

MEMORANDUM

Date: May 23, 1994
To: Senator Dole
From: Alec Vachon
Re: Floor Statement/Clinton, ADA, and Rejection of Judge
Arnold as a Supreme Court Nominee

- * As I wrote you Friday, Clinton rejected Judge Richard Arnold because of a history of cancer -- wanting someone who might last 15-20 years on the Court. Clinton is also reported as having spoken directly with Arnold's doctors.
- * Whether cancer was Clinton's real reason for rejecting Arnold is debateable -- press reports indicate Arnold had problems on both the left and right. Nonetheless, cancer is Clinton's stated reason (although it would have been better if Clinton had said nothing, and simply commended Breyer).
- * Although a clear violation of the spirit of both ADA and the Rehab Act, Clinton's action did not break either law. The 1991 Civil Rights Act exempts Presidential appointments requiring Senate confirmation from civil rights laws, including ADA and the Rehab Act.
- * But there is a double standard -- one for business, state & local government, and most Federal jobs -- and another for "important" Presidential nominations. Although Clinton's reason is understandable, longevity in making employment decisions is not acceptable for businesses. Indeed, the first EEOC ADA lawsuit was against a business on behalf of an individual with less than a year to live.
- * Attached is a floor statement that reflects both sides of this issue -- and would begin to build a record if changes to ADA are eventually needed. Normally, I advise staying away from even implied criticism of ADA -- disability groups are volatile, and are looking for a prominent member of Congress to attack as soft on ADA, if only for fundraising. However, the President makes excellent cover.
- * DO YOU WANT TO:

- _____ READ STATEMENT ON FLOOR.
- _____ INSERT IN RECORD.
- _____ HOLD OFF.

cc: D. Shea

**SENATOR BOB DOLE
FLOOR STATEMENT
PRESIDENT CLINTON, JUDGE RICHARD ARNOLD, AND ADA**

MR. PRESIDENT, ON MAY 13TH PRESIDENT CLINTON ANNOUNCED HIS NOMINATION OF JUDGE STEPHEN BREYER TO THE SUPREME COURT. IN HIS MAKING THIS ANNOUNCEMENT, THE PRESIDENT NOT ONLY DESCRIBED JUDGE BREYER'S MANY EXCELLENT QUALITIES, BUT ALSO EXPLAINED WHY HE REJECTED JUDGE RICHARD ARNOLD, CHIEF JUDGE OF THE EIGHTH CIRCUIT COURT OF APPEALS.

THE PRESIDENT SAID, AND I QUOTE, "JUDGE RICHARD ARNOLD . . . HAS BEEN A FRIEND OF MINE FOR A LONG TIME. . . . BUT, AS HAS BEEN WIDELY REPORTED IN THE PRESS, [HE] HAS CANCER AND IS NOW UNDERGOING A COURSE OF TREATMENT."

PRESIDENT CLINTON'S REMARKS HAVE BEEN WIDELY CRITICIZED. THE ORLANDO SENTINEL SUGGESTED THE PRESIDENT'S MEDICAL INQUIRIES MAY BE "UNETHICAL." A USA TODAY ARTICLE FOUND HIS WORDS A SHARP REMINDER OF THE STIGMA FACED BY THE NATION'S 8-MILLION CANCER SURVIVORS. FRANK RICH, WRITING IN THE NEW YORK TIMES, SAW ARNOLD'S CANCER AS UNPARALLELED REAL WORLD EXPERIENCE, EXACTLY WHAT THE PRESIDENT HAD SAID HE WANTED IN A SUPREME COURT NOMINEE. AND THE WALL STREET JOURNAL CORRECTLY NOTED THE PRESIDENT'S ACTION WOULD BE ILLEGAL UNDER THE AMERICANS WITH DISABILITIES ACT.

MR. PRESIDENT, I ASK UNANIMOUS CONSENT THAT THESE FOUR ARTICLES BE PRINTED IN THE RECORD.

