger firms offering fast-track career advancement, larger salaries, bigger and better benefits. Yet small business continues to generate new jobs for new workers.

As we approach the end of this century, the pool of available workers will shrink in absolute terms, and the composition of the workforce will change drastically. Competition for workers will be fiercer than ever before. The challenge to small business will be to find ways to integrate individuals outside the economic mainstream into their workplaces, and to do so in an efficient and economic manner so they can continue to compete with

larger firms with greater resources. Businesses are, after all, economic institutions by their nature. Small firms who have hired persons with disabilities have found in most cases that the extra effort makes good economic sense. I have no doubt that, faced with the demands of the marketplace, many other small firms will soon learn the same lesson.

0361T

TESTIMONY ON THE AMERICANS WITH DISABILITIES ACT OF 1989

BEFORE

THE SENATE SUBCOMMITTEE ON THE HANDICAPPED

May 10, 1989

Neil F. Hartigan
Attorney General
State of Illinois

Thank you, Senator Harkin, Senator Kennedy and my Illinois colleague Senator Simon for giving me the opportunity to testify in support of the Americans with Disabilities Act of 1989. As Illinois Attorney General, I have observed firsthand the daily instances of discrimination that occur against persons with disabilities: being unable to hop a bus to work because they use a wheelchair; being forced to enter a building through the loading dock because there are steps to the main entrance; being unable to attend a town council meeting because it is held on the 2nd floor of a non-elevator building. You have just heard firsthand reports of similar, inexcusable instances of discrimination against persons with disabilities. Such experiences should not be a part of anyone's life in this land of opportunity. These examples of discrimination on the basis of disability are some of the concerns that the Act before you today is designed to address.

In 1983, shortly after I became Attorney General, I established a Disabled Persons Advocacy Division in my office -- the first and only full-fledged division in any Attorney General's office in the country where staff are devoted full-time to disability rights issues at the state level. The accomplishments of that division, working together with an Advisory Council I appointed comprised of over 70 leaders in the disabled community, have been many. Highlights include:

* Drafting and passage of the Illinois Environmental Barriers Act, a law requiring structural access in new

construction and remodeling of all publicly and privately owned facilities held open to the public and to certain multistory housing units. Since the fall of 1985, we have successfully resolved over 3000 access complaints.

* Legislation creating a Comprehensive Health Insurance Plan for Illinois offering adequate and affordable health insurance coverage to persons with such disabilities as cancer, arthritis, diabetes, sickle cell anemia and heart disease. We take particular pride in the implementation of this Plan, which we successfully fought for through five long years of complications and setbacks.

* Legislation in other areas such as strengthening the states's parking provisions for persons with disabilities, provision of TDD's (telephones for the deaf) in transportation facilities, improvements in special education making it more responsive to the needs of children with disabilities and improved access to polling places.

We have also been involved in litigation to insure that mainline buses are lift-equipped in the Chicago service area so people with disabilities can get to work, to social events and to school. In the next several months, 700 lift-equipped buses will be on the Chicago streets, providing mainline access for people with disabilities for the first time in the city.

We also do extensive public education about the Illinois Human Rights Act, the broad state civil rights law that includes protection from discrimination for persons with disabilities in such key areas as housing, employment, financial credit and access to public accommodations and services.

In my on-going daily activities in the disability rights area over the past six years one theme emerges as a constant: in order to surmount the attitudinal and architectural barriers that people with disabilities face every day a federal commitment is needed. The time is long past due to make equal opportunity a reality for all people. We fail to confront the true scope of the problem if we consider only the most dramatic examples of discrimination. It is the ordinary daily routines that most of us take for granted -- going to work, to school or to a movie -- that illustrate how many barriers our society truly imposes on people with disabilities. In Illinois, we have made significant progress in removing these obstacles. But much remains to be done. People with disabilities should not have to win their rights on a state-by-state basis. Equal opportunity is not just an Illinois principle; its an American principle. A coherent national policy in this area is long overdue.

The Act before you this morning is structured to accomplish that goal: it will put persons with disabilities on equal footing with other Americans. Title III of the Act requires public

services -- at all levels including state and local -- to be provided in a non-discriminatory matter. Those of us in public service should be especially aware of the fact that our constituency, the public, obviously includes people with disabilities. But as Attorney General I have had innumerable complaints regarding lack of access to public services -- people unable to meet with their elected representatives because their district office buildings were not accessible or unable to attend public meetings because they are held in an inaccessible building. Children are unable to participate in park district programs because they are visually impaired and function with a guide dog -- and the park has a "no dogs" rule.

Each of these examples violates our state law in Illinois, giving us a tool to address the discrimination. But people with disabilities should not have to fight these battles in every state. This is a crucial area where the federal government can act to establish uniform minimum requirements for accessibility. Under current federal law, the Rehabilitation Act (commonly referred to as "Section 504") non-discrimination requirements are tied to the receipt of federal financial assistance. Unfortunately, what this translates to is total confusion for the disabled community and the inability to receive consistent treatment. Where there is no state law prohibiting discriminatory practices, two programs that are identical except for funding sources can treat people with disabilities completely differently. One can discriminate; the other cannot. The ADA will

resolve this problem by applying uniformly and by requiring that public services, government services, be available to all.

Title III of the Act also requires access to public transportation provided by public entities. This section is critical: transportation is the linchpin that makes all other aspects of disability rights meaningful. Employment opportunities offer no opportunity at all if you can't get to the job site. Accessible design in theaters, restaurants and other recreational facilities offer no opportunity to relax or play without accessible transportation to get you there.

There will unquestionably be major cost involved in complying with the Act's requirements concerning new buses, new railcars, access to stations and general program access. But there are major costs involved when our society is not accessible for everyone: the continued, forced isolation of literally millions of Americans; the lost productivity and lost tax revenue; the continued fostering of dependence on government subsidies by people who would prefer to pay their own way and work if we can make it possible. By closing the doors of the bus or train on people with disabilities we maintain an insurmountable barrier.

However, it would be a cruel hoax to hold out new hope for persons with disabilities but fail to assure that funds are available to make this hope a reality. This very nearly happened in Illinois, when the law creating the new comprehensive health insurance plan sat on the books for two full years without the necessary funding. Speaking from that experience, I know that

the disabled community is justifiably wary of empty promises. I urge this committee to take the appropriate steps to assure an increased flow of federal dollars to the states for transportation services when the Act becomes law.

Title IV of the Americans With Disabilities Act is in effect the other side of the coin from Title III. It requires that public accommodations and services that are privately owned be accessible to persons with disabilities. This requirement parallels Illinois law and is both a logical and enforceable standard. Protections such as those afforded in the Act provide no more than what the general public takes for granted: the ability to go to work, relax in the park, eat dinner out and go to a movie.

The best way to illustrate the scope of the bill is to consider some examples. Illinois law currently extends to privately owned public accommodations so I can provide some firsthand experience on the benefits of the proposed coverage.

We received a complaint in my office that an airport limousine service that provided transportation between the suburbs and O'Hare was charging a double fee to persons who are visually impaired and accompanied by a guide dog. As if that wasn't enough, our investigation discovered that the discrimination wasn't limited to people with visual impairments: people who use wheelchairs were also charged double because of their "excess baggage." We utilized the public accommodations section of our

state Human Rights Act to put an immediate end to these practices. If the double-fare practice had applied to other minorities, federal law would be applicable nationwide. Such protections should now be afforded to persons with disabilities.

We also receive literally hundreds of complaints regarding structural access to facilities. Two state laws, one of which we wrote, require access to new construction and remodeling and require reasonable accommodation to services in older buildings. All of us would agree that the time is long gone when it was legal -- or morally acceptable -- in our society for public facilities such as restaurants, theaters, pools and office buildings to hang signs saying "whites only". But a restaurant or theater with steps to its entrance and no ramp or an office building with bathrooms upstairs and no elevator may as well hang a sign that reads "able-bodied only" because that is the practical effect of structural inaccessibility.

Experience in Illinois has shown that the cost of providing access in new construction is minimal -- just 1/2% to 2% more. We cannot continue to accept the discrimination that results from structural inaccessibility. The bill before you addresses this concern. The Act requires accessible design in new construction and remodeling and program or service access where construction is not triggered. This has worked in Illinois; I believe it can and must work for the country.

In 1985 I installed TDD's -- telecommunications devices for the deaf -- in all 13 offices of the Attorney General statewide.

Interestingly, we have received a lot of deliberate "wrong numbers" -- individuals who are deaf or hearing impaired calling our office for assistance because the arm of government they need to reach is not accessible to them.

In part to address this problem, Illinois has recently enacted a two part program that my office has been integrally involved in implementing, to provide greater communication access for persons with hearing impairments. Through a per line surcharge paid by all telephone customers in the state, free TDD's are distributed to qualified consumers who are severely hearing impaired, deaf or deaf and blind. Phase II of this program requires the provision of 24 hour voice relay service. Such a service enables a TDD user to communicate with a voice user through a relay operator. Consider these situations where telephone access is so essential:

* A person who is deaf awakens to discover his house is on fire. He cannot call for help. He must run to a hearing person's home to call for emergency assistance and even then may not be able to communicate the nature of the emergency.

* A woman who is deaf is watching closed caption T.V. Her husband collapses from chest pain. She cannot herself call the paramedics and precious minutes are lost seeking assistance.

Even the relatively mundane tasks of life -- making a doctor's appointment or a dinner reservation are impossible. Without communication access, "phone first" is a cruel joke.

Title V of the ADA requires that relay service be provided by common carriers or by an entity designated by the state, as we have done in Illinois. This will open telephone communication lines to the hearing impaired community for the first time -- a long overdue step.

In Illinois, I have made disability rights issues a priority. You have an opportunity to make the lives of millions of Americans fuller and more productive. I urge your support for this Act and I pledge to lend my support in any way I can.

Thank you.

Statement

of

Gerald A. Hines

Director of Special Long Distance Services

AT&T

before the

Subcommittee on the Handicapped

Committee on Labor and Human Resources

U.S. Senate

May 10, 1989

My name is Gerald A. Hines. I am Director of Special Long Distance Services at AT&T, in whose behalf I am here today.

AT&T has a long history of providing services to persons with disabilities. It was, as you may recall, during the course of his studious efforts to help people with hearing disabilities that Alexander Graham Bell came to invent the telephone back in 1876. Over the years since then, both AT&T Bell Laboratories and Western Electric, which is now known as AT&T Technologies, have researched and developed new technologies and designed many innovative products to better serve disabled persons.

AT&T commends the Subcommittee Chairman for introducing the "Americans with Disabilities Act of 1989" and for conducting these hearings. These are important initiatives which you have begun on behalf of people with disabilities. My own expertise in this matter is in the area of telecommunications relay services, which is dealt with in Title V of this bill, and I will therefore confine my testimony to that title.

Telecommunications relay services, or Dual Party Relay (DPR) services, as we call them, provide an important and even indispensable link that enables a hearing-impaired or speech-impaired person to communicate over the telephone system with any non-handicapped person, through an attendant at a DPR center. DPR is thus very valuable for all of us, but, for the two to three million people with severe hearing or speech difficulties, it is far more vital.

AT&T has had many years of experience with DPR and now operates three DPR centers which, respectively, serve customers in California, New York and Alabama. These and a number of other states deserve credit for the major steps they have taken in this area. Nonetheless, we do not think that state action alone is enough. AT&T supports initiatives looking toward the establishment of universal DPR and believes that appropriate government authorities at both the federal and state levels must work together and with the telecommunications industry toward that objective.

DPR requires both advanced technologies and important interpersonal skills, but the concept itself is really quite simple. A person with a hearing or speech difficulty that prevents his or her using a regular telephone uses, instead, a telecommunications device for the deaf, or TDD. This teletype-like machine enables the person to transmit and receive written messages over the phone. In a state where a Dual Party Relay system is in operation, California, for example, someone using a TDD contacts the DPR center. An attendant there receives the message and then communicates it by way of an ordinary telephone call to the party the hearing-impaired person wants to reach. The messages go back and forth in this manner until the communication is completed. A call can be made in reverse order, as well, from someone placing an ordinary telephone call to a person with a disability. DPR is not needed when two persons with disabilities are communicating with TDDs; in such cases, they send their messages back and forth directly to each other.

A DPR attendant must have highly specialized training and skills. He or she must be able to understand and translate typed American Sign Language syntax into spoken English, and must have excellent typing, spelling and vocabulary skills. Attendants must be sensitive to the cultural and linguistic differences between the deaf and hearing communities and, because they transmit messages that are personal and confidential, often with respect to business, they must adhere to the highest professional standards of ethics and confidentiality. Attendants must relay whatever messages they receive accurately, without passing judgment with respect to their content, conveying communications and not in any way editing or censoring the messages.

The California Relay Service, operated by AT&T, began taking calls on January 1, 1987. Initial expectations were that the center would handle about 50,000 calls each month. Instead, the center received 87,000 calls in its first month and now regularly processes more than 250,000 calls each month. The center has 120 attendant positions and employs more than 200 communications assistants. It will handle more than 2.75 million calls this year.

So far in 1989, AT&T has been engaged by two additional states, Alabama and New York, to provide DPR service. In its first month, the New York center handled more than 45,000 calls. It now receives more than 65,000 calls monthly and volume is expected to reach 100,000 calls monthly before long. It has 100 attendant positions and employs about 100 communications assistants.

The Alabama DPR center opened February 27, 1989. Currently, some 7,000 to 8,000 calls are coming in each month and it is anticipated that the center will process more than 250,000 calls in its first year. It has 30 attendant positions. At least one other state has expressed interest in using the Birmingham center for its own DPR users.

We envision a scenario in which each state would establish a DPR center, perhaps along the lines of those in California, New York and Alabama. Each state would take bids from potential suppliers to operate the center. Some states might not have a sufficient number of calls to justify their own centers; in those cases a regional center serving several states might be more efficient. The center would apportion costs and all of the states involved would benefit from the economies.

The start-up of DPR centers in various states reflects a growing sensitivity at the state level to the needs of speech-impaired and hearing-impaired people and a growing awareness of the technology available to serve them. While I have focused on the three centers which AT&T operates, all of which were begun rather recently, DPR is not new. For some 20 years, public-spirited groups have been active in this area. Today, some 200 private organizations--churches, Catholic Charities, United Way organizations and specialized groups like the Telecommunications Exchange for the Deaf, Inc. (TEDI)--provide DPR services, which are funded by contributions and staffed by volunteers.

The contributions of these groups cannot be overstated. They have made a very significant difference in the lives of many disabled people and have pioneered the introduction of a service that will affect the lives of millions more. But the needs of speech-impaired and hearing-impaired persons greatly outstrip the resources of our nation's charitable organizations and volunteers. DPR centers need to be open 24 hours a day, seven days a week, with a sufficient number of positions, and sufficient equipment and personnel to assure that all calls receive prompt attention. People with these special needs deserve services which will bring them as close to parity with the rest of society as possible. This is a need which government at both the state and federal levels must address.

As the description of the DPR operation suggests, it is not an inexpensive service. It requires a skilled staff and up-to-date technology, and must operate around the clock, every day of the year. If it is agreed, at the state or national level, to establish DPR centers as an important and socially desirable public service, then government must recognize that funding for such centers should come from the general treasury. It would not be fair to expect any particular industry or group of customers to bear these costs alone.

In view of the need for taking advantage of all available economies of scale, one approach to a national DPR system is to build upon the state systems already in place or under way, and develop an integral system that will process local and long distance calls, intrastate and interstate. The legislation proposed by the Subcommittee Chairman correctly calls upon the

FCC to establish minimum standards and guidelines. It would assure that any DPR center that is established would provide the highest quality service that technology allows.

As noted earlier, many states have already begun to face up to their responsibilities in this area. In addition to California, New York and Alabama, four states now provide for the funding of statewide DPR centers, which are staffed by private agencies.[1] Altogether, some 15 states have adopted legislation calling for the establishment of such centers.[2] Legislation is pending in eight others.[3] Whatever Congress and the federal government can do to help expedite a national DPR system would be most welcome.

By far, the majority of states accept the responsibility for providing DPR centers for their residents. In some cases, legislatures have authorized direct public funding of the DPR service.[4] In other cases, the states have assigned the DPR operation to a public agency.[5] In all cases, the states have prescribed a funding mechanism, typically a monthly surcharge on non-

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[1]Arizona, Minnesota, Oklahoma and Utah.

[2]Alabama, Arizona, California, Connecticut, Hawaii, Illinois, Louisiana, Maryland, Minnesota, North Carolina, Oklahoma, Oregon, South Dakota, Utah and Washington.

[3]Colorado, Georgia, Massachusetts, Montana, Nebraska, Tennessee, Texas and Virginia.

[4]Connecticut and possibly New Mexico.

[5]The Department of Public Service in the State of Maryland, for example, and the Department of Social Services in South Dakota. In California, Georgia, Illinois and North Carolina, the legislatures have delegated the service responsibility to public agencies which do not appear to be conventional agencies of the respective state governments.

competitive local-exchange lines, as a surrogate for general tax revenues.[6]

The funding for DPR in Alabama, for example, comes from two sources. First, customers pay a charge based on the tariffed rates for a point-to-point call between the disabled and non-disabled persons. The telephone companies, however, do not keep this charge. Instead, they remit it to the committee which administers the Alabama DPR. Also, each telephone subscriber in the State of Alabama pays 20 cents per month to support the relay center.

In conclusion, let me emphasize once again that AT&T strongly supports the goal of nationwide Dual Party Relay, and will continue to work with the federal government, state governments, other companies in the telecommunications industry, private groups and associations--particularly those representing people with hearing or speech disabilities--and individuals at all levels, to accomplish this objective.

AT&T is pleased to have the opportunity to present its views on this important matter.

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[6]Surcharges per local-exchange line per month are imposed in Alabama ($0.20); Arizona ($0.03); Illinois ($0.03); Louisiana ($0.05); Minnesota ($0.10); Oklahoma ($0.05); Oregon ($0.10); South Dakota ($0.10); Utah ($0.10); and Washington ($0.10). Surcharges have been proposed in five states: Colorado ($0.10); Georgia (unspecified); Michigan ($0.10); Montana ($0.10); and Nebraska ($0.10). In many cases, the surcharge covers the cost of distributing TDD equipment as well as the cost of the DPR center. California's charges are indicated earlier in this testimony.

PARALYZED VETERANS
OF AMERICA
Chartered by the Congress
of the United States

STATEMENT OF

PERRY TILLMAN, III

NATIONAL VICE PRESIDENT

PARALYZED VETERANS OF AMERICA

BEFORE THE

SUBCOMMITTEE ON THE HANDICAPPED

OF THE

UNITED STATES SENATE

COMMITTEE ON LABOR AND HUMAN RESOURCES

REGARDING THE

"AMERICANS WITH DISABILITIES ACT OF 1989"

MAY 10, 1989

801 Eighteenth Street, N.W., Washington, D.C. 20006 (202) USA-1300 Fax: (202) 785-4452

Chairman Harkin, and members of the Subcommittee, my name is Perry Tillman, III. I am a National Vice President of the Paralyzed Veterans of America. I speak to you today not only as an officer of PVA, but as a disabled veteran who has experienced the types of discrimination which the "Americans with Disabilities Act" seeks to eliminate. I believe that with the enactment of this legislation you will help me and other disabled veterans enjoy the freedoms that we sacrificed so much for. Perhaps together we can end the second class treatment of all disabled people.

I am a Systems Accountant for the United States Department of Agriculture (USDA), Office of Finance and Management at the National Finance Center located in New Orleans, Louisiana. I have worked for the USDA since my education at Xavier University in New Orleans where I graduated after returning home from Vietnam. I have been the recipient of numerous government and public service awards and I am very active in many civic activities.

In 1976, after years of frustration of not being able to go to places that other citizens could go to because of discrimination on the basis of my handicap and because of the numerous barriers which existed in Louisiana, I was instrumental in the formation of the Bayou Chapter of PVA in New Orleans. My association with PVA dates back to 1966, after I lost the use of my legs from a helicopter crash in Vietnam.

PVA has been a very strong advocate for obtaining full civil rights and opportunities for individuals with physical disabilities for more than 40 years. As our name implies, all of PVA's 14,000 members are veterans and have incurred some form of dysfunction of their spinal cords, caused either by injury or disease. Regardless of the cause, the end result has been that by virtue of their disability and because of society's attitudes toward persons with disabilities, many PVA members like myself still face barriers which limit our full and equal participation in everyday American life.

Because most of our members rely upon wheelchairs and other aids for their personal mobility, PVA has been and probably remains the most active and effective proponent of the need for a more accessible America. We do so because we know first-hand what it is like to be denied access to theaters, restaurants, buses, and places of business and employment simply because a doorway is too narrow or an entrance has steps.

We also know about the many psychological barriers that exist -- the unfounded fears and assumptions that non-disabled people have regarding a person with a disability. We know first hand the real pain and heartache of discrimination, both intentional and by benign neglect. A day does not go by for me and other people with disabilities, that some form of

subtle discrimination occurs that reminds us that we are different and are, therefore, faced with artificial barriers which do not permit our participation in American society as equal members.

Mr. Chairman, I was born and raised in the gracious city of New Orleans, Louisiana. As a child I suffered from an asthma condition. That didn't matter to my grandmother though, because she made me go to school anyway. She was a hard lady but she taught me many things. She taught me to be strong and not to let things get the best of me, no matter how big or how small. And so I kept trying even when my asthma acted up and left me short of breath. I did everything I could with the help of my grandmother's pushing to overcome my restrictions from asthma.

I can remember that as a teenager in high school no matter what the coach told me to do, I did it. I was a first string halfback on the football team my senior year. I also ran the high hurdles. Many times I tried to get that extra yard when I carried the ball. But sometimes I couldn't. You see, I was still suffering with that asthma condition.

After high school graduation, I traveled to California to live with my father and attend a junior college. My mother and grandmother were upset that I wanted to go so far away. But it was something I just had to do. In June of 1965, I

was inducted into the U.S. Army. I went because my country called and it was my duty as an American citizen.

After advanced basic training, I decided I wanted to be a paratrooper. I could see myself proudly coming home with those airborne wings on my army uniform to the housing development where I lived. My grandmother would be proud, I thought.

I will never forget the champagne flight we took from Travis Air Force Base in California to South Vietnam. At the time it all seemed like just another training exercise to me. It was difficult to realize that some of us on that flight would never return to our homes and loved ones. I was lucky, Mr. Chairman, I lived. Like so many other young men in my company I thought it would take us maybe six months to end the war and then we would be back home.

Well, I returned home alright. It wasn't after six months. It was only three months later because, during a combat mission, I was severely injured in a helicopter crash. One of my buddies was killed in the crash and another had both of his legs amputated when the propeller blade sheared off. Four days after the crash I regained consciousness. The first thing I remembered was the agonizing pain as I was being rotated on a striker frame -- a sandwich like device used to turn a paralyzed person lying on their stomach to

their back and vice versa. It was a horrible experience for a young man.

After my injury was stabilized, I was flown back to the states where I was sent to the Veterans Administration Spinal Cord Injury Center in Memphis, Tennessee. After spending eight months in the hospital and after going through long hours of rehabilitation to learn how to use a wheelchair and take care of my personal needs, I was finally ready to go home. I soon found that home was not ready for me and my wheelchair.

The pain and suffering I went through for my country, I would go through again. As a service connected disabled veteran, I knew my country would do everything it could to make my life whole again. The Veteran's Administration did its best to restore my health and rehabilitate me. They tried to prepare me for my new life in a wheelchair and they provided me with medical benefits and benefits that allowed me to go to college.

I went to Vietnam like a lot of other young men to fight for our country's ideals -- freedom and the ability to become whatever we dreamed of becoming. I did my job but the government let me down. You see when I came home I found out that what I fought for applied to everyone but me and other handicapped people. My dreams had to be put on hold while I

continued to fight for these ideals myself from my wheelchair.

In 1966 when I came home from Vietnam, America was not accessible. In many areas of the country it still isn't. I couldn't even use the bathroom in this building today because it is not accessible. I couldn't ride the bus here today because not every bus has a wheelchair lift on it. Although my grandmother taught me to be strong and not to let things get the best of me, I can't wish my way onto a bus and I can't make my wheelchair smaller to fit into inaccessible lavatories.

I didn't return home from Vietnam walking. I never got that chance to show off my airborne wings. Instead, I came home in a wheelchair. The housing development where I lived was not accessible. In order for me to get in or out of my home, I had to be carried up four steps. My mother had a terrible time with this. Imagine a 5'2" woman weighing 110 pounds lifting 220 pounds, which was the combined weight of me and my wheelchair.

My fight for improved accessibility started in 1966 with a six inch curb and those four steps into my home. Those little obstacles made it impossible for me to leave my home unassisted. This was my first encounter with inaccessibility but it would not be my last.

When I came back from Vietnam I could not participate in society as I had been able to before. I couldn't go out to a restaurant without first calling in advance to see if they were accessible. I, along with many others in wheelchairs, have seen the kitchens of many restaurants. The statement is always that "our main entrance isn't accessible but our service entrance is". I'll bet I have heard that statement a million times. I have had to pass up going to many places because I couldn't even get into their service entrance. There have been many other times when people looked at me as if I should stay at home because I was in a wheelchair.

I never thought that this would happen to me when I was flying combat missions in Vietnam. I thought people would welcome me as a veteran, not shut me out. The idea that disabled veterans and others with disabilities are sickly and should stay at home are myths. Fear is the main barrier society has toward disabled people. Society is afraid of anything that is different.

In the early 1970's a group of my disabled friends and myself formed an organization called "PLACE", which stands for Physically Limited Association for a Constructive Environment. We saw the need for a clearinghouse type of organization to speak for persons with disabilities. We had one goal and that was to improve the lives of those disabled individuals living in the state of Louisiana.

PLACE had to fight to get the Louisiana legislature to act on many important issues concerning our members. Our most important victory was getting a handicapped license plate bill passed. With the help of other disability organizations we were victorious.

Another aspect of my involvement toward helping make society more accessible is the fact that I have been a member of the New Orleans Mayor's Committee on Disabled Concerns since 1980. I was a part of the city's street directive, which mandated that when a street is repaired, curb cuts would be put in at the renovated intersections. The 1984 World's Fair provided added impetus to this improved accessibility and in my capacity as President of the Bayou Chapter of PVA and the Mayor's Committee, I was privileged to have played a part in that historic event also.

In addition, I have been an active member of the Regional Transit Authority's (RTA) Elderly and Handicapped Advisory Committee since 1982. The RTA's Committee was created after the Rehabilitation Act Amendments of 1978 and we have continually debated the pros and cons of an accessible fixed route bus system against a separate dial-a-ride system. I personally believe in an accessible fixed route bus system because separate but equal has never been equal.

I visited the Seattle, Washington transit system which has been a model of transit accessibility. I brought back to the RTA all the information of the Seattle success story. The RTA though didn't listen to our wishes and has implemented a dial-a-ride system instead. With this system I have to make my trip plans 24 hours in advance and can't travel with my friends who come in from out of town because you have to be a resident of New Orleans to use our Regional Transit Authority's paratransit service.

The recent court ruling in Philadelphia requiring that wheelchair lifts be put on all new buses is still being debated. I applaud the U.S. Court of Appeals for their ruling in this matter. Those of us in wheelchairs have been denied access to this nation's mass transit system for too long. The Department of Transportation's current "local option policy" leaves too many gaps in our overall public transportation system.

Sometimes the adversities which I, and so many other veterans and other people with disabilities, encounter are a bit much to bear. I thank God that my grandmother pushed me the way she did. I can't tell you the effect she had on me, not only when I was young but even more so when I became injured in Vietnam. She taught me to roll with the punches. And that I have done and continue to do.

But not everyone has a grandmother like mine to help them through the tough times. And not everyone has my mother to help them up the stairs into their home or into a restaurant. Nor should they have to depend on someone to help them over these barriers. Barriers should not be built to keep us out any longer.

I did my job when I was called on by my country. Now it is your job and the job of everyone in Congress to make sure that when I lost the use of my legs I didn't lose my ability to achieve my dreams. Myself and other veterans before me fought for freedom for all Americans. But when I came home and I found out that what I fought for applied to everyone but me and other handicapped people I couldn't stop fighting. I have fought since my injury in Vietnam to regain my rightful place in society. I ask that you now join me in ending this fight and give quick and favorable consideration to the "Americans with Disabilities Act" in order to allow all Americans, disabled or not to take part equally in American life.

Thank you Mr. Chairman, that concludes my testimony. I will be happy to answer any questions that I can.

Testimony for the
Americans with Disabilities Act of 1989 (ADA)
Title V: Telecommunications Relay Services

Presented before the Senate Subcommittee on the Handicapped
May 10, 1989
by
Paul L. Taylor
Associate Professor, National Technical Institute for the Deaf at
Rochester Institute of Technology, Rochester, New York

Honorable Senators, on behalf of 12,000 dues paying members of Telecommunications for the Deaf, Inc., its advocate arm, the National Center for Law and the Deaf, and some 22 million hearing impaired Americans who have varying difficulties using the telephone in the customary manner, I am happy to speak on the wonderful benefits of the new dual-party telephone relay services (DPRS) that have only recently been available to a small percentage of the hearing impaired population in a few states. Such benefits make us all realize that we are not as much hearing-impaired as we are **communication-impaired**. The communication-impaired aspect isolates us from the rest of the world. The DPRS acts as a bridge between us and the world; indeed, a vital one where employment and independence are at stake. We want to improve chances for our career mobility so that our increased payout of state and federal taxes will do us proud and make us givers rather than receivers. Our career mobility depends on our use of the telephone in our jobs. The inability to use the telephone has already cost us untold thousands of passed over promotions and job opportunities. As a result, we remain underemployed in spite of our high school diplomas and college degrees.

Many years ago rural areas of America were afforded equal accessibility to the telephone when the state utility commissions spread the cost of the expansion equally among all telephone subscribers in the state. We ask that our telephone communication

barriers be removed like these geographical barriers. We also ask that costs associated with that removal be spread among all telephone subscribers.

For twenty years, volunteer or low-end clerical staffed organizations have provided some relay services, however, due to funding and staffing problems, the blockage rate (busy line occurence) was intolerably high, often on the order of twenty busy lines to one serviced line. To countermand this unacceptable condition, the New York Public Service Commission in a memorandum last year defined that its newly established DPRS shall have the same service accessibility as the regular network which is one busy line per 100 requests for assistance.

At this present time, six states have DPRS while some twenty states are either on the way or are considering setting up a DPRS. (See attached update). However, each DPRS have differing governance methods which leads to inconsistency and confusion. Five of those states operate DPRS as a result of state legislation with different funding mechanisms. The sixth operates a DPRS by a direct order from the Public Service Commission incorporating its costs in the base rate of its 41 regulated telephone companies. Other states that plan to be operational next year likewise will have differing organizational and funding mechanisms. Half of the 50 states do not have any consideration for establishing a DPRS. The net result of this inconsistency is a limitation on telephone accessibility. For instance, of the six existing DPRS, only three offer interstate services. Of the other three that offer only intrastate services, New York and California easily being the largest of all DPRS still cannot offer interstate relay services. Only one state which operates a DPRS has an official statement defining full telephone accessibility.

Funding a DPRS from tax revenues may subject it to budgetary line item vetoes thus temporizing full telephone accessibility during periods of economic inactivity. A capped telephone surcharge is undesirable for two reasons; it reflects the costs of the DPRS on the monthly telephone statements which in the eye of the public would constantly remind them in a rather invidious way that the blame for the increased cost lie with the relatively small speech and hearing

impaired population; and the fixed income it provides to the DPRS may not allow for expansion to meet unforeseen demands. Without such expansion, the notion of full telephone accessibility goes back from a reality to only a concept much to everyone's disadvantage.

Data from the existing DPRS centers have indicated that the increases in the telephone bill of their state's telephone subscribers range from five to fifteen cents per month. This does not include costs associated with free distribution of telecommunication devices for the deaf (TDD) to qualified individuals in several states. To give some semblance as to the range and nature of services presently provided by DPRS, I will offer California and New York as examples. During a single month in March 1989, these two DPRS's serviced 300,000 intrastate only calls on a 24 hour, 7 day/week basis. Of these calls, 80% were originated by those with hearing/speech impairments and 20% by hearing callers. New York is presently growing at a 20 percent clip per month since its inception last January. New York which uses the base rate to pay for its DPRS has already notified its 11 million telephone subscribers of a 12 cent increase per month. This notification occured just once and not monthly as in the case against California which uses the unpopular surcharge of 0.5 % applied to intrastate toll charges.

Consistency towards organization and funding methods of DPRS is urgently needed across all 50 states to ensure that full telephone accessibility become a significant reality for the 22 million hearing and speech American citizens. Last September at the "Speech to Text" Conference as hosted by Gallaudet Research Institute at Gallaudet University, the overwhelming consensus of the experts was that full telephone accessibility is the most important consideration towards a DPRS and that such accessibility is most likely to occur if costs are incorporated into the telephone's base rate. A preamble stating that the allowable blockage rate for any DPRS being identical to the regular voice telephone network should be at the beginning of any legislative or utility regulatory document to state clearly what full telephone accessibility is about.

Initially, when a DPRS was being considered by the New York State Public Service Commission, many local telephone companies

objected, fearing competitive inequities among themselves. They were informed that the costs of the DPRS are to be shared proportionally among them according to their relative sizes as defined by number of subscribers in their local area. Eventually, their objections turned into sentiments of support. The incorporation of DPRS expenses into the telephone's base rate was made possible with these sentiments. A telephone monthly surcharge accomplishes the same prevention of competitive inequities, but it is inflexible and too conspicious on the monthly telephone statements.

Once more, I need to stress the fact that consumer participation in the establishment and operation of DPRS is of paramount importance. All utility regulatory agencies have consumer advisory committees and the DPRS is no exception. Hearing and speech impaired representatives should constitute the bulk of such advisory committees as rightfully expected.

I would like to conclude this testimony with a sincere request for **full** telephone accessibility for the 22 million hearing, or rather, communication-impaired Americans in their fifty States. Finally, we dare ask the honorable members of this 101st Congress that in the true spirit of full accessibility the intentions as set forth by the Communications Act of 1934 will finally realize Dr. Alexander Graham Bell's original intent of his invention as a communication tool for the hearing and speech impaired.

TELECOMMUNICATIONS FOR THE DEAF, INC.
814 THAYER AVENUE • SILVER SPRING, MD • 20910

HOME OFFICE
301-589-3006 (TDD)
301-589-3786 (Voice)

EXECUTIVE DIRECTOR
Alfred Sonnenstrahl

Telephone Relay Service Update
State-By-State

(as of May 6, 1989)

One of TDI's major goals is to have all fifty states access quality dual party telephone relay (DPR) services so that all 22 million hearing and speech impaired Americans may have full telephone accessibility. Quality services are those that are adequately funded and staffed so that accessibility is not limited. Updates will be printed periodically in our GA-SK newsletter to apprise you of the current national situation. New or updated information should be sent to: Paul L. Taylor, Chairman, Telephone Relay Committee, NTID Bldg. 14, Rochester, NY 14623-0887.

A summary of current DPRS activity follows:

STATE	ACTIVITY
AL	AT&T awarded contract to begin service on 4/1/89. Legislative act authorizes monthly surcharge of 20 cents on all telephone subscribers in the state. Ms. Ruby Griffin is the new manager. Address: Alabama Relay Center, Bldg. 500, 2200 Riverchase Center, Birmingham, AL. 33 employees; 15,000 sq. ft. Rev. Cam Desmaris 205-582-5577.
AZ	DPR service began 3/13/88 by non-profit organization. Current legislation requests a cap of 0.8% of monthly phone bill to be applied towards DPR. Passed by House Ways and Means Committee 4/3. Scheduled ahead are the Rules Committee and

the Governor's signature. Claudia Foy 602-542-3323.

AR DPR system since 10/87 is funded thru state Rehab Services. Operated 24 hrs. by Communication Ctr. of the Health Dept. Currently working on 911 ACCESS statewide. Ken Musteen, State Coord. f/t Deaf 501-371-1922 (Voice) 1924 (TDD).

CA Legislation signed to change funding mechanism from 10 cents surcharge per line to 0.5% surcharge on all intrastate toll charges. Currently in its third year of operation by AT&T. Handles 220,000 relay calls per month. Ms. Phyllis Shapiro, Manager. Address: California Relay Service, 20931 Burbank Blvd., Woodland Hills, CA 91367. Jack Levesque 415-895-2432.

CO Legislation to create funding for DPR system has been proposed for second year in a row.

CT Legislature appropriated funds for DPR which is operated by a non-profit organization.

DE Senate Bill No. 97 introduced 3/21 to require Diamond State Telephone Co. to establish a DPR as initiated by the PSC. A. Laurence Field, Administrator, Architectural Access. Bd., State of DE 302-571-2295 TDD.

FL DPR center proposal requested by Fla. Telephone Assoc. and Fla. Council for Hearing Impaired. Will make recommendation to the Public Service Commission and Legislature. Ms. Peggy Schmidt, Administrator, FCHI, Knott Bldg. Tallahassee, FL 32399-0401, 904-488-5087.

HI Presentations have been made on the DPR to the Public Service Commission and other parties after legislation passed a law. Current bidders are Hawaiian Telephone and ATT. Bernadette Coughlin 808-548-3972.

IL — Public Service Commission approves statewide relay service which is scheduled to begin 6/30/90. Bidding for service parties to result in selection by 5/1/89. There is no "cap" to surcharge; it will float according to cost of TDD distribution and relay systems. Ms. Pam Ransom, Chicago Hearing Society, 312-939-6888 Voice, 312-427-2166 TDD.

KS — Public Service Commission is presently inquiring into a DPR.

LA — Legislation authorizes surcharge of 5 cents per month eff. 9/1/88. Advisory committee formed. It may link up with Alabama relay center.

MD — Legislation passed directing Dept. of Human Svcs. to establish and administer DPR services.