ALTHOUGH THE PRESIDENT DID VIOLATE THE SPIRIT OF ADA, HE DID NOT BREAK THE LAW. THE CIVIL RIGHTS ACT OF 1991 SPECIFICALLY EXEMPTS PRESIDENTIAL APPOINTEES SUBJECT TO SENATE CONFIRMATION FROM THE NATION'S CIVIL RIGHTS LAWS, INCLUDING ADA.

IN MY VIEW, THIS IS A DOUBLE STANDARD -- ONE FOR TOP PRESIDENTIAL APPOINTMENTS, ANOTHER FOR EVERYBODY ELSE. INDEED, THE FIRST LAWSUIT BROUGHT BY THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION UNDER ADA WAS ON BEHALF OF AN INDIVIDUAL WITH BRAIN CANCER WHO WAS EXPECTED TO LIVE LESS THAN A YEAR.

MR. PRESIDENT, THE AMERICAN PEOPLE DO NOT LIKE DOUBLE STANDARDS. THEY ARE UNFAIR, AND THEY CAN DISCREDIT OUR BEST INTENTIONS. IF WE HAVE RULES, THEY SHOULD APPLY TO EVERYONE.

BUT THIS CONTROVERSY CAN SERVE A USEFUL PURPOSE. IF WE ARE TO MAKE ADA WORK -- AND I THINK WE ARE ALL COMMITTED TO DOING THAT -- WE MUST LOOK CANDIDLY AT THE TOUGH ISSUES. THE PRESIDENT'S UNFORTUNATE REMARKS ARE AN OCCASION TO DO JUST THAT.

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THE ORLANDO SENTINEL

<May> 17, 1994 Tuesday, 3 STAR

SECTION: EDITORIAL; Pg. A7

HEADLINE: THE CANDIDATE WHO CAME IN FROM THE DARK

BYLINE: By Thomas V. DiBacco, Special To The Sentinel

BODY:

President <Clinton's> nomination of federal appeals <Judge> Stephen Breyer for his second Supreme Court appointment illustrates what might be dubbed the major deficiency of his administration, namely, poor management.

The president really didn't want Breyer, as illustrated by the unhappy demeanor that he showed late Friday during the solitary announcement in the White House Rose Garden. His first choice was Bruce Babbitt, the interior secretary; next was old friend <Judge Richard Arnold> of Arkansas. But there were only three names on the president's short list, with Breyer a leftover from last year's selection process in which Ruth Bader Ginsburg won the nod.

Thus, when opposition to Babbitt and <Arnold> emerged, <Clinton> had no choice but to choose Breyer. Conservatives were delighted because, as consumer activist Ralph Nader was quick to criticize after the announcement, <Judge> Breyer has been more supportive of business interests than consumers during the years. Liberals support Breyer because Sen. Edward Kennedy has been his major backer - and there's enough evidence in Breyer's judicial record to support some of their causes, too, such as abortion rights.

Had <Clinton> permitted his staff to come up with a longer list of strong candidates and operated under the tenet that he had ample time to fill the slot (October is the actual month when Justice Harry Blackmun's retirement is effective), he would have been able to exercise real choice. As it was, <Clinton> was testy in answer to a reporter's question that suggested poor management of the process:

"When we have these appointments that only I make," snapped the president, ". . . with all respect to my aides - I think I know as much or more about it as they do."

Maybe, but the president of the United States must act presidential, and candidates should be treated with due courtesy. Sadly, the events of last week were scarcely elevating: We were told on Monday, May 9, that an announcement was forthcoming. By Tuesday, word leaked out that Babbitt was the man, leading to a rash of criticism from Western senators who took offense at the Interior secretary's strong environmental stance.

According to The New York Times, the president also personally called doctors regarding the health of <Judge Arnold,> who for years has been battling chronic lymphocytic leukemia; <Clinton's> strategy must be not only the first of its kind but may be unethical, given the usual confidentiality of medical records. Also on Tuesday, the president and Sen. Kennedy conferred during a joint appearance at a meeting of the American Federation of Teachers.