MI — Legislation authorizes Public Service Commission to design and implement DPR system funded by 10 cents surcharge. A committee has been formed to advise on implementation. Hearings to continue through 3/89. PSC ordered hearings and procedures which will lead to setting up the system. PSC hearings were completed in March. Michigan Bell filed for a rebuttal hearing (sched. in May) to resolve minor matters. Francine Lauer 517-373-0378.

MN — Legislation authorizes ten cents surcharge on all telephone subscribers in state. Non-profit organization provides services.

NV — Legislation has passed. Funding may not be adequate.

NM — Legislation has passed. Funding may not be adequate.

NY — DPR system implemented on 1/1/89 by AT&T in a new 20,000 sq. ft. facility in Clifton Park (north of Albany). Funded by all 42 telephone companies in NY state as a normal operating expense. Number of

calls serviced during first month is 41,932. In third month, over 66,000 calls were serviced. Growth is expected at a 20 percent clip per month until it levels off at around 120,000 service calls per month. Paul Taylor 716-475-2243.

NC — Senate bill enacted establishing DPR program. To be administered by NC Council for the Hearing Impaired. A consultant has submitted results of a study on DPR to the Legislature.

OH — Public Service Commission issued statement of support 7/88 for relay service program. However, statement stipulates that the program should be addressed through legislation.

OK — Contract for center awarded to non-profit organization for one year. Surcharge of 5 cents applied to all telephone subscribers in state for both DPR and TDD distribution programs. Charles Estes 405-495-7707.

OR — Legislation provides for a ten cents surcharge to fund DPR and TDD distribution programs. Equipment RFP for DPR has been issued. Service provider RFP to follow.

PA — PSAD representatives have met with staff of the Penna. State Telephone Association and PUC on 4/20. Statewide relay system tentatively approved by Advisory Council. Formal action expected anytime soon for startup next year. John Maurer 412-364-5738.

TN — Public Service Commission approves a dual statewide telephone relay system. Otto Menzel 615-878-5626.

TX — Proposed legislation, entitled the Telecommunications Relay Access Service, sponsored by Senator Chet Brooks, will mandate the PUC to establish statewide telephone relay service. Larry Evans 512-469-9891.

UT Three cents monthly surcharge enables a non-profit service provider to continue DPR services.

WA Legislation has provided ten cents monthly surcharge for a DPR and TDD distribution program. A state directed non-profit corporation has been proposed to manage the DPR and distribution services. Patti Hughes 206-586-8249.

TESTIMONY: SUB-COMMITTEE ON THE HANDICAPPED
DR. MARY LYNN FLETCHER, DIRECTOR DISABILITY SERVICES
LENOIR CITY, TENNESSEE

For eight (8) years of my life, I worked in rural America - from Point Barrow, Alaska, Binghamton, Maine, Glendive, Montana to Maquoketa, Iowa and Cuba, New Mexico and now in Loudon County Tennessee - I worked in rural America to provide a basic level of health care to rural citizens. Gentlemen, I know rural America: its beauty, its uniqueness and its problems.

From these experiences, I have come to realize three things: rural America is not unlike Third World Nations in some parts of our country, especially the Southeast; - secondly, rural America is facing economic girdlock; and, finally those persons who are disabled are so profoundly isolated we do not live, we exist on a slow slide into hell.

This testimony is the result of a volunteer rural health officer trying to respond to: (1) an aging population, (2) the "backlash" of mainstreaming disabled children into rural school systems, (3) the cultural myth that disability is something to fear rather than to be accommodated; (4) a system of irrational, ill-conceived and inaccessible services; and, finally to the notion a disabled person is incapable as a "social creature" and thus not part of the community - therefore, unemployable in those jobs which are available.

RURAL AREAS IN AMERICA

Most view rural America as a Currier and Ives painting - the bucolic life style where life is simple and unhurried. We all yearn to simplify our lives with the image of a rural life where one still has a special relationship with his/her land as Thomas Jefferson so elegantly envisioned over 200 years ago. But, today rural areas, especially within my beloved Southeast, are experiencing rape - rape of our resources, heritage and of it people (Dr. Ron Eller, Appalachian Center, University of Kentucky speech, "Hunger in Appalachia", Knoxville, Dec., 1987.)

I have brought some graphs to demonstrate the plight of the Southeast as well as the numbers of persons with disabilities living in rural America. It is clear where the majority of disabled persons live: the Southeast. Furthermore, there is a higher percentage of the disabled living in rural areas as compared with the general population. And, yet we have fewer resources to intervene.

HOW THE DISABLED PERSON IS VIEWED IN AMERICA

How America views us, the person with a disability, seems to be inexorably intertwined with the nature of ~~our~~ how view of ourselves as Americans - a people who is self-starting, competitive, rugged individualists who deplores dependency. But, the disabled person is a violation of this image. It is almost a contradiction in terms to say a "disabled American". Society on the one hand stresses "health of mind and body"* as keys to happiness; but, on the other, society is faced with more individuals having greater functional limitations.** This paradox in attitudes has resulted in economic stagnation for the disabled community. Medical technology has outstripped and outpaced our moral and intellectual capacity to understand the needs of those whom these devices are saving. We have learned to save lives but have yet to learn to live with the results. We, the disabled, are unlike any other minority group. We are the only ones to have the word "impairment" in our definition. There are no shared experiences, no shared culture and no pride in our uniqueness as in a Latino family. A disability, thank God, is not a matter of heritage to be passed on to the next generation, disability is a damn inconvience. Thus we are isolated within the family, the school, the community and in rural areas by a multiple of other factors.

I have tried for some time to find the means to educate the public on how profoundly isolated the person with a disability truly is. Perhaps, better than any words I could summon this illustration will denote how a disabled person feels as she/he progresses in life.

SHOW OVERLAYS: You will note that when one puts the finally overlay "rural" on top of the other isolating factors, experienced by all persons with disabilities, the person no longer exists as a social being.

One has to ask the question, therefore, given the condition of rural America and the rural person with a disability, if the Americans With Disabilities Act would affect our condition. Perhaps more than any other existing or proposed legislation, the ADA would effect our lives. The Rehabilitation Act of 1973, as amended, has had little to no influence as we in rural America receive few federal dollars.

But, first allow me to place a more human face on rural America and how the ADA would correct the benign neglect and outright discrimnation we face every day.

* Aristotle: "Health of Mind and Body is so fundamental to [illegible]"

First, let us consider who I am. I am a rural Appalachian woman who is a public health scientist and a practicing Christian. I am a person with a functional disability who because of the isolating factors identified above is sometimes "handicapped". Of all of these adjectives which ones are the more prevasive having the greater influence on my life? If I had to choose two - it would be "rural, Appalachian" and "disabled". Why? Because being from a rural and Appalachian culture affected overwhelmingly what services I received, whether I had access to my church, school, recreation and especially employment. To illustrate just one of these factors: when I graduated from the University of Tennessee in 1972, 56 employers were called by a private employment firm and all 56 employers refused even to interview me for a clerical position, although, I had had extensive experience doing clerical work while working my way through college.

But, what of today - have things chnaged? For Tennessee, for rural America, in a word, "NO"!

By all standards, I have lived and do live a privileged life: having extraordinary parents who fought and fought hard the system with no legal status at all; we had resources and a heritage of "cussed" independence. AND, yet because of horrible inaccessibility and poor construction standards, I live in agony from week to week as to how I shall be able to get my groceries or how I can gas for my car in a town where I'm not known because of the self-service gasoline stations. My recreational passion is music, especially 17th and 18th century classical music. Even when I am able to go to Knoxville to hear our orchestra, I am unable to get into the building. When I do get inside the building if I need to go to the bathroom I must crawl up a flight of stairs. My associate, Tim Craven, a senior design engineer, who is here with me today dislikes going to the University of Tennessee home basketball games with his friends for disabled persons are segregated from the able-bodied fams. The Thompson/Boling arena's construction borders on the absurd and yet this building was built last year!

We have considered collecting enough money throughout the region to send every architect from Knoxville to Atlanta back to school. And, for rural constractors we would like to send them to jail for the fraud they have imposed on individuals and local governments regarding meeting "accessibility codes."

ACCESS TO PUBLIC SERVICES

People are surprised in my region when I say, we, who are mobility impaired or sensory impaired, do not yet have the right to vote by virtue of inaccessibility. The new laws on voting, not withstanding, fully 1/3 of our polling places are totally inaccessible. The election commissions are trying but if one arrives at a polling place and that individual is unable to get inside they cannot vote on election day. To vote by absentee ballot is a long, extensive draconian process which is expensive (it requires going to a physician for a doctor's permit.) One has to want to vote more than anything to subject oneself to this humiliating process.

Another example would be: whenever Senators Jim Sasser and Albert Gore, Jr. come to Loudon County to conduct our town meetings., I (or anyone with a severe mobility impairment) must crawl up three flights of circular stairs to the "Court Room". In this room all public business is conducted by the county government whether on taxes, zoning, schools or any type of public business.

"ACCESSIBILITY STANDARDS" IN RURAL AREAS

I DO NOT BELIEVE MY URBAN BROTHERS AND SISTERS fully understand the issues we face regarding fraudulent contractors in rural areas over accessibility standards and the danger they pose.

Previously I mentioned, perhaps "tongue and cheek" what we would like to do with rural contractors. But, for the rural disabled THESE ARE REAL ISSUES. WHEN I WAS going up a ramp pitched at 38° degrees which is 10 feet long, my wheelchair flippled over backwards . I broke my fall by grabbing the railing. The end result of that fall was two ruptured discs, two surgeries with one to go at the Mayo clinic at a cost which has exceeded $200,000.

"Accessibility code fraud" is a real issue with us and, the inflated cost borders on absurd. Illustrative of this is Monroe County, Tennessee.

In Monroe county, which is next to my county, the County Commission authorized a "handicapped ramp". The Sheriff, who is a personal friend, was most anxious for me to try the new ramp. I almost fainted when I saw it - it is circular - built

to circumvent over thirty (30) outdoor steps. Not could could my wheelchair, with assistance not get up the ramp, but I almost couldn't manage walking up by pulling on the railing. But at the top when I started to go into the Court House I found an "18" inch step into the court house. That piece of travesty cost Monroe county over $10,000. If only the County had consulted Tim Craven, the Tennessee Valley Authority, the state fire marshall's office we could have saved the county over $8,500.

I do not know how to suggest to handle this problem except in the enforcement area with the strong suggestion that state and local governments consult a qualified disabled person before they build or remodel a public building. These buildings are important to being enfranchased as American citizens.

COMMUNICATIONS

There is a story, one which I was unable to verify, regarding a deaf couple who lives in the upper portion of our county whose home almost burned to the ground because the central dispatching does not have a TDD for communications with the deaf. WHAT I can verify is that there is not one TDD in any government office within my county as well as most rural, Tennessee counties. There is not even a devise at our rural hospital nor interrputor services and they receive federal funds.

EMPLOYMENT

In most rural areas there are five consistent employers: the school system, the city and county government, rural hospitals (if we've lucky enough to keep them after this Congress) and banks.

I do not even know where to begin explaining how truly discrimnatory these institutions truly are. Of those counties lucky enough to have industry as we do "hiring the handicapped" is a joke.

I work every day of my life on employment issues and the only consistent place I can refer qualified people to are the Tennessee Valley Authority and the Oak Ridge National Laboratories, both substantial distances from my home. These, of course, receive federal funding and thus are accountable. Of the private industries

only one makes a concerted effort to outreach to the disabled person: Martin Marietta Energy Systems, but again they are federally funded and the President, Mr. Clyde Hopkins is on the Executive Committee for the President's Committee for the Employment of the Disabled Person.

I can tell you of an instance where a person worked for a company for 19 years and then was fired because he developed a disability which did not interfer with his job. I can tell you of people with epilesy who have had one seizure after working for years and then being fired - this happened in my own family.

Some of the other issues I have mentioned are usually as a result of benign neglect but in the area of employment - the problems regarding employment are examples of gross discrimnation largely based upon ignorance about insurance and the capabilities of the disabled person.

I am thrilled to see organized labor now on the National Council on the Handicapped for their people are the taking the greatest beating over discrimnation when one of their workers acquire a disability.

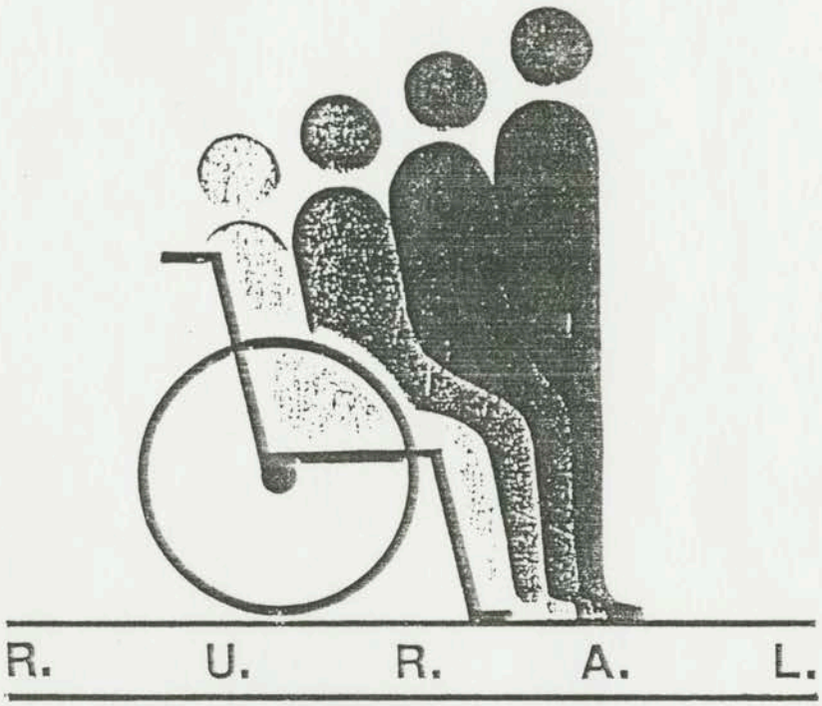
Finally, Senators, I would strongly urge you to "stick to your guns" over the financial enalties which you are proposing for industry - because without them we will have no opportunity to employ the disabled in rural America.

Take any aspect of the American with Disabilities Act and the proposed coverage it would entail and I would be able to give you horror stories. I keep asking myself, is it not time, in this year of the Bicentennial of the Congress of the United States that American's largest minority group become enfranchised?

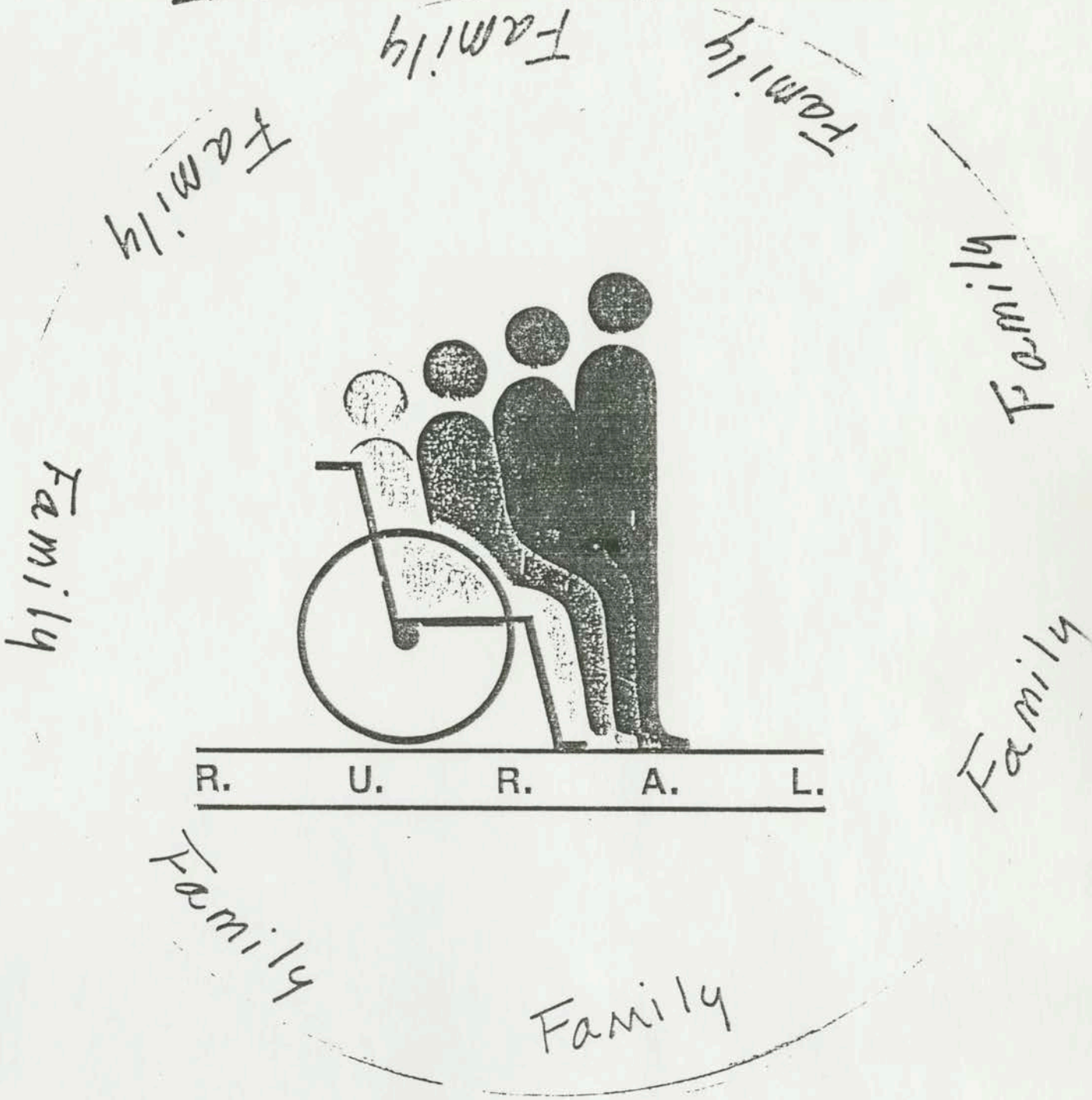
We have tried for over sixty years to change people's atitudes but America is afraid becoming disabled and thus dependent. Therefore, most would like to ignore these problems. Until basic civil liberities are a "right" rather than a "privilege" the person with a disability will remain an object of charity. A people diminished before the law is diminished before society. Until there are strong laws the person with a disability will remain isolated, or as Gliedman and Roth noted in their book The Unexpected Minority (written for the Carneige Foundation on Children) "an isolate and thus socially incompetent or in the original Greek

meaning of the word 'handicapped', an idiot."

Isolation : Disabled Person



Isolation : Disabled Person



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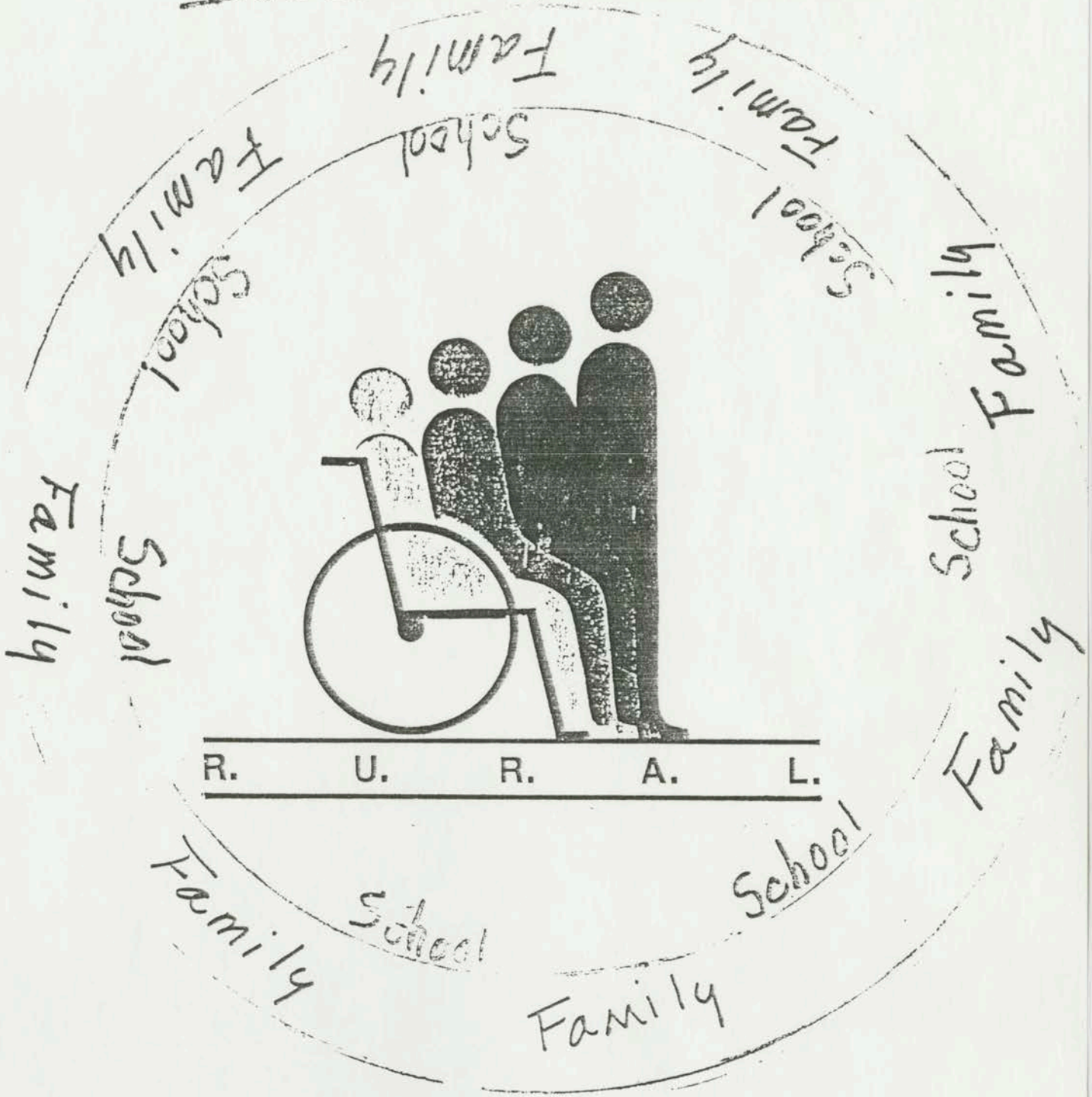

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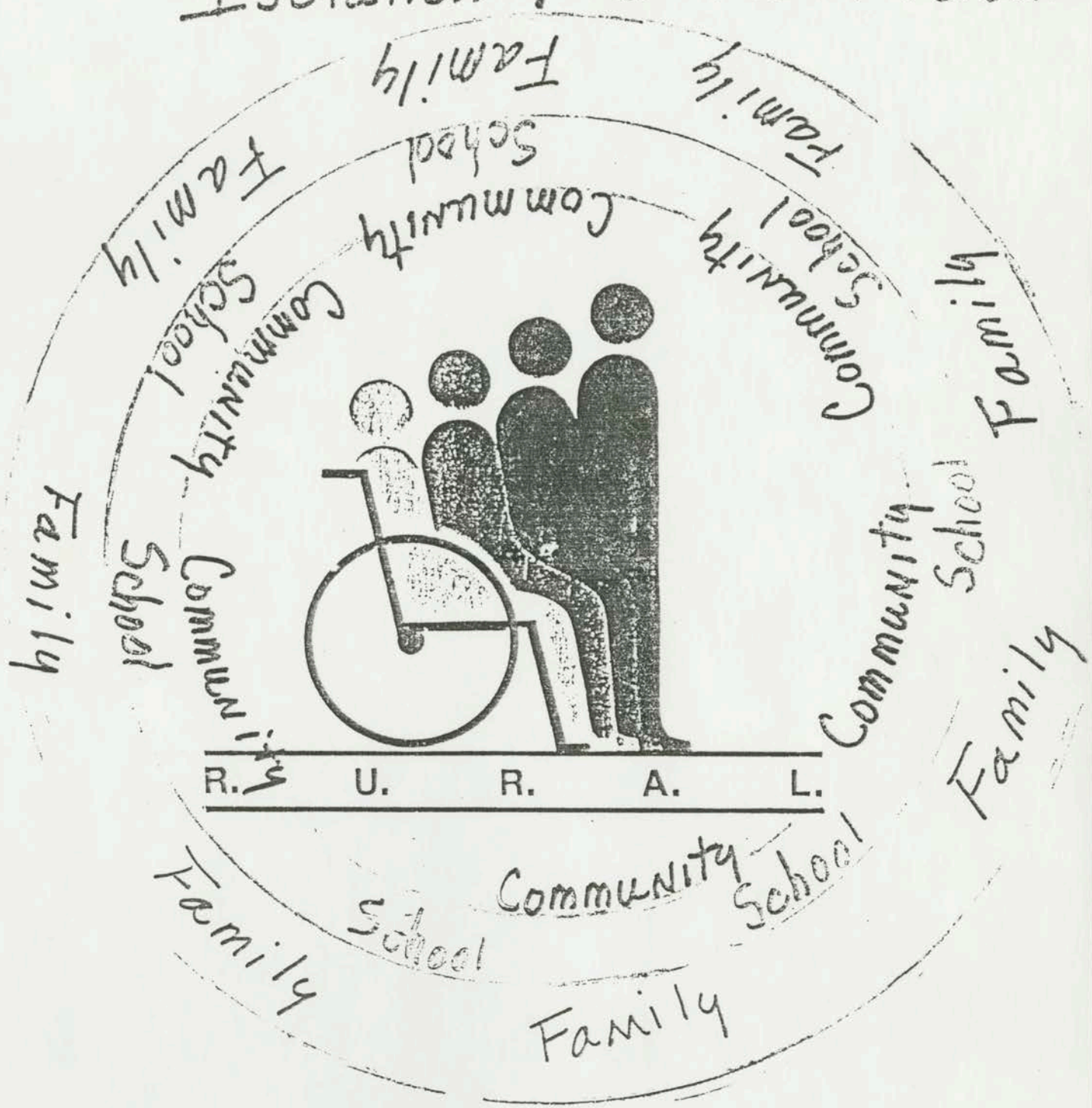

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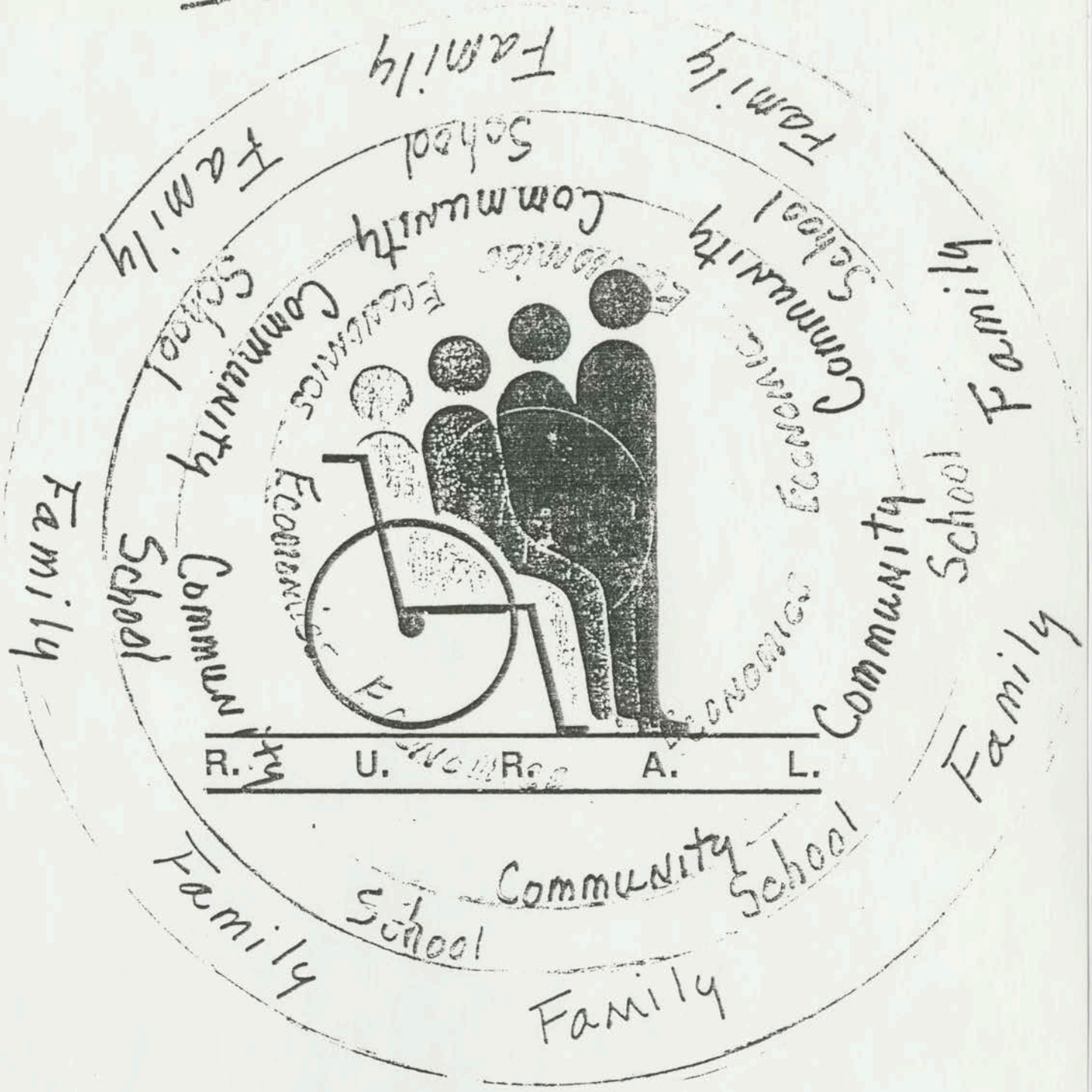

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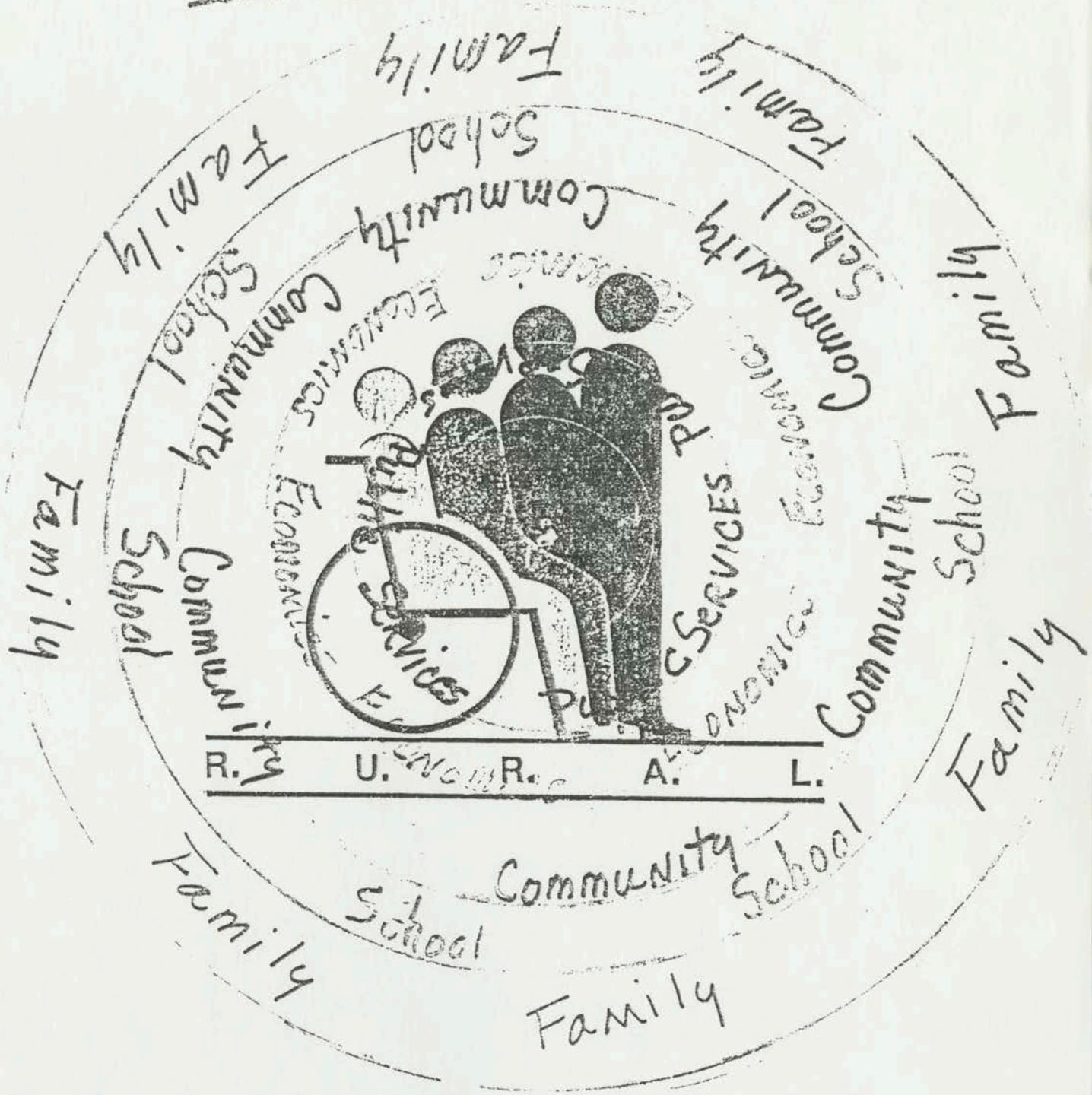

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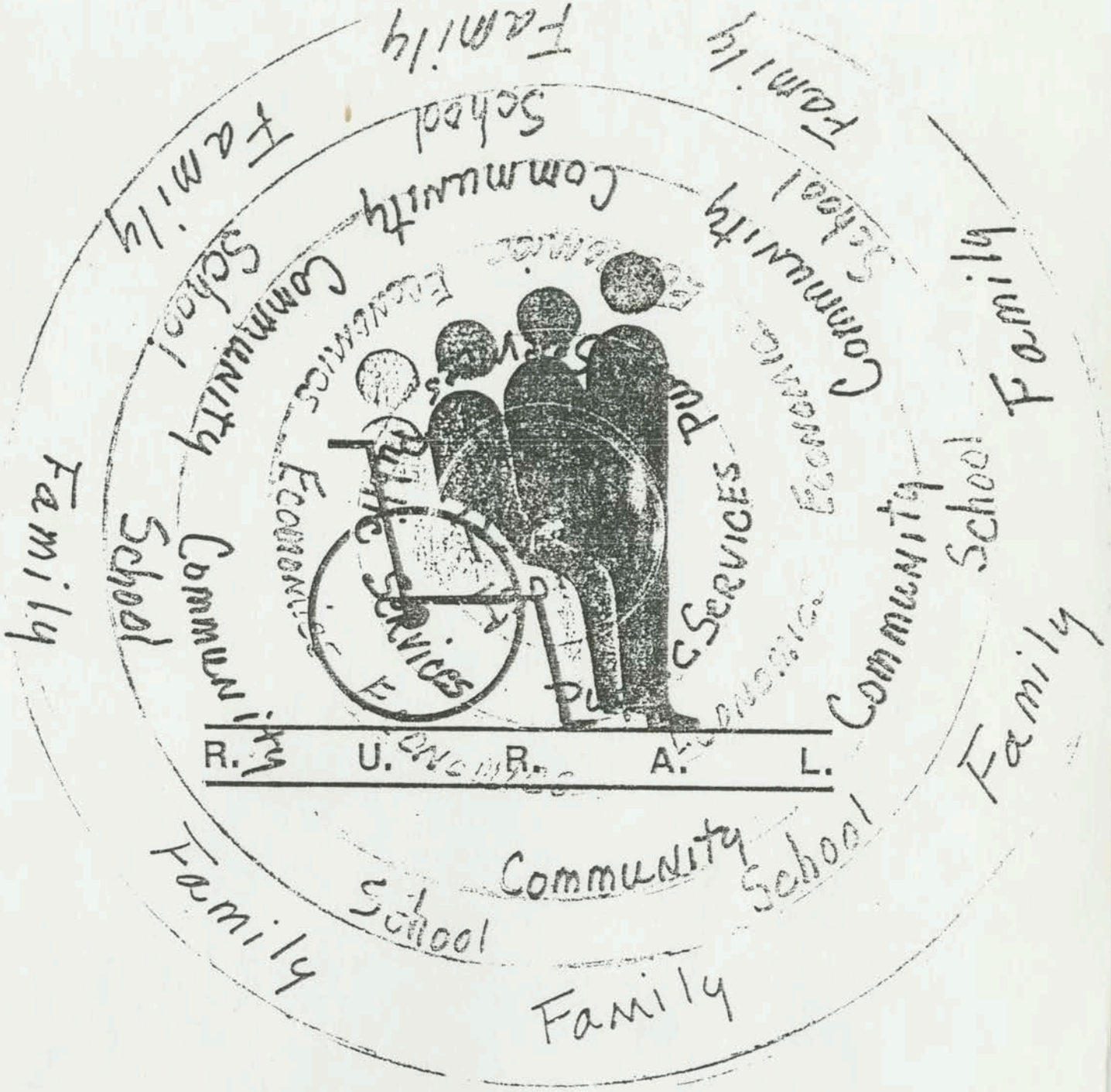


Testimony
of

Laura Oftedahl

Before the Subcommittee on the Handicapped

Committee on Labor, Health, and Human Resources

United States Senate
101st Congress, First Session

May 16, 1989

regarding

Transportation, and Public Service Barriers
Faced by Blind or Visually Impaired Persons

The Americans with Disabilities Act (S.933)

For further information contact:

Laura Oftedahl
1421 P Street, N.W.
Washington, DC 20005
(202) 462-2900

Good Afternoon Mr. Chairman and Members of the Subcommittee:

My name is Laura Oftedahl. I am presently employed as the Director for Public Affairs of the Columbia Lighthouse for the Blind here in Washington, DC. I speak to you today as a consumer: a professional woman who is visually impaired. My work experience has included jobs in sales, broadcasting, and public relations. I have also been involved in competitive sports programs for people with disabilities, and am proud to have won national and international medals in cross country skiing. Competitive sports activities provide people with disabilities the opportunity to prove what we can do. Too often we are told that we cannot compete effectively in all aspects of life. We Can!