Then late Wednesday night, in a meeting that ran into the wee hours of Thursday, the president brought Babbitt to the White House to soften him up for the bad news and possibly boost his ego by suggesting that he was really needed at the Interior Department. After Thursday morning, when the press was told an announcement would come by day's end, representatives of women's groups made

known their opposition to <Judge Arnold.> So no announcement came on Thursday. The president's decision was made for him: Breyer was the only one left.

Is this any way to make a decision regarding a nominee for the nation's highest court?

To be sure, Breyer is distinguished as a judicial scholar and <judge.> I recall having reviewed his book Regulation and Its Reform for Harvard's Business History Review in 1982, and I couldn't say enough good things about his moderate stance and ability to write and argue effectively. And there is little doubt that Breyer is his own person when it comes to interpreting the law. About the only wart in his background is his failure to have fully paid Social Security taxes on a part-time household worker, but news reports suggest that the Internal Revenue Service ruled that Breyer acted within the law. Certainly, this issue will get a full airing before the Senate Judiciary Committee.

But Americans for the foreseeable future may identify <Judge> Breyer - if, as appears likely, he is confirmed - as the dark-horse candidate to become a Supreme Court justice who won the race because the White House didn't have its act together. Unfortunately, in terms of the 42nd president's track record thus far, it's not the only memory of bad management at 1600 Pennsylvania Ave.

GRAPHIC: DRAWING: Stephen Breyer DOROTHY AHLE

LANGUAGE: ENGLISH

LOAD-DATE-MDC: May 18, 1994

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USA TODAY
<May> 19, 1994, Thursday, FINAL EDITION

SECTION: NEWS; Pg. 5A

HEADLINE: From cancer survivors, a cry of discrimination/'Disease-ism' joins ranks alongside racism, sexism

BYLINE: Tony Mauro

BODY:

When President <Clinton> said last week he would not appoint his friend <Richard Arnold> to the Supreme Court because <Arnold> had cancer, few questions were raised.

But for many of the 8 million Americans who have survived cancer, it was a chilling reminder that from the White House on down, cancer still bears a stigma that can create a high barrier to employment and other opportunities.

Some legal experts say that in a different setting, <Clinton's> basis for not appointing <Arnold> would have been downright illegal under the Americans with Disabilities Act.

"If <Richard Arnold> were applying to be general counsel of IBM, they could not consider his cancer history," says Seton Hall law professor Barbara Hoffman. "Fear of future recurrence is not acceptable."

The act does not apply to judicial appointments, but the rejection still stung.

"The choice of Steve Breyer was excellent, but it was tainted by rejecting someone because of cancer," says Paul Tsongas, former presidential candidate who had a cancer similar to <Arnold's.> "If he had been rejected because of race or color, there would have been outrage, but this kind of discrimination is accepted."

<Arnold,> a federal appeals <judge> in Arkansas, was first diagnosed with a lymph system cancer called non-Hodgkin's lymphoma 19 years ago. He was treated recently with radiation and precautionary chemotherapy in connection with a lymphoma discovered last year in his mouth.

"We had to have the progress of his health ultimately resolved," <Clinton> said Friday in explaining why he did not pick <Arnold,> choosing Boston <judge> Breyer instead.

Grace Parsons Monaco of the Candlelighters Childhood Cancer Foundation says:

"My phone started ringing Saturday morning. I heard a lot of raspberries for the president."

Some of the calls were from parents of cancer survivors who have been fighting with increasing success against discrimination that shuts out opportunities for their children.

"There had been so much optimism, we've made so much progress, and then this comes out," Monaco says. "There's racism and sexism and there's disease-ism too."

White House officials say <Clinton> is mindful of cancer discrimination issues.

But the rarity of Supreme Court openings, paired with <Clinton's> desire to replace liberal Harry Blackmun with a justice who could serve well past his own administration, made it necessary to take <Arnold's> life expectancy into account, the White House says.