You might be asking yourself at this point: "It sounds like this woman has her life together! Has she experienced discrimination? Does she need the ADA?" The answer to the last question is a definite "yes!" Although I try to lead a productive,

active life despite my disability, I nevertheless face barriers which the Americans with Disabilities Act will address. I have been asked to discuss primarily transportation barriers and barriers to accessing public services faced by blind or visually-impaired people. I could also easily discuss employment discrimination because I have faced that, too. My bottom line message to you is that the accommodations I need as a visually-impaired person in order to effectively access transportation and public services do not cost a lot of money, and would, for the most part, be of great benefit to the public generally.

Let me give you some real life examples. I am a regular subway rider, but for me, as a visually-impaired person, each trip requires a great deal of extra concentration. Wayfinding for a blind or visually-impaired person is a task involving all one's remaining senses. I have frequently tried to ride an escalator in the wrong direction because I could not see the sign or direction indicator. I have been disoriented when embarking from a subway car

because of variations in lighting from the car's interior to the platform. While on the platform, I cannot read the directional signs, and must rely upon information from other passengers. I must always be vigilant as to where the platform edge is located. A momentary distraction, or even a casual conversation with a fellow passenger might be deadly, since I must always be aware of every orientation cue available to me. The subway platform can be particularly hazardous during the jostling of rush hour. The station environment can also be confusing because equipment such as add-fare machines or transfer dispensers are not uniformly positioned in each station.

Bus transportation can also pose a problem. I, and many of my blind or visually-impaired friends, have been late for important appointments because a bus driver failed to announce a stop, even though asked to do so. Such occurrences can cause us great embarrassment, vis-a-vis employers or prospective employers, for example. Bus transfer points where many lines

converge also can be a problem, particularly at night when no one is nearby to read the signs. Features such as adequate lighting, safety strips along platform edges, readable signage, and public address systems on buses coupled with better training of vehicle operators would greatly enhance my access to public transportation. These accommodations, which I understand may be required by the ADA, are not costly, and more importantly, benefit everyone. Some of the people who have unfortunately fallen from subway platforms here in Washington have not been blind, but have been careless fully sighted individuals. Thus, safety features such as platform edge markings and adequate lighting would help not only blind or visually-impaired people, but the general public as well.

Public transportation authorities have also attempted to exclude blind people from the use of paratransit or "dial-a-ride" systems. Such discrimination is predicated on the notion that blind people can physically mount a fixed route bus. Although a

blind person without a secondary disability is perfectly capable of boarding a bus, a blind or visually-impaired person, depending upon his/her travel skills, may not be willing or able to cross a six-lane highway to reach the fixed-route bus stop. Finding the location of the fixed-route bus stop may also be difficult in some situations.

Turning to access to public services, many of the same barriers also apply. Wayfinding in public buildings can be a problem because of inadequate signage or lighting. Large open areas such as building atriums can pose significant orientation barriers. White noise created by a cascading fountain, which are popular in some new buildings may destroy the sound cues which blind and visually-impaired people rely upon for orientation and mobility.

The solution for the white noise problem is simple: building managers need only to turn the fountain's water pressure down.

Barriers to accessing public information also exist. Few agencies produce publicly distributed material in braille, large-print, recorded, or computer-accessible form. When public information is not available in special media, alternate access (such as personal assistance) is frequently not available. I recently experienced this problem when I applied for a nondriver's ID card. It was difficult for me to determine which line to stand in, and I had to rely upon another applicant to help me fill out the necessary forms. When I asked the woman who took the applications for help, she told me: "That's not my job!", and made no effort to locate a supervisor or other assistance.

Mr. Chairman, I believe that the barriers I have described above can be eliminated at minimal cost and with benefit to the general public if the ADA is enacted into law. I hope the Congress will recognize the barriers faced by all people with

disabilities which impede our full participation in society. I urge you to promptly pass the Americans with Disabilities Act.

Mr. Chairman, this concludes my remarks.

TESTIMONY
BY
MARK JOHNSON
AMERICAN DISABLED FOR ACCESSIBLE PUBLIC TRANSPORTATION (ADAPT)

SOME FACTS

THIS YEAR IS THE 25TH ANNIVERSARY OF THE URBAN MASS TRANSPORTATION ACT, 16TH ANNIVERSARY OF SECTION 504 AND 10TH ANNIVERSARY OF THE ORIGINAL MANDATE TO MAKE TRANSIT TOTALLY ACCESSIBLE TO PEOPLE WITH DISABILITIES.

FEDERAL FUNDING FOR PUBLIC TRANSIT WAS REDUCED FROM $4,615 MILLION IN 1981 TO $3,215 IN 1988.

IN SPITE OF THESE CUTS, THE NUMBER OF LIFT EQUIPPED BUSES HAS INCREASED FROM 11% IN 1981 TO OVER 31% IN 1988.

38% OF U.S. TRANSIT SYSTEMS PROVIDE BOTH FIXED ROUTE ACCESS AND PARATRANSIT SERVICES.

CALIFORNIA LEAD THE WAY WITH LEGISLATION IN 1971.

SEATTLE'S METRO MADE A COMMITMENT TO TOTAL ACCESS IN 1978.

BY *1991*, DENVER'S ENTIRE FLEET OF OVER 700 FIXED ROUTE BUSES WILL BE LIFT EQUIPPED. IN ADDITION, DENVER OPERATES A PARATRANSIT SERVICE.

MIAMI VALLEY REGIONAL TRANSIT AUTHORITY, DAYTON OHIO, USES A THREE-PRONG APPROACH; FIXED ROUTE ACCESS, ACCESSIBLE VANS AND TAXIS SERVICES OPERATED BY THE PRIVATE SECTOR. IN ADDITION, MVRTA IS INVOLVED IN INTERAGENCY COORDINATION INITIATIVES.

THE DEPARTMEMT OF TRANSPORTATION (DOT), IN A ONE PAGE SUMMARY, DATED *JUNE 9, 1980*, HIGHLIGHTED THE REASONS FOR THE ACCESSIBILITY APPROACH UNDERLYING THE DEPARTMENT'S ORIGINAL REGULATION IMPLEMENTING 504.

"WHEN THE DEPARTMENT OF TRANSPORTATION PROVIDES GRANTS FOR THE OPERATION OF MASS TRANSIT SYSTEMS, HANDICAPPED PERSONS SHOULD BE ABLE TO USE SUCH MAINLINE SYSTEMS."

"MOREOVER, IT IS MUCH LESS EXPENSIVE AND MORE COST EFFECTIVE TO MAKE EXISTING TRANSPORTATION SYSTEMS ACCESSIBLE TO HANDICAPPED PERSONS THAN IT IS TO CREATE SEPARATE, SPECIAL SYSTEMS."

DOT CONCLUDED THAT PERMITTING A SPECIAL SERVICE ONLY APPROACH WOULD NECESSITATE "SIGNIFICANT REGULATORY AND ENFORCEMENT EFFORTS."

IN AN *AUGUST 14TH, 1988* CORRESPONDENCE TO MARCA BRISTO, GEORGE BUSH STATED:

"WE ARE AWARE THAT IF THE EMPLOYMENT POTENTIAL OF PEOPLE WITH DISABILITIES IS FULLY REALIZED, PARATRANSIT SERVICES SIMPLY WILL NOT BE ABLE TO ACCOMMODATE THE NUMBERS INVOLVED."

ON *FEBRUARY 13TH, 1989*, A FEDERAL APPEALS COURT ORDERED THE U.S. DEPARTMENT OF TRANSPORTATION TO REQUIRE TRANSIT AUTHORITIES TO EQUIP ALL NEWLY PURCHASED BUSES WITH LIFTS AND PROVIDE PARATRANSIT SERVICES.

FANTASY

-THINGS COULDN'T BE BETTER.

-ACCESS ONLY EFFECTS OR BENEFITS PEOPLE WITH DISABILITIES.

-PUBLIC PARTICIPATION AS OUTLINED IN THE CURRENT REGULATIONS WORKED AND IS WORKING.

REALITY

MOST PEOPLE WITH DISABILITIES DON'T HAVE ACCESS TO PRIVATE TRANSPORTATION.

IF THE ORIGINAL MANDATE HAD REMAINED IN EFFECT, EVERY BUS IN THE COUNTRY WOULD HAVE BEEN LIFT EQUIPPED BY 1991.

INSTEAD INCONSISTENCY IN APPROACH, COURT ACTION AND CONTROVERSY CONTINUE.

CHICAGO TRANSIT AUTHORITY WAS FORCED THROUGH LITIGATION TO PROVIDE ACCESS.

THE CITY OF PORTLAND WAS FORCED THROUGH LITIGATION.

THE CITY OF DETROIT WAS HIT WITH $2.1 MILLION JUDGMENT FOR FAILURE TO PROVIDE ACCESSIBLE BUS TRANSPORTATION. SIX PEOPLE WITH DISABILITIES FILED THE ORIGINAL LAWSUIT. THE NUMBER OF PLAINTIFFS HAS GROWN TO 1,100.

CINCINNATI'S QUEEN CITY METRO BOUGHT 87 LIFTED EQUIPPED BUSES IN 1981, OVER 100 IN 1986 (OVER HALF THE FLEET IS NOW LIFT EQUIPPED), BUT METRO DOESN'T CHOOSE TO USE THEIR LIFTS. IT'S THEIR OPTION AND IT'S LEGAL.

IN TULSA, OK, THE SYSTEM TRIED TO CONTROL RIDERSHIP ON THEIR PARATRANSIT ONLY SERVICE BY INCREASING FARES.

WASHINGTON, D.C. METRO'S 50% IS AN INSULT.

ATLANTA, GA. COMMITTED TO 100% IN 1987, HOWEVER IT WILL BE THE YEAR 2,000. (27 YEARS AFTER THE PASSAGE OF 504) BEFORE I CAN RIDE THE SAME BUSES YOU DO.

I'M NOT AWARE OF ANY CITY WHOSE PARATRANSIT ONLY APPROACH ACCOMMODATE'S OUT OF TOWN GUESTS.

CLEARLY LOCAL OPTION MEANS NO OPTION.

CLEARLY UNEMPLOYMENT OF PEOPLE WITH DISABILITIES WILL REMAIN UNACCEPTABLY HIGH UNTIL TRANSIT IS TOTALLY ACCESSIBLE.

CLEARLY ACTION SPEAKS LOUDER THAN WORDS.

WHEN ACCEPTING HIS PARTY'S NOMINATION FOR PRESIDENT, GEORGE BUSH SAID:

"I'M GOING TO DO WHATEVER IT TAKES TO MAKE SURE THE DISABLED ARE INCLUDED IN THE MAINSTREAM. FOR TO LONG THEY'VE BEEN LEFT OUT, BUT THEY ARE NOT GOING TO BE LEFT OUT ANY MORE."

ON *APRIL 10TH, 1989*, THIS ADMINISTRATION FILED A PETITION TO REHEAR A CASE ORDERING ALL NEW TRANSIT BUSES TO BE LIFT EQUIPPED AND PARATRANSIT SERVICES PROVIDED.

SOME OF US IN THIS ROOM JUST RETURNED FROM PHILADELPHIA WHERE ORAL ARGUMENTS WERE PRESENTED.

CLEARLY WE NEED TO MANDATE ACCESS IN THE PUBLIC AND PRIVATE SECTOR.

NONE OF GREYHOUNDS BUSES, OVER 4,000 HAS A LIFT. INSTEAD THEY HAVE THEIR "HELPING HANDS" PROGRAM. OTHERWISE YOU BRING SOMEONE TO CARRY YOU ON AND THEN THEY CAN REFUSE TO TRANSPORT YOUR BATTERY POWERED WHEELCHAIR.

ACCESSIBLE HOTEL SHUTTLES FROM AIRPORTS DON'T EXIST.

AND WHEN'S THE LAST TIME YOU TOOK A TRIP ON AN ACCESSIBLE CHARTER BUS.

MY/ADAPT'S COMMITMENT

IN 1981, I MADE A COMMITMENT TO THE STRUGGLE FOR ACCESSIBLE PUBLIC TRANSPORTATION. I WAS ARRESTED IN 1982 FOR CHAINING MYSELF TO A RAIL IN THE LOBBY OF THE DENVER'S REGIONAL TRANSIT DISTRICT'S ADMINISTRATIVE OFFICES, BECAUSE THEY DIDN'T WANT TO PROVIDE ACCESSIBLE EXPRESS SERVICE. SOME OF US IN THIS ROOM HAVE BEEN ARRESTED REPEATLY, SINCE 1983, BECAUSE THE AMERICAN PUBLIC TRANSIT ASSOCIATION DENIES US OUR RIGHT TO FREEDOM AND DIGNITY. WE WILL CONTINUE OUR EFFORTS. WE WILL RIDE.

BEING PART OF THE SOLUTION

YOU MUST ACT SWIFTLY AND RIGHTEOUSLY TO ENACT THE AMERICANS WITH DISABILITIES ACT AND YOU MUST STOP THE DEPARTMENT OF JUSTICE FROM APPEALING THE THIRD CIRCUIT'S DECISION TO MANDATE TOTAL ACCESS TO PUBLIC TRANSIT.

Queens
Independent
Living Center
140-40 Queens Boulevard, Jamaica NY 11435 718/658-2526 TTY 718/658-4720

TESTIMONY

PRESENTED TO

THE UNITED STATES SENATE
SUBCOMMITTEE ON THE HANDICAPPED

BY

MICHAEL M. MCINTYRE

QUEENS INDEPENDENT LIVING CENTER

MAY 16, 1989

Good afternoon. My name is Michael McIntyre. I am the Executive Director of Queens Independent Living Center, a non-residential, not-for-profit, resource, support and advocacy organization run by and for people with disabilities. Queens Independent Living Center is also a member of the National Council of Independent Living Centers. I appreciate this opportunity to present testimony to you today in support of the Americans with Disabilities Act of 1989 (ADA).

The success of the Americans with Disabilities Act, the most critical legislation affecting individuals with disabilities ever considered by the Congress, will depend greatly upon your support and the support of Congress. This legislation represents a national policy to protect the rights of persons with disabilities in the private and public sector. This is the definitive civil rights bill for people with disabilities.

The Act prohibits discrimination on the basis of disability in areas such as employment, housing, public accommodations, travel, communications, and activities of state and local governments.

This bill has many provisions that will prohibit discrimination against individuals with disabilities in the United States. However, I would like to direct my testimony to the issue of discrimination against individuals with disabilities in the area of transportation.

On behalf of the National Council of Independent Living Centers members, we strongly urge you to support ADA transportation provisions as it stands. As someone who serves as an advisor to the New York City Department of Transportation and as a consultant to private bus companies, I have a professional expertise in the area of accessible public transportation. As a motorized wheelchair user, I also have a personal knowledge of what an accessible transportation system can mean to a person who is physically disabled.

Living in New York City, I am very fortunate to be able to use the city's accessible public bus service, along with key accessible subway stations. There are now plans by the New York City Department of Transportation to start a para-transit program this summer in order to provide a needed service for the transportation disabled who can not use accessible buses or subways because of their disabilities. I use public transportation daily to go to work and to social functions. I have been using lift-equipped buses since 1983. It is the only affordable means of transportation for persons with disabilities who want to be part of the mainstream of our society, and for those who want to have the independence of not being tied to a fixed schedule, and to enjoy the freedom of choice all others do who are non-disabled.

Americans have traditionally enjoyed many freedoms. Many Americans, however, have not been able to exercise those freedoms, for the lack of the simple ability to travel. The freedom to go to college does not exist without the means to get to the college; the freedom to work does not exist without the ability to get to work; the freedom to organize politically does not exist without people being able to get together in one place; the freedom to date, to go to the movies, to go to the library, to go shopping, to go to a ballgame, to go to the zoo, to anyplace that makes life meaningful, is predicated on the ability to travel.

If freedom is an abstract word, money is not. With the ability to travel, many disabled Americans will be able to get the education that will in turn get them meaningful jobs, that will allow them to become tax payers instead of tax users.

The issue of transportation has been a symbol in the civil rights struggle for Black Americans in the fight against discrimination. Today it plays a significant role in the civil rights movement of persons with disabilities. Public transportation must be accessible and affordable to every American. All states, counties, and cities providing public transportation must be required to make their public transportation services accessible to persons with disabilities.

I would like to reiterate that the ADA transportation provision will ensure a working and viable public transportation system for all Americans. Only through accessible public transportation can people with disabilities have the freedom of movement that all other Americans take for granted.

Independent Living Centers are service centers, but they also embodiments of a philosophy. The motto of our center is "Dignity and Opportunity for People with Disabilities." Please make our motto a reality by approving the Americans with Disabilities Act of 1989 (ADA). We ask for no more, and we demand no less.

Thank you for providing me the opportunity to testify this afternoon.

TESTIMONY OF

J. RODERICK BURFIELD

SECRETARY
VIRGINIA ASSOCIATION OF PUBLIC TRANSIT OFFICIALS

BEFORE THE

SUBCOMMITTEE ON HANDICAPPED
OF THE
COMMITTEE ON LABOR AND HUMAN RESOURCES

U.S. SENATE

MAY 16, 1989

GOOD AFTERNOON, MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. MY NAME IS J. RODERICK BURFIELD. I APPEAR BEFORE YOU TODAY AS AN OFFICER AND SPOKESMAN FOR THE VIRGINIA ASSOCIATION OF PUBLIC TRANSIT OFFICIALS (VAPTO). MY REMARKS TODAY REPRESENT THE POSITION OF THE VIRGINIA ASSOCIATION OF PUBLIC TRANSIT OFFICIALS AND DO NOT REPRESENT THE POSITION OF MY EMPLOYER, THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY.

PUBLIC TRANSIT IN VIRGINIA FOR THE DISABLED

VAPTO CONSISTS OF 20 TRANSIT PROPERTIES THAT CARRY OVER 98 PERCENT OF THE ANNUAL PUBLIC TRANSIT RIDERSHIP IN VIRGINIA AND ALSO MANAGES A TRANSIT LIABILITY INSURANCE POOL FOR ITS MEMBERS. ASSOCIATE MEMBERS INCLUDE HUMAN AND SOCIAL SERVICE AGENCIES AND TRANSIT CONSULTANTS AND VENDORS.

VAPTO'S MEMBERSHIP CONSISTS OF LARGE URBAN TRANSIT PROPERTIES (WASHINGTON, D.C. AND ITS VIRGINIA SUBURBS); MEDIUM URBAN TRANSIT PROPERTIES (TIDEWATER VIRGINIA; NEWPORT NEWS AND HAMPTON; ROANOKE; LYNCHBURG; CHARLOTTESVILLE; PETERSBURG); SMALL URBAN TRANSIT PROPERTIES (HARRISONBURG; BRISTOL; DANVILLE; WINCHESTER); AND RURAL SYSTEMS OF VARYING SIZES AND

CHARACTERISTICS (BLACKSBURG; JAMES CITY COUNTY; CENTRAL VIRGINIA TRANSPORTATION; JEFFERSON AREA UNITED TRANSPORTATION). THE MIX OF SIZE AND TYPE OF SYSTEM (URBAN; SUBURBAN; RURAL; BUS; VANS; RAIL; FERRY) IN VIRGINIA IS TYPICAL OF MANY STATES. VIRGINIA MAY BE VIEWED AS A SAMPLE OF THE VARIOUS METHODS THAT HAVE BEEN DEVELOPED TO MAKE PUBLIC TRANSIT AVAILABLE TO DISABLED PERSONS UNDER EXISTING FEDERAL AND STATE STATUTES.

THERE ARE ESSENTIALLY TWO TYPES OF SERVICE OFFERED TO DISABLED TRANSIT USERS: (1) FIXED ROUTE, LIFT EQUIPPED BUSES ON A FULLY ACCESSIBLE OR DEMAND RESPONSE BASIS, AND (2) PARATRANSIT OR SPECIAL TRANSPORTATION SERVICE, WHICH IS USUALLY A DEMAND RESPONSE, SPECIALLY EQUIPPED VAN NOT CONFINED TO A FIXED ROUTE AND THEREFORE MORE FLEXIBLE IN ITS APPLICATION. THE VAST MAJORITY OF PUBLIC TRANSIT FOR DISABLED PERSONS IS ONE OF THESE METHODS OR A COMBINATION OR VARIATION OF THEM.

VAPTO STRONGLY SUPPORTS ACCESSIBLE PUBLIC TRANSIT SERVICES FOR THE DISABLED COMMUNITY. IN 1988, VAPTO MEMBERS SPENT OVER $11 MILLION AND CARRIED OVER 815,000 DISABLED PASSENGER TRIPS (SEE ATTACHMENT). ALSO IN 1988, USING A NEW FINANCIAL INCENTIVE PROGRAM THAT PROVIDES A HIGHER LEVEL OF CAPITAL ASSISTANCE FOR EQUIPMENT THAT SERVES THE DISABLED, VIRGINIA'S TRANSIT SYSTEMS SPENT ALMOST $1.8 MILLION TO INITIATE OR SUBSTANTIALLY IMPROVE TRANSPORTATION FOR THE DISABLED (SEE ATTACHMENT).

IN VIRGINIA, THREE TRANSIT PROPERTIES PROVIDE LIFT EQUIPPED SERVICE EXCLUSIVELY; 12 PROVIDE PARATRANSIT SERVICE EXCLUSIVELY; TWO PROPERTIES PROVIDE BOTH; AND FOUR PROPERTIES OPERATE IN AREAS WHERE BOTH SERVICES ARE AVAILABLE, BUT ARE OPERATED BY DIFFERENT AGENCIES. EIGHT OF THESE PROPERTIES, IN RECOGNITION OF THE OBLIGATION TO SERVE DISABLED PERSONS, VOLUNTARILY EXCEED THE MINIMUM THREE PERCENT ANNUAL OPERATING COST GUIDELINES REQUIRED IN THE EXISTING UMTA REGULATIONS.

EXPERIENCE IN VIRGINIA

THE IMPROVEMENTS IN TRANSPORTATION SERVICES FOR DISABLED PERSONS THAT S. 933 SEEKS TO MANDATE ARE LAUDABLE. THE REAL-LIFE, REAL-TIME EXPERIENCES THAT HAVE OCCURRED OVER THE LAST DECADE, HOWEVER, LEAD VIRGINIA TRANSIT PROPERTIES TO THE CONCLUSION THAT THIS BILL AS CURRENTLY DRAFTED WILL INEVITABLY FALL PREY TO THE 'LAWS OF UNINTENDED CONSEQUENCES'. TYPICALLY, A REVIEW OF THE EFFECTS A BILL SEVERAL YEARS LATER REVEALS THAT CHANGES DID OCCUR, BUT THE BEHAVIOR MODIFICATION WAS NOT AS GREAT AS ORIGINALLY INTENDED OR THE CHANGED BEHAVIOR DID NOT OCCUR IN THE MANNER IN WHICH IT WAS ORIGINALLY CONCEIVED. NOT SURPRISINGLY, SOME OF THE MANDATED CHANGES USUALLY CREATE OR RESULT IN AN UNINTENDED SITUATION THAT IS WORSE THAN THE SITUATION PRIOR TO PASSAGE OF THE OMNIBUS BILL.

IN THIS INSTANCE, THE CONGRESS, THE DISABLED COMMUNITY AND TRANSIT PROPERTIES NATIONWIDE HAVE A RARE OPPORTUNITY TO FORECAST WITH SOME ACCURACY ALMOST PRECISELY WHAT SOME OF THESE UNINTENDED CONSEQUENCES COULD BE. THIS IS BECAUSE FEDERAL STATUTES AND REGULATIONS ON THE ISSUE OF PUBLIC TRANSIT ACCESSIBILITY FOR THE DISABLED HAVE BEEN DEALT WITH AT THE LOCAL LEVEL FOR OVER 10 YEARS. A RECORD OF THE SUCCESSES AND FAILURES HAS BEEN WELL ESTABLISHED.

VAPTO MEMBERS HAVE HAD AN EXTREMELY POSITIVE EXPERIENCE WORKING COOPERATIVELY WITH THE LOCAL DISABLED AND TRANSIT COMMUNITY AND TAKING INTO ACCOUNT UNIQUE LOCAL CONDITIONS. I OFFER SOME INFORMATION AND RECENT EXPERIENCES IN VIRGINIA FOR THE SUBCOMMITTEE'S CONSIDERATION:

S. 933 REQUIRES THAT FIXED ROUTE VEHICLES PURCHASED WITHIN 30 DAYS AFTER ENACTMENT OF THE BILL BE WHEELCHAIR ACCESSIBLE.

- IN JAMES CITY COUNTY, VIRGINIA, WHICH SURROUNDS THE CITY OF WILLIAMSBURG, LESS THAN ONE PERCENT OF THE ROADS HAVE SIDEWALKS. A REQUIREMENT THAT JAMES CITY COUNTY LIFT EQUIP THEIR BUSES WOULD CLEARLY NOT SERVE THE DISABLED, SINCE A WHEELCHAIR-BOUND PERSON COULD NOT SAFELY GET TO THE BUS STOP. THIS IS WHY JAMES CITY COUNTY HAS A PARATRANSIT SYSTEM TO SERVE DISABLED PERSONS AND SPENT 25 PERCENT OF THEIR TRANSIT OPERATING BUDGET FOR THIS PURPOSE IN 1988. JAMES CITY COUNTY, BY THE WAY, HAS NEVER RECEIVED A COMPLAINT BECAUSE THEIR BUSES ARE NOT LIFT EQUIPPED.

- LYNCHBURG, VIRGINIA IS A CITY OF 70,000 SITUATED ON EXTREMELY HILLY TERRAIN. MANY LOCATIONS WOULD BE LITERALLY IMPOSSIBLE FOR WHEELCHAIR PATRONS TO GET TO AND EVEN MORE DIFFICULT TO OPERATE A LIFT EQUIPPED BUS. FOR THIS REASON, LYNCHBURG OPERATES A PARATRANSIT SYSTEM FOR DISABLED PERSONS.

- WINCHESTER AND HARRISONBURG, VIRGINIA, BOTH PURCHASED LIFT EQUIPPED BUSES IN THE EARLY 1980'S AND OPERATED THEM IN REGULAR ROUTE SERVICE FOR SEVERAL YEARS. WHEN NOBODY USED THEM, THEY WERE PHASED OUT AND BOTH CITIES TODAY OPERATE PARATRANSIT SYSTEMS.

- BLACKSBURG, VIRGINIA IS THE HOME OF THE LARGEST STATE UNIVERSITY, VIRGINIA TECH. THE TOWN OPERATES A 25-BUS, FIXED ROUTE TRANSIT SYSTEM THAT SERVES THE TOWN AND THE 25,000 STUDENTS. THE TOTAL NUMBER OF QUALIFIED DISABLED PERSONS IS APPROXIMATELY 60. THEY ARE SERVED BY A PARATRANSIT SYSTEM WHICH THEY HAD A LARGE HAND IN DESIGNING.

- EVEN IN THE LARGEST AND MOST DENSELY POPULATED URBAN AREAS, LESS THAN 10 PERCENT OF THE BUS STOPS HAVE SHELTERS AND LESS THAN HALF OF THE BUS STOPS HAVE A HARD SURFACE ON WHICH RIDERS MAY STAND. JUST RECENTLY IN VIENNA, VIRGINIA, AN ASPHALT PAD WAS INSTALLED BETWEEN THE SIDEWALK AND THE CURB SO A WHEELCHAIR BUS RIDER WOULD NOT SINK INTO THE GRASS WHEN ATTEMPTING TO BOARD A LIFT-EQUIPPED BUS.

RESPONSIBLE SERVICE DELIVERY

S. 933 REQUIRES THAT ANY SYSTEM THAT PROVIDES LIFT EQUIPPED, FIXED ROUTE TRANSIT SERVICES MUST, IN ADDITION, PROVIDE PARATRANSIT SERVICES FOR THE DISABLED "SUFFICIENT TO PROVIDE A COMPARABLE LEVEL OF SERVICES AS IS PROVIDED TO INDIVIDUALS USING FIXED ROUTE PUBLIC TRANSPORTATION."

- IN ALL RURAL AREAS AND IN SOME URBAN AREAS IN VIRGINIA, PARATRANSIT SERVICES ARE PROVIDED BY HUMAN AND SOCIAL SERVICE AGENCIES INSTEAD OF THE PUBLIC TRANSIT AGENCY. AS DRAFTED, THE LEGISLATION DOES NOT MAKE IT CLEAR THAT PARATRANSIT SERVICES PROVIDED BY ONE AGENCY AND FIXED ROUTE PUBLIC TRANSPORTATION PROVIDED BY ANOTHER IS ALLOWABLE.

- IF ALLOWING ONE AGENCY TO PROVIDE FIXED ROUTE SERVICES AND ANOTHER TO PROVIDE PARATRANSIT SERVICES IS PERMISSIBLE, THE BEST RESULT IS THAT THE PARATRANSIT AGENCY MUST NOW COMPLY WITH TWO SETS OF FEDERAL AND/OR STATE AND/OR LOCAL REGULATIONS, REPORT TO TWO BUREAUCRACIES, COMPLICATE THE DELIVERY OF SERVICES AND INCREASE OPERATING COSTS.

- THE WORST RESULT IS THAT A LOCAL TURF BATTLE TORPEDOES THE COMBINATION OF THE FIXED ROUTE AND PARATRANSIT SYSTEMS, SO THAT THE TRANSIT AGENCY IS FORCED TO CREATE A SECOND, OVERLAPPING PARATRANSIT SYSTEM AT GREAT ADDITIONAL COST AND NEGLIGIBLE ADDITIONAL BENEFIT. IN THIS INSTANCE, A FIXED ROUTE BUS SYSTEM AND TWO PARATRANSIT SYSTEMS WOULD CONSUME SCARCE FEDERAL, STATE AND LOCAL DOLLARS AS THE PUBLIC SUBSIDIZES THREE PUBLIC TRANSIT SYSTEMS INSTEAD OF JUST ONE.

S. 933 DOES NOT ADDRESS THE ISSUE OF "DUMPING" IN ANY WAY. "DUMPING," OR THE ABANDONMENT OF CLIENT TRANSPORTATION BY HUMAN AND SOCIAL SERVICE AGENCIES HAS BEEN OCCURRING IN VIRGINIA AND NATIONWIDE FOR SOME TIME. VAPTO BELIEVES THAT S. 933 WILL ACCELERATE THIS TREND BECAUSE OF THE REQUIREMENT THAT TRANSIT AGENCIES THAT OPERATE FIXED ROUTE SERVICES ALSO OPERATE PARATRANSIT SERVICES.

- "DUMPING" HAS BEEN OCCURRING ACROSS THE COUNTRY FOR SEVERAL YEARS AND IS ACCELERATING BECAUSE OF REDUCED FUNDING FOR SOCIAL SERVICE PROGRAMS. BASICALLY, THIS PHENOMENON OCCURS WHEN THE SOCIAL SERVICE AGENCY CONTACTS THE MASS TRANSIT PROVIDER AND INFORMS THEM THAT THEY WILL NO LONGER BE ABLE TO TRANSPORT THEIR CLIENTELE. THE SOCIAL SERVICE AGENCY USUALLY FURTHER STATES THAT THE MASS TRANSIT AGENCY, UNDER CURRENT UMTA REGULATIONS AND SECTION 504 OF THE REHABILITATION ACT OF 1973, IS RESPONSIBLE FOR OPERATING THE TRANSIT SERVICE FOR THEIR SOCIAL SERVICE CLIENTS. THE SOCIAL SERVICE AGENCY DOES NOT NORMALLY TRANSFER ANY FUNDS IN ORDER TO PAY FOR THE INCREASED EXPENSES OF THE MASS TRANSIT AGENCY, SINCE THE "DUMPING"

OCCURRED SO THEY COULD REPROGRAM THEIR TRANSPORTATION FUNDS TO OTHER PURPOSES. IN MANY INSTANCES, THE ADDITIONAL SERVICE REQUIRED BECAUSE OF THE "DUMPING" IS NOT ELIGIBLE FOR FEDERAL OR STATE OPERATING ASSISTANCE BECAUSE IT IS NOT FIXED ROUTE "PUBLIC" TRANSPORTATION. (ATTACHED TO THIS STATEMENT IS A 1988 LETTER TO THE GREATER RICHMOND TRANSIT COMPANY (GRTC) THAT ILLUSTRATES HOW DUMPING OCCURS.)

- IN OTHER INSTANCES OF "DUMPING", A SOCIAL SERVICE AGENCY CEASES TO OPERATE THEIR OWN TRANSPORTATION SYSTEM OR CANCELS THE CONTRACT WITH THE MASS TRANSIT SYSTEM AND SIMPLY TELLS THEIR CLIENTS WHAT BUSES THEY MUST TAKE OR HOW TO ORDER A PARATRANSIT VEHICLE. THIS IS A MORE SUBTLE FORM OF "DUMPING", SINCE FREQUENTLY THE MASS TRANSIT AGENCY IS NOT NOTIFIED OF THE ACTION OF THE SOCIAL SERVICE AGENCY BEFORE IT OCCURS. UNFORTUNATELY, THE SOCIAL SERVICE CLIENT MAY NOT LIVE CLOSE TO THE BUS STOP, FREQUENTLY MUST TRANSFER VEHICLES OR DOES NOT COMPLETELY UNDERSTAND HOW TO USE THE BUS OR PARATRANSIT SERVICE. THE RESULT: SOCIAL SERVICES ARE DENIED TO CITIZENS MOST IN NEED OF THEM.

- A MAJOR PROBLEM THAT OCCURS IS THAT SOME OF THE SOCIAL SERVICE CLIENTS WHO ARE "DUMPED" ARE NOT CLASSIFIED AS DISABLED UNDER CURRENT STATUTES OR UNDER THE DEFINITIONS CONTAINED IN S. 933. WHAT HAPPENS TO THE ELDERLY? WHAT HAPPENS TO DIALYSIS PATIENTS? WHAT HAPPENS TO HOMELESS PERSONS OR DRUG AND ALCOHOL REHABILITATION PATIENTS? THESE PERSONS ARE SERVED BY SOCIAL SERVICE AGENCIES BUT FREQUENTLY DO NOT MEET THE DEFINITION OF DISABLED UNDER THE LAW.

- THE PROVISION IN S. 933 REQUIRING COMPARABLE PARATRANSIT SERVICE COULD LEAD TO SERVICE THAT IS INFERIOR TO EXISTING SERVICE LEVELS. LET US ASSUME THAT A MASS TRANSIT AGENCY CURRENTLY OPERATES A PARATRANSIT SYSTEM FOR DISABLED PERSONS BUT DOES NOT HAVE LIFT EQUIPPED REGULAR ROUTE BUSES. UNDER THE PROPOSED STATUTE, THE MASS TRANSIT SYSTEM WOULD BE REQUIRED TO LIFT EQUIP ALL NEW BUSES AND PROVIDE PARATRANSIT COMPARABLE TO THE REGULAR ROUTE BUS SERVICE. COMPARABLE SERVICE DEFINED IN THIS MANNER WOULD MEAN PARATRANSIT SERVICE CONFINED TO DESIGNATED REGULAR BUS ROUTES AND SCHEDULES AT NIGHT AND ON WEEKENDS. MOST

EXISTING PARATRANSIT SYSTEMS PROVIDE SUPERIOR LEVELS OF SERVICE TO THAT ENJOYED BY REGULAR ROUTE RIDERS -- THE PARATRANSIT VEHICLES ARE NOT CONFINED TO REGULAR BUS ROUTES, OPERATE ON A DEMAND RESPONSE BASIS THROUGHOUT THE ENTIRE SERVICE AREA AND PROVIDE CURB-TO-CURB OR DOOR-TO-DOOR SERVICE WITH TRAINED DRIVERS. THE PROPOSED STATUTE WOULD ALLOW THIS SERVICE TO BE REDUCED TO THE LESSER LEVEL PROVIDED TO REGULAR BUS RIDERS.

- NATIONAL RIDERSHIP STATISTICS INDICATE THAT THE DISABLED OVERWHELMINGLY PREFER PARATRANSIT SERVICE. IN VIRGINIA, RICHMOND AND THE NORTHERN VIRGINIA AREA OFFER BOTH PARATRANSIT AND LIFT SERVICE. IN RICHMOND IN 1988, ONE LIFT EQUIPPED TRIP WAS TAKEN FOR EVERY 59 PARATRANSIT TRIPS. IN NORTHERN VIRGINIA IN 1988, ONE LIFT EQUIPPED TRIP WAS TAKEN FOR EVERY 37 PARATRANSIT TRIPS. RATIOS LIKE THIS ARE REPEATED IN VIRTUALLY EVERY AREA NATIONWIDE IN WHICH BOTH METHODS OF TRIP DELIVERY ARE OFFERED.

- THE PRIMARY REASON FOR LIFT EQUIPPING A VEHICLE IS TO PROVIDE ACCESSIBILITY FOR PERSONS IN WHEELCHAIRS OR PERSONS SUFFERING FROM A SEVERE, PERMANENT PHYSICAL IMPAIRMENT. PERSONS CONFINED TO WHEELCHAIRS OR SUFFERING

FROM A SEVERE PHYSICAL IMPAIRMENT MAKE UP APPROXIMATELY FIVE TO SEVEN PERCENT OF THE TOTAL DISABLED POPULATION. FURTHERMORE, MANY DISABLED PERSONS WITH SEVERE PHYSICAL IMPAIRMENTS REQUIRE A COMPANION AND CANNOT GET TO A REGULAR ROUTE BUS STOP WITHOUT ASSISTANCE. LIFT EQUIPPED REGULAR ROUTE VEHICLES AND THE ATTENDANT OPERATING AND ADMINISTRATIVE COSTS ARE NOT USED BY THE BLIND, THE DEAF, THE MENTALLY IMPAIRED OR THE ELDERLY. THIS IS THE MAIN REASON THAT SO MANY COMMUNITIES IN VIRGINIA AND AROUND THE COUNTRY HAVE DETERMINED, WITH THE INPUT AND SUPPORT OF THEIR DISABLED RESIDENTS, THAT A PARATRANSIT SYSTEM PROVIDES THE BEST SERVICES FOR THE GREATEST NUMBER OF PEOPLE.