That consideration of future health "is exactly what the ADA was meant to prevent," says Dan Fiduccia, an advocate for cancer survivors in Cupertino, Calif. "<Clinton> basically said it's OK for the president to do this, so it's OK for others to do it."

Lawyers say that under the ADA, employers may not even ask applicants initially if they have had cancer, AIDS or other illnesses. Once a person is found qualified, illnesses can be considered only if the employer can show that the applicant's immediate ability to do the job would be affected.

No one suggests that concern would apply to <Arnold,> 58.

<Arnold> declines to comment, but friends say he has never missed a day of work because of cancer since he was diagnosed. <Arnold> has said that people with his kind of cancer will have it when they die - but they'll die of other causes.

Last year <Arnold> received low-level radiation treatment after a dentist detected signs of lymphoma in his gums. That was followed up by mild chemotherapy in pill form this year. The treatment was evidently successful, but last week White House officials reportedly asked independent doctors to review <Arnold's> medical records and provide some assurance that he could serve on the high court for 15 years.

As late as last Thursday night, <Arnold> was said to be <Clinton's> favorite for the lifetime position. But when medical assessments arrived Friday without any 15-year assurances, <Clinton> apparently called <Arnold> and told him he would not be picked.

White House officials say that if <Arnold> continues in good health for the next year, he would top the list for any future high court vacancy.

But cancer survivor advocates say <Arnold> could have been picked this time.

"No doctor would ever guarantee anybody's health for 15 years, or the next day," says Monaco. "Second tumors can be cured. Any person with a 20-year history of lymphoma cannot be killed easily."

4 justices have cancer history

Supreme Court justices with cancer histories:

Harry Blackmun, 85: Prostate cancer, diagnosed in 1977. Has been treated for at least one recurrence, in 1986. He's retiring this summer.

Sandra Day O'Connor, 64: Breast cancer, diagnosed in 1988.

John Paul Stevens, 74: Prostate cancer, diagnosed in 1992.

William Brennan Jr., 88: Vocal cord cancer, diagnosed 1977. Retired 1990.

Messages differ on the illness issue President <Clinton> on <Richard> <Arnold:> "I have the greatest respect for his intellect, for his role as a jurist, and for his extraordinary character. . . . But, as has been widely reported in the press, <Judge Arnold> has cancer and is now undergoing a course of treatment. I think we had to have the progress of his health ultimately resolved."

Americans with Disabilities Act

"No employer shall discriminate against any qualified individual with a disability because of such individual's disability in regard to job application procedures, the hiring and discharge of employees . . . and other terms, conditions, and privileges of employment."

Equal Employment Opportunity Commission

"The ADA prohibits medical inquiries or . . . examinations before making a conditional job offer to an applicant. This prohibition is necessary because the results . . . frequently are used to exclude people with disabilities from jobs they are able to perform."

South Korea from 1989 to 1993, 1994, Beijing sent Zhang, chairman of the Korea Society.

gyan, China's leading expert on Ko-

threat we face anywhere in the world.

Journal

FRANK RICH

A Justice Denied

Judge Arnold's useful perspective.

Death is the last taboo in America, a word to be avoided the moment it hits home. But in the public arena, death is inescapable. Arguments about abortion rights, the assisted suicides of Jack Kevorkian and capital punishment are all arguments about when life begins and ends and who, if anyone, should call the shots. Even the health-care debate is in part a referendum on the myriad routes that can be taken to death and the cost of reaching that final destination.

This is why all the Monday-morning quarterbacking about President Clinton's choice of a new Supreme Court justice may miss the point. The lost runner-up on Mr. Clinton's short list of three was not the politically controversial Bruce Babbitt but the medically controversial Richard S. Arnold, a highly regarded chief judge on the Federal Court of Appeals who has been under treatment for lymphoma since 1978.