OTHER SYSTEMS, PRIMARILY THOSE IN LARGE URBAN AREAS, HAVE DETERMINED THAT LIFT EQUIPPING THE REGULAR ROUTE BUS SYSTEM IS THE BEST WAY TO SUPPLEMENT THE EXISTING PARATRANSIT SERVICES OPERATED BY SOCIAL SERVICE AGENCIES. AS I NOTED EARLIER, REQUIRING TRANSIT AGENCIES TO OPERATE BOTH FIXED ROUTE AND PARATRANSIT SERVICES, BASED ON PRIOR EXPERIENCE, WILL INEVITABLY LEAD TO "DUMPING" OR RESULT IN A LESSER LEVEL OF PARATRANSIT SERVICE THAN EXISTS TODAY, OR BOTH.

TOWARDS A CONSTRUCTIVE APPROACH

AS IS THEIR PRIMARY MISSION, TRANSIT AGENCIES TEND TO ADDRESS THIS ISSUE IN TERMS OF EFFICIENT SERVICE DELIVERY. TRANSIT AGENCIES FREQUENTLY FEEL THAT THE GREAT STRIDES THAT HAVE BEEN MADE IN PROVIDING IMPROVED TRANSPORTATION FOR THE DISABLED ARE NOT FULLY RECOGNIZED. FOR EXAMPLE, IN 1988 THE GRTC WAS FORCED TO TAKE OVER THE EXISTING PARATRANSIT SYSTEM ON THREE DAYS NOTICE WHEN IT SUDDENLY WENT BANKRUPT. THE INVESTIGATION REVEALED THAT THE VANS HAD BEEN POORLY MAINTAINED AND THE SERVICE IMPROPERLY MANAGED BY THE NON-PROFIT MANAGEMENT AGENCY, BUT THE TRANSIT AGENCY RECEIVED ALMOST NO CREDIT FOR STEPPING IN AND RESUMING SERVICE ALMOST IMMEDIATELY.

I WOULD LIKE TO DESCRIBE HOW VIRGINIA HAS DEALT WITH THIS SITUATION OVER THE LAST TWO YEARS IN THE HOPE THAT IT MAY HELP THE CONGRESS DEAL WITH THIS ISSUE. IN THE 1988 SESSION OF THE GENERAL ASSEMBLY, A BILL TO MANDATE LIFTS ON ALL NEW REGULAR ROUTE BUSES WAS INTRODUCED. IT BECAME CLEAR THAT STATUTORILY MANDATING THE METHOD WAS COUNTERPRODUCTIVE. IT WAS EQUALLY EVIDENT THAT A METHOD TO PROVIDE INCENTIVES IN ORDER TO ACHIEVE CERTAIN SERVICE GOALS WAS A BETTER WAY TO GO. A COMPROMISE WAS

STRUCK: THE VIRGINIA DEPARTMENT OF TRANSPORTATION WAS AUTHORIZED TO REIMBURSE 95 PERCENT OF THE LOCAL CAPITAL EXPENDITURES FOR DISABLED TRANSPORTATION PROGRAMS (A MATCH 25 PERCENT HIGHER THAN AVAILABLE FOR OTHER TRANSIT CAPITAL GRANTS). VIRGINIA WAS PRAISED BY THE PRESIDENT'S COMMITTEE ON EMPLOYMENT OF PEOPLE WITH DISABILITIES FOR "PROVIDING THE LEAD FOR OTHER STATES BY ACTING TO REDUCE A MAJOR IMPEDIMENT TO EMPLOYMENT FOR MANY PEOPLE WITH DISABILITIES." I MENTIONED EARLIER THAT IN THE FIRST YEAR ALMOST $1.8 MILLION IN NEW CAPITAL PROJECTS FOR DISABLED TRANSPORTATION RESULTED FROM THIS INNOVATIVE PROGRAM.

ONE FINAL, SHINING EXAMPLE OF HOW A COOPERATIVE APPROACH TO THIS ISSUE HAS EVOLVED IN VIRGINIA IS A MEETING BETWEEN DISABLED REPRESENTATIVES AND VAPTO OFFICERS HELD IN LATE JANUARY, 1989 AT WHICH A DRAFT RESOLUTION (ATTACHED) WAS DEVELOPED. THE CONCEPT UNDERLYING THE RESOLUTION IS TO ESTABLISH A PROCESS FOR TRANSIT PROVIDERS AND DISABLED ADVOCATES TO MEET ON A REGULAR RASIS AND, ABSENT THE EMOTIONAL CONTENT OF MANDATES AND LEGISLATION, DETERMINE IF SERVICE DELIVERY UNDER THE EXISTING LOCAL OPTION REQUIREMENTS CAN BE IMPROVED. THE RESOLUTION WILL BE APPROVED BY VAPTO AT OUR SPRING MEETING IN A FEW WEEKS AND REFERRED TO THE DISABLED GROUPS FOR THEIR CONCURRENCE.

MY REASON FOR TESTIFYING TODAY AND RELATING WHAT HAS OCCURRED IN VIRGINIA IS TO SUGGEST THAT SERIOUS THOUGHT BE GIVEN TO A SIMILAR SYSTEM OF INCENTIVES AT THE NATIONAL LEVEL. I HAVE ABSOLUTELY NO DOUBT THAT S. 933 COULD LEAD TO MANY OF THE UNINTENDED CONSEQUENCES I REFERRED TO EARLIER; INSTEAD, CONSIDER BUILDING UPON THE IMPROVEMENTS THAT HAVE ALREADY OCCURRED UNDER EXISTING STATUTES THROUGH A SYSTEM OF FINANCIAL AND MANAGEMENT INCENTIVES DESIGNED TO CREATE IMPROVED TRANSPORTATION FOR DISABLED PERSONS, TARGETED TO THE LOCAL LEVEL SO THAT LOCAL CONDITIONS AND DESIRES CAN BE RECOGNIZED.

AT VAPTO, WE BELIEVE THE APPLICATION OF COMMON SENSE, LEAVENED WITH SOME CREATIVITY, IS THE BEST SOLUTION FOR THIS ISSUE. THE CHALLENGE FOR THIS COMMITTEE AND THE CONGRESS IS TO DRAFT A STATUTE THAT PROMOTES "CREATIVE COMMON SENSE" AS ITS PRIMARY INGREDIENT. A STATUTE THAT EMPHASIZES THE CARROT RATHER THAN THE STICK WILL ULTIMATELY RESULT IN FAR GREATER AND LASTING IMPROVEMENTS IN TRANSPORTATION FOR THE DISABLED WHERE IT REALLY COUNTS: ON THE STREET, AT THE LOCAL LEVEL. THANK YOU.

1466v

VAPTO Disabled Transportation Survey

October, 1987

Properties	Year Began	Lift	Special	Passenger Trips FY '86	Passenger Trips FY '87	Passenger Trips FY '88	FY '88 Cost	Plans for Expansion	FY 88' % of Operating Cost
Alexandria	1984		X	10,557	14,362	19,000	$ 135,000	Yes (Special)	8.8%
Blacksburg	1983		X	4,389	5,333	6,506	110,000	No	10.0%
Charlottesville	1987	X(2)					10,000	Yes (Lift)	1.0%
Danville	1987		X		20	100	400	No	.07%
Fairfax City	1986		X		121	175	2,520	No	.36%
Fairfax County	1985	X(2)	X	86	7	344,207	3,985,549	Yes (Lift)	
Harrisonburg	1979		X					No	
James City County	1981		X		5,217	5,500	40,000	No	15.0%
JAUNT	1975	X(6)	X	30,401	40,480	45,000	797,122	Yes (Lift)	100.0%
Lynchburg	1985		X	2,700	2,700	5,000	20,000	Yes (Special)	1.0%
Peninsula TDC	1979		X	25,881	28,443	30,000	321,693	No	4.2%
Petersburg	1979		X	11,904	13,475	14,000	46,130	No	6.0%
Prince William County								Yes	
Richmond	1978	X(47)	X	101,692	84,881	90,621	787,000	No	4.6%
Roanoke	1979		X	3,000	3,250	4,200	65,000	Yes (Special)	3.0%
Tidewater TDC	1978		X	204,026	210,000	220,000	1,557,977	Yes (Special)	7.8%
Winchester	1981	X(8)						No	
Washington Metro	1976/79	X(90)		18,000	25,000	31,500	3,200,000	Yes (Lift)	.7%
TOTAL		6(153)	14	412,636	408,314	815,409	11,078,391		

Only two (2) properties (Washington Metro, Winchester) provide lifts exclusively. Charlottesville, Fairfax County and Richmond have lifts; other service is by arrangement with specialized providers (JAUNT, FASTRAN & SPECTRAN). Trips (not including FASTRAN in Fairfax County) increased over 15% from FY '87 to FY '88 (projected). Eight (8) properties exceed Federal 3% cost guidelines. FY '88 average cost per disabled trip: $13.58

COMMONWEALTH OF VIRGINIA FINANCIAL ASSISTANCE TO PUBLIC TRANSPORTATION

Financial Incentive Program for

Capital Improvements to Serve the Disabled

Fiscal Year 1989

A Report on the First Year of the Incentive Program

Rail and Public Transportation Division

Virginia Department of Transportation

December 1988

TABLE OF CONTENTS

	PAGE
SUMMARY	1
PROGRAM DESCRIPTION	4
CAPITAL INCENTIVE GRANTS FOR FY1989	5
PROGRAM OUTLOOK FOR FY1990	7
PROGRAM ASSESSMENT	8
APPENDIX 1	
PROGRAM CHRONOLOGY & RELATED DOCUMENTS	

Summary

In January of 1988, Governor Baliles asked the Commissioner of Transportation and the Commonwealth Transportation Board to consider developing a program that would enhance the transportation capabilities of Virginians with disabilities. In response to the Governor's request, the Virginia Department of Transportation (VDOT) developed a new program of state financial assistance for public transportation. This new program was designed to assist Virginia's public transportation operators in undertaking additional capital improvements which serve people with disabilities and which will build on the substantial base of existing services.

In March of 1988, the Commonwealth Transportation Board approved the new "Financial Incentive Program for Capital Improvements to Serve the Disabled." This program was developed in consultation with the Virginia Department for Rights of the Disabled and the Virginia Association of Public Transit Officials. The key points of the incentive program are as follows:

* The program establishes improved public transportation services for the disabled as a high priority for the Commonwealth.
* The program does not suggest a State preference for any method of service delivery. Equal consideration is given to accessibility improvements to regular route transit services and to improvements for specialized transportation services for the disabled.
* The program allows maximum flexibility to local governments in designing services that meet the particular needs of their disabled constituents. It encourages continued dialogue between local governments and their disabled communities in determining how to best meet their mobility needs.

In addition to the financial incentive program, there are two other initiatives which have been undertaken by VDOT that are intended to enhance the new program. "Innovations in public transportation services for the disabled" has been designated as an emphasis area for state transit demonstration grants in Fiscal Year 1990. Localities that operate transit service have been encouraged to develop proposals for innovations in transportation services for the disabled. These proposals will be submitted for funding in Fiscal Year 1990 and may include operating expenses for up to a one year demonstration period. Accepted proposals will receive state support at 95 percent of the cost borne by the locality.

Certain special proposals for disabled transportation improvements have been forwarded to the Governor's Office for funding consideration through oil over-charge or stripper well funds. Decisions on these proposals are pending.

The financial incentive program was the focal point of VDOT's initiatives to improve transportation service for the disabled during the past year and benefits from this program already are being realized. In May, the Commonwealth Transportation Board approved a public transportation program of projects for Fiscal Year 1989 that included over $590,000 in state grants to thirteen public transportation systems under the new incentive program. Combined with federal and local aid, these funds will be used to finance capital improvements for the disabled totaling approximately $1,800,000 this year.

The incentive program has attracted support from all parts of the Commonwealth. In addition, the program was recently recognized in a letter to

Governor Baliles from the President's Committee on Employment of People With Disabilities. The program was recognized for the significant benefits it provides to people with disabilities. Even though the financial incentive program is still in its first year, it has served to promote further consultation and cooperation between public transportation providers and the disabled communities that they serve. This is essential to the goal of the program: improved public transportation services for Virginians with disabilities.

Program Description

All localities that operate public transportation services are encouraged to undertake additional capital improvements which are designed specifically to improve the use of their services by the disabled Proposed improvements which are found to be reasonable and appropriate by VDOT and the Commonwealth Transportation Board will receive state funding at the maximum state participation ratio (95 percent of the non-federal share). All other state public transportation capital grants receives funding at a lower participation ratio which varies from year to year. The current (FY89) state participation ratio for public transportation capital grants is 75 percent.

Proposed improvements must be related directly to passenger services for the disabled and only those services operated with rubber-tired vehicles are eligible. Accessibility to rail transit service is already required by federal regulations and building codes governing architectural barriers. Examples of eligible improvements include: the purchase and installation of wheelchair lifts lifts on buses, trolleys, and vans; the purchase of vans used for the transportation of the disabled by the public transportation operator or through a service contract between the transit operator and a third party; and the purchase and installation of telecommunications equipment for the deaf, braille signing or transit schedule printing, or on-board audio equipment for announcing destinations and stop locations.

The incentive grants are awarded as part of the state public transportation capital assistance program and drawn from the same fund. Therefore, the Commonwealth Transportation Board has retained the right to limit the amount of funds that a recipient can receive in a single year. No limit was imposed in Fiscal Year 1989.

Capital Incentive Grants for Fiscal Year 1989

During the first year (FY89) of the Capital Incentive Program, thirteen Virginia transit systems received funding. Table 1 provides a list and description of the projects funded in the first year of the program. The estimated total cost of the projects is $1,782,500. The table presents the total amount of each incentive grant including a breakdown of federal transit aid, state aid and local match.

The amount of state funds awarded under the incentive program totaled $590,378. The following equipment will be purchased through these grants: thirty-two wheelchair lifts for transit coaches, three wheelchair lifts for trolleys, four body-on-chassis vehicles with wheelchair lifts, and thirty-eight vans with wheelchair lifts.

Arlington County received state aid funds of $42,750 under the incentive program to help purchase wheelchair lifts for three new trolley buses. Arlington County began operating the Crystal City Trolley service in 1987 with two trolleys and a lift-equipped van. The county will purchase three trolleys with wheelchair lifts to continue this service. The service is operated by a private for profit operator.

The Tidewater Transportation District Commission (TTDC) through the Tidewater Regional Transit (TRT) operates a special transportation service for its transportation for the disabled. TRT operates forty-one vehicles under this service. TTDC received funding under the incentive program to help purchase seventeen vans (fifteen with lifts) and three small buses for specialized services. These vehicles will replace old, worn out equipment. TTDC received $85,500 in state aid for the fifteen vans with wheelchair lifts

Table 1

Commonwealth of Virginia Financial Assistance to Public Transportation

Financial Incentive Grants for Captial Improvements to Serve the Disabled - Fiscal Year 1989

Grant Recipient	Project Description	Total Project Cost	Federal Funds Provided	Incentive Grants	Local Funds Provided
Arlington County	Purchase wheelchair lifts for 3 new trolley buses.	$45,000	$0	$42,750	$2,250
Tidewater Transportation District Commission	Purchase 17 vans (15 with lifts) and 3 small buses for specialized services.	$600,000	$360,000	$228,000	$12,000
Greater Richmond Transit Company	Purchase wheelchair lifts for 29 new buses.	$435,000	$413,250	$20,663	$1,087
Peninsula Transportation District Commission	Purchase 7 vans with lifts and TDD system for specialized services.	$224,700	$83,160	$134,463	$7,077
Greater Lynchburg Transit Company	Purchase 1 body-on-chasis (BOC) vehicle with lift for specialized services.	$40,000	$32,000	$7,600	$400
Petersburg Area Transit	Purchase 2 vans with lifts for specialized services.	$48,000	$0	$45,600	$2,400
Charlottesville Transit System	Purchase 1 van with lift for specialized services.	$25,000	$0	$23,750	$1,250
Central Virginia Transportation (Cumberland, Va.)	Purchase 1 van with lift for specialized services.	$24,000	$19,200	$4,560	$240
District III Governmental Cboperative (Marion, Va.)	Purchase 4 vans and 1 BOC with lift for specialized services.	$108,800	$87,040	$20,672	$1,088
Harrisonburg Transit	Purchase 1 body-on-chasis (BOC) vehicle with lift for specialized services.	$40,000	$32,000	$7,600	$400
JAUNT Inc. (Charlottesville Area)	Purchase 4 vans with lifts and 1 BOC with lift for specialized services.	$141,000	$112,800	$26,790	$1,410
Winchester Transit	Purchase 1 van with lift for specialized services.	$27,000	$21,600	$5,130	$270
Tazewell County Transit	Purchase 1 van with lift for specialized services.	$24,000	$0	$22,800	$1,200
	Total:	$1,782,500	$1,161,050	$590,378	$31,072

and $142,500 in state aid for the three small buses and two vans. These grants together total $228,000.

The Greater Richmond Transit Company (GRTC) received state financial incentive funds of $20,663 to help purchase wheelchair lifts for twenty-nine new buses. These buses will be used in GRTC's fixed route service.

The Peninsula Transportation District Commission received $134,463 from the incentive program to help purchase seven vans with lifts for its special service and a Telecommunication Device for the Deaf (TDD). The seven vans with lifts will replace other worn out vans. The TDD system will be used to provide route and scheduling information for the hearing impaired.

The Greater Lynchburg Transit Company (GLTC) received $7,600 from the incentive program to help purchase on body-on-chassis vehicle with a lift for special services. Due to expected increases in demand, an additional lift-equipped vehicle is needed for this service.

The City of Petersburg received $45,600 to help purchase two vans with lifts for its specialized service. Petersburg plans to lease these vehicles to provide its special service.

The City of Charlottesville will purchase one van with a lift for special services. They received $23,750 in state incentive funds. This vehicle will be leased to another operator to provide Charlottesville's special service.

The Central Piedmont Action Council (CPAC) in Cumberland, Virginia, received funds to help purchase a van for special service. The van replaces another van whose useful life has expired. CPAC received $4,560 in state aid.

District III Governmental Cooperative in Marion, Virginia, received $20,672 in state aid from the incentive program to help purchase four vans and one body-on-chassis vehicle with a lift for special services. The vehicles

will be used to replace worn out equipment and to serve the increased demand for service.