Judge Arnold, who is 58, survived as a candidate until nearly the last moment. But the President, who originally found no conflict between the judge's illness and his capacity for work, kept polling more doctors for second opinions. Finally, as a White House aide told *The New York Times*, "it became more and more difficult to project with any sense of confidence that Judge Arnold would be able to serve 15 or 20 years on the bench."

The political reasons that a President wants Supreme Court appointees with longevity are obvious. But there may be higher reasons for choosing a man or woman who has been forced to confront mortality by

coping daily for 16 years with a serious illness. Were Judge Arnold to live only 14 more years — taking him to 72, the average life expectancy of white American men — or even considerably less, his facing down of his own death might make those limited years of service an extraordinary asset to American jurisprudence, not a liability.

His experiences would have an immense practical value — and no doubt a humanizing effect — in deliberations where the very definition of life and death can be up for grabs. More important than his firsthand knowledge of clinical issues of illness, medicine and dying, however, would be his depth of perspective on life before the grave. A man who has been forced into sustained contemplation of his own end is likely to have a firmer fix on what really matters than many of us do.

When the critic Anatole Broyard wrestled with prostate cancer, he wrote of feeling "as concentrated as a diamond or a microchip" — and shared his sharpened lucidity with grateful readers. The novelist Reynolds Price, who has been paralyzed with spinal cancer since 1984, offers similar testimony in his new memoir, "A Whole New Life." Weighing his 10 years of catastrophic illness against the 50 healthy years that came be-

fore, he says the last decade has "brought more in and sent more out — more love and care, more knowledge and patience, more work in less time." He's written the same number of books (13) in those 10 years as he did in the preceding 50.

I have no special knowledge of Judge Arnold's condition; given that he functions in a high-powered judicial role now and did not withdraw his name from consideration for the Supreme Court, he is presumably able to serve. That his chances were done in by his diagnosis and its continuing treatment puts him in a similar position to millions of Americans who are in one way or another shunted aside when serious illness strikes.

"Nowadays the style is to hide death from view," explains Sherwin B. Nuland in his best seller, "How We Die." Dr. Nuland points out that the number of American deaths taking place in solitary hospital confinement has risen from 50 percent to 80 percent since 1949. Not because modern hospitals work miracles but because we want to sequester the dying where they can't disturb us.

Yet the sick often have more to say than the healthy do. Americans, who deny their own deaths but are all too eager to regulate the rights of others to live or die, desperately need the counsel of people like Judge Arnold. Dying, after all, may be the sole aspect of life that everyone in the country still has in common. On a high court where so many jurists represent specific constituencies, a justice on intimate terms with death promises untold benefits for us all. □

ethanol-based additive) in reformulated gasoline (RFG).

Particularly in the face of growing opposition from a diverse chorus of voices.

So far, more than 50 U.S. senators and about 120 members of Congress have written to the EPA in an attempt to dissuade that generally responsible agency from passing a rule that would not benefit the environment but, at the same time, would increase an already generous subsidy enjoyed by the ethanol industry.

And the lawmakers are not alone in their opposition.

In commenting on the proposal, the California Energy Commission left no doubt about its sentiments. In a letter to the EPA, the Commission said it "opposes EPA's proposed Regulation of Fuels and Fuel Additives: Renewable Oxygenate Requirement for Reformulated Gasoline."

"This proposal," the Commission wrote, "is a departure from the 'negotiated' regulation' agreement, moves the EPA away from their position of 'oxygenate neutrality' and interferes with the free market for oxygenates by further assisting an already heavily subsidized ethanol industry."

For the record, the ethanol industry presently enjoys an annual tax break of \$500 million for the ethanol used in gasoline. The proposed mandate would add an estimated \$340 million to

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This document is from the collections at the Dole Archives, University of Kansas
http://dolearchives.ku.edu

Bill Clinton and the ADA

A senior manager had a job to fill last week: Supreme Court Justice. At one point the senior manager wanted a qualified candidate, Judge Richard Arnold of Arkansas. But first he personally talked with two of the doctors who had treated Judge Arnold for low-level lymphoma. The senior manager decided against naming the job candidate, afraid he might not be able to work 15 to 20 years. Someone else got the job.