The City of Harrisonburg received state aid of $7,600 to help purchase a body-on-chassis vehicle with a lift for its special service. The vehicle will be used for a new route to support the growth of James Madison University.

Jefferson Area United Transportation, Inc. (JAUNT) received $26,790 in state aid funding from the incentive program to purchase four vans with lifts and a body-on-chassis vehicle with a lift for special service. The four vans will replace worn out equipment. The body-on-chassis vehicle will allow JAUNT, Inc. to expand their rural service.

The City of Winchester was granted $5,130 in state aid to help purchase a van with a lift for its special services. This vehicle will allow Winchester to provide on-call transportation services for the disabled.

Tazewell County received $22,800 in state aid from the incentive program. This will allow this rural county to begin a special demand responsive service for the disabled.

Program Outlook for Fiscal Year 1990

In a survey of Virginia's transit operators conducted in September of 1988, VDOT requested a preliminary preview of the requests for Fiscal Year 1990 grants under the program. Eighteen of Virginia's thirty-one public transportation systems indicated that they anticipated submitting a grant application under the incentive program for the coming fiscal year. The anticipated total cost of the proposed improvements is expected to be $1,640,000, and a total of $543,400 in state capital assistance will be required to fund these incentive grants.

These funds will be used to help purchase thirty-eight wheelchair lifts for transit coaches, thirty-one vans with wheelchair lifts, and three body-on-chassis vehicles with wheelchair lifts.

These proposed grant applications have not been reviewed and approved by the policy boards which oversee the transit properties and should be considered very preliminary estimates. For this reason the grant applications anticipated from each transit property are not identified in this report.

Program Assessment

Virginia's public transportation operators had very little time to respond when the incentive program was announced in March of 1988. This announcement came after the close of the application cycle for the other, ongoing public transportation grant programs. A special, condensed grant application process was conducted for the incentive program in order to ensure that grants would be awarded for the upcoming fiscal year. Applications were due into VDOT by the first of April for proposals to be funded in FY89. Yet the response to the program was very good. This was due largely to the fact that Virginia's public transportation operators already had well established transportation programs for their disabled constituents, and they were cognizant of their needs for capital improvements. It appears that the incentive program enabled Virginia's transit operators to move to a higher priority those capital improvements which are designed to serve the disabled. Therefore, the incentive program is working to establish improved public transportation services for the disabled as a high priority in the Commonwealth. It is important to note that the transit industry in Virginia has been supportive of this initiative. This is true even though the incentive program is funded with state public transportation capital assistance monies which are in great

demand. Clearly, Virginia's public transportation operators share the concern of the Governor and the Commonwealth Transportation Board regarding the mobility of our disabled citizens.

The incentive program also has attracted the attention of numerous disabled citizens associations and human service agencies in the Commonwealth. Many of these associations and agencies have been very supportive of this program. The incentive program recently received national recognition when the President's Committee on Employment of People with Disabilities sent a commendatory letter to the Governor of Virginia.

Most significantly, the incentive program has helped to emphasize the importance of communications between public transportation operators and the disabled citizens that they serve. The capital improvements proposed under the incentive program are designed to meet the needs of the local disabled communities as expressed by these citizens themselves. It is the firm belief of the Commonwealth Transportation Board and the Virginia Department of Transportation that consultation and cooperation between the public transportation provider and the local disabled community are essential to the goal of the incentive program: improved, effective public transportation services for Virginians with disabilities.

APPENDIX 1

PROGRAM CHRONOLOGY & RELATED DOCUMENTS

The following is a chronology of the State Aid to Public Transportation application process for Fiscal Year 1989--the first year of the Financial Incentive Program for Capital Improvements to Serve the Disabled.

DECEMBER 1, 1987 — VDOT announces the opening of the grant application process for FY89 state aid to public transportation. Applications are due by February 16, 1988 for all grant categories.

JANUARY 20, 1988 — Governor Baliles sends a letter to VDOT Commissioner Pethtel requesting the Commonwealth Transportation Board (CTB) to consider a financial incentive mechanism for encouraging public transportation capital improvements which enhance the mobility of Virginians with disabilities. (Attachment 1)

JANUARY 29, 1988 — Commissioner Pethtel transmits the Governor's letter to the Board and places this item on the agenda for the Board's February meeting. VDOT staff begins examining options and discussing options with the Virginia Association of Public Transit Officials (VAPTO) and the Virginia Department for Rights of the Disabled (VDRD).

FEBRUARY 2, 1988 Board of Directors of VAPTO meets and adopts a position statement regarding improved transportation for the disabled; also appoints a subcommittee to work with VDOT on the incentive program.

FEBRUARY 8, 1988 VDOT staff meets with VAPTO subcommittee to examine options for incentive program. Recommendations of VDRD are reviewed.

FEBRUARY 15, 1988 All applications received for FY89 state transit grants. Application review process initiated; target completion date is March 23, 1988.

FEBRUARY 18, 1988 VAPTO and VDRD representatives present their opinions and recommendations to the Multi-Modal Committee of the CTB, and the full Board approves a resolution which instructs VDOT to develop a financial incentive program to be initiated with grants awarded for FY89.

FEBRUARY 24, 1988 VDOT staff submits a proposal for a financial incentive program for improving the mobility of Virginians with disabilities. Proposal is forwarded to CTB for consideration at their March meeting. VAPTO and VDRD are advised of staff recommendations. All eligible recipients of state transit grants are advised of staff recommendations and of the tentative application deadline of April 1, 1988.

EARLY MARCH, 1988 — An amendment to the Appropriations Act of 1988 is introduced which authorizes the CTB to award financial incentive grants for public transportation to the disabled within the state aid for public transportation capital assistance subprogram. This amendments is offered in lieu of an earlier amendment which would have removed the requirement that the Highway Maintenance and Operating Fund program must be distributed under the same formula as the Mass Transit Trust Fund component.

MARCH 17, 1988 — Commonwealth Transportation Board approves a resolution creating the financial incentive program. (Attachment 2) A press release is issued and a letter is sent out to all public transportation operators eligible to receive grants under the incentive program.

APRIL 1, 1988 — Applications received for capital incentive grants for transportation improvements for the disabled.

APRIL 21, 1988 — Entire proposed FY89 Program of Projects for state aid to public transportation is reviewed and discussed by the Multi-Modal Committee at their regular April meeting.

MAY 19, 1988	Entire proposed FY89 Program of Projects for state aid to public transportation is presented at the Commonwealth transportation Board for their approval.
JULY 1, 1988	Execution of contracts for all FY89 grants is initiated.
NOVEMBER 19, 1988	Commonwealth Transportation Board passes a resolution (Attachment 3) commending Virginia's transit operators, the Department for the Rights of the Disabled, and the local disabled groups for their cooperative efforts in working to make the incentive program successful. The resolution also affirms the Board's belief that localities, in consultation with their local disabled communities, should continue to determine the most appropriate method for providing public transportation services to the disabled.

Attachment #1

COMMONWEALTH of VIRGINIA

Office of the Governor

Richmond 23219

Gerald L. Baliles
Governor

COMMISSIONER'S

JAN 22 1988

OFFICE

January 20, 1988

Mr. Ray D. Pethtel, Chairman
Commonwealth Transportation Board
1221 East Broad Street
Richmond, Virginia 23219

Dear Ray:

Congratulations on your recent appointment as Chairman of the ASHTO Standing Committee on Public Transportation. I am sure you will do well. You have provided leadership not only in speeding up projects and putting money to work but doing so with a keen eye on the total picture. Your child care proposal is one such example.

Virginia has an opportunity now to take the lead in encouraging localities to make their public transit facilities accessible to all her citizens. In that regard, I would like for you to explore options for providing financial incentives for public transportation operators to purchase transit vehicles which are wheelchair accessible. One option suggested to me would be to provide state financial support for capital projects involving the purchase of buses, trolleys and vans which are equipped with wheelchair lifts at a higher level of state participation.

As we have discussed from the very beginning, our transportation initiatives will and should benefit all Virginians. I would like you to work with your Board over the next several weeks to suggest a mechanism that will also enhance the transportation capabilities of Virginians with disabilities. This is an issue of great importance to me.

With kindest regards, I am

Sincerely,

Gerald L. Baliles

GLB/fw

cc: The Honorable Vivian E. Watts
The Honorable Eva S. Teig

PUBLIC TRANSPORTATION FOR THE DISABLED

CAPITAL FINANCIAL INCENTIVE PROGRAM

Moved by H. V. Kelly, Sr., Seconded by Dr. Daphyne S. Thomas

WHEREAS, in a resolution passed on February 18, 1988, this Board affirmed its commitment to ensuring that transportation facilities and services improve the mobility of all of Virginia's citizens; and

WHEREAS, this Board requested the Department of Transportation to develop a proposal for a capital financial incentive program for public transportation projects which serve persons with disabilities; and

WHEREAS, members of this Board and the Department have met with representatives of the Department for Rights of the Disabled and the Virginia Association of Public Transit Officials and careful consideration has been given to the opinions expressed by all concerned parties; and

WHEREAS, it is the opinion of this Board that public transportation services for the disabled must be designed in a cooperative effort between local governments and their disabled citizens, and therefore, the capital financial incentive program should not suggest a specific state preference in the approach taken to the delivery of public transportation services to the disabled; and

WHEREAS, it is the desire of this Board to ensure that the capital financial incentive program is undertaken as soon as possible and is effective in encouraging improvements to public transportation services to the disabled without disrupting plans for improvements to transportation services for the full general public; and

NOW, THEREFORE, BE IT RESOLVED, that this Board will accept applications from eligible recipients of state transit assistance for grants to support capital improvement projects which are designed specifically to increase the mobility of disabled persons; and

FURTHER, BE IT RESOLVED, that such projects will be eligible to receive state support for 95 percent of the expenses borne by the locality for the incremental cost of a component to a capital improvement and/or the full cost of a stand-alone capital improvement designed to assist disabled persons who require special equipment or services; and

FURTHER BE IT RESOLVED, that this financial incentive program will be extended to capital projects for rubber-tired transit services exclusively and may have an annual limit per recipient to be determined by this Board; and

FURTHER BE IT RESOLVED, that this Board requests the Department of Transportation to implement this financial incentive program as part of the FY 88-89 Program of Projects and to report on the progress of this program by December 1988.

* * * *

Motion carried 3/17/88

Attachment #3

RESOLUTION
OF THE
COMMONWEALTH TRANSPORTATION BOARD
CONCERNING
PUBLIC TRANSPORTATION FOR DISABLED PERSONS

WHEREAS, the Commonwealth Transportation Board on March 17, 1988, instituted a capital financial incentive program for public transportation projects which serve persons with disabilities; and

WHEREAS, this program was adopted at the request of the Governor and after consultation with representatives of the Department for Rights of the Disabled and the Virginia Association of Public Transit Officials; and

WHEREAS, the Board believes that successful programs for the public transportation needs of all Virginians, including special programs for the disabled, are enhanced through cooperative efforts at the local level, especially concerning the method for the delivery of such services; and

WHEREAS, in an effort to begin this program as soon as possible, requests for public transportation capital grants were reopened so that public transportation operators could amend their FY 1989 grant requests to provide additional equipment and facilities to serve the disabled; and

WHEREAS, such projects are eligible to receive state support for 95 percent of the expenses borne by the locality for the incremental cost of a component to a capital improvement and/or the full cost of a stand-alone capital improvement designed to assist disabled persons; and

WHEREAS, 13 public transportation operators received grants under this program in the amount of $590,378, which provided additional funding for the purchase of 32 wheelchair lifts for transit buses and 42 paratransit vehicles for specialized services for the disabled; and

WHEREAS, the rapid response of Virginia's public transportation operators to this program is further evidence of their commitment to increase the existing high levels of transportation services for the disabled; and

WHEREAS, the President's Committee on Employment of People with Disabilities has commended Governor Baliles for providing the lead for other states by acting to reduce a major impediment to employment for many people with disabilities, thus helping thousands of Virginians to live more productive and satisfying lives;

NOW, THEREFORE, BE IT RESOLVED that the Commonwealth Transportation Board commends the Virginia Association of Public Transit Officials, the Department for Rights of the Disabled and the many local disabled groups for their cooperative approach to enhancing transportation for the disabled community; and

BE IT FURTHER RESOLVED that the Board believes the current program, which allows each locality or public transportation operator to work with their local disabled community to determine the most appropriate method for providing such transportation, is a model for the nation; and

BE IT FURTHER RESOLVED that the Board encourages public transportation providers and the state and local disabled communities to continue working together to further improve local option transportation services for the disabled under the existing Capital Incentive Program.

Moved by Mr. Beyer

Seconded by Mr. Musselwhite

Motion carried November 19, 1988

Adult Development Center Inc.
3111 West Clay Street
Richmond, Virginia 23230
Phone 355-7815

December 2, 1988

[redacted]
Richmond, VA 23230

Dear [redacted]

The purpose of this letter is to follow up on our telephone conversation of November 21, pursuant to my request for a meeting to open discussion on the transportation agreement between our agencies.

Complying with your request, I am enclosing a typical schedule of the Adult Development Center's current transportation. Typical is a key word because, as I am sure you understand, this schedule is subject to change based upon individual circumstances relating to mental and physical health. Nevertheless, it represents the best information we can provide at this time and it should enable you to get an initial feel for the problem area.

Please keep in mind that all ADC clients are eligible for transportation subsidies within the Federal Program for Specialized Transportation for which the Greater Richmond Transit Authority has local responsibility. It is within the "consolidation" guidelines of that program that ADC is attempting to reduce its own program by seeking your comments and assistance. Your proposal will be considered together with those other agencies with whom we have consulted.

I will await further word from you.

Sincerely,

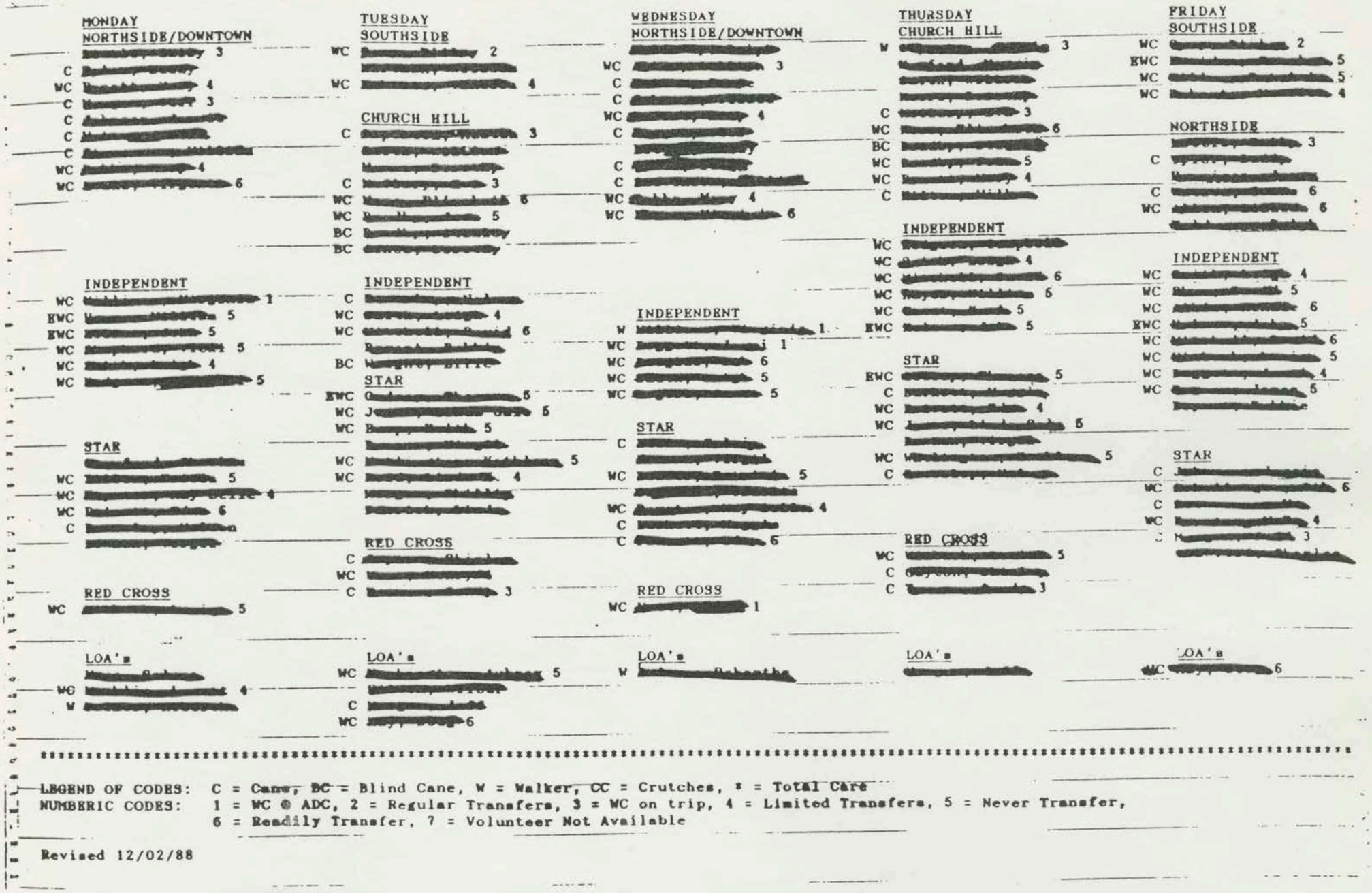
Fred Fluckiger

Fred Fluckiger
Chairperson, Board of Directors

FF/jso

Enclosure

ADULT DEVELOPMENT CENTER
MEMBERSHIP/TRANSPORTATION LOG



LEGEND OF CODES: C = Cane, BC = Blind Cane, W = Walker, CC = Crutches, * = Total Care
NUMBERIC CODES: 1 = WC @ ADC, 2 = Regular Transfers, 3 = WC on trip, 4 = Limited Transfers, 5 = Never Transfer,
6 = Readily Transfer, 7 = Volunteer Not Available

Revised 12/02/88

RESOLUTION SUPPORTING BETTER COMMUNICATIONS BETWEEN VAPTO AND ELDERLY & DISABLED CITIZENS

WHEREAS, the Virginia Association of Public Transit Officials (VAPTO) wishes to establish better communications with citizens who require specialized public transportation services; and

WHEREAS, VAPTO representatives met on January 23, 1989 with representatives of the Board for Rights of the Disabled (BRD) to discuss how communications could be improved between specialized transportation providers and specialized transportation recipients; and

WHEREAS, VAPTO and the BRD agreed that better communications could lead to improvements in transportation services for the elderly and disabled communities under current state and federal laws and regulations if all parties committed themselves to such an effort; and

WHEREAS, VAPTO agreed to draft a resolution outlining these goals for presentation to the BRD and other groups representing elderly and disabled persons for their consideration;

NOW, THEREFORE, BE IT RESOLVED that this resolution be presented to VAPTO, BRD and other groups representing the elderly and disabled community for their consideration and action; and

BE IT FURTHER RESOLVED that after approval the participating groups will convene an initial meeting in order to establish an orderly plan for better communications and more efficient and productive transportation services to benefit all parties to this resolution.