President Clinton's decision was reasonable and rational. And managers all over America know what he undoubtedly doesn't: If a private employer had done the same thing, it clearly would have been illegal under the Americans with Disabilities Act.

Milton Bordwin, editor of a newsletter on the legal risks facing business, told us the president "would have been hauled into court and forced to pay damages" if he were a private-sector employer. In fact, the first big settlement under the ADA involved a security guard who sued claiming he had been let go because he was a cancer patient. Cancer victim groups are already attacking Mr. Clinton.

Under the Americans with Disabilities Act it is "unlawful" to "make inquiries as to whether an applicant is an individual with a disability or as to the nature or severity of such disability." An exception is made if a disability would directly inhibit someone's ability to do a job. That wouldn't have applied to Judge Arnold.

White House officials say they had to take Judge Arnold's life expectancy into account because the president wanted someone who could serve past his own administration. Sounds reasonable to us. But that wouldn't have passed muster with the ADA. "Longevity may be desirable, but isn't part of a judge's job description," says Russell Roberts, a business pro-

fessor at Washington University in St. Louis. "Many Supreme Court justices have served only a few years."

Mr. Bordwin says the ADA prevents employers from even asking applicants if they have ever had cancer, AIDS or other afflictions. "We are going to spend millions for hundreds of dollars worth of problem solving."

Indeed, this month *Lawyers Weekly* magazine warned that the ADA not only covers disabled employees, but also those who are merely perceived to be disabled. *Lawyers Weekly* spelled it out with recent cases:

A salesman suffering from "attention deficit disorder" was fired because he couldn't follow verbal directions. His problem isn't considered a disability, but he claimed his employer acted as if it were one. He won a settlement.

A federal appeals court recently upheld a \$100,000 award to an obese Rhode Island woman who wasn't hired as an attendant in a mental-care home. The employer claimed her weight would prevent her from evacuating patients in an emergency. The court ruled that though the woman wasn't disabled, the employer had perceived her to be so, and thus had to pay damages.

President Clinton would have blown his famous gasket if Lloyd Cutler had told him that his handling of Judge Arnold and his conversations with the doctors were illegal and actionable. Welcome to reality. And the next time some businessman is worrying to him about the costs of complying with the administration's proposed health care plan, he might keep in mind that these people already have the extremely costly disabilities-act sword hanging over their heads. Mr. Clinton was lucky that Judge Arnold went away quietly. In the real world, the disappointed send in their lawyers for some money.

Asides

The Abrams Case

A federal appeals court is now considering whether to disbar for one year former Reagan State Department official Elliott Abrams, who underwent assault by Lawrence Walsh's pro-

secutors, pleaded guilty to misleading Congress. The suspension move is the work of the D.C. bar. The political hostility is predictable, but the piling-on career wrecker by Beltway lawyers is really beyond the pale.

...rarely gets ahead of his members.

The GOP backbone only got stiffer when Nebraska Democrat Bob Kerrey joined them. Along with Oklahoma's David Boren, Mr. Kerrey has endorsed the Chafee bill. But he told me he will also oppose any mandate, employer or individual, which means he wants to move Chafee even further toward sensible ground.

Is Mr. Kerrey carrying water for his best friend in the Senate, Pat Moynihan? "I told Pat my belief is that the Chafee bill is the best bill, substantively and politically," he says. "I love the first lady and love Bill Clinton, but neither one of them has votes down here." Without Mr. Kerrey, adds a source close to Mr. Moynihan, getting to 50 votes would be hard, much less 60.

So naturally, liberals aren't heeding Mr. Moynihan; they're griping about him, at least in private. Ardent Clintonian Sen. Jay Rockefeller (W.Va.) this week cited nearly all extant Democrats as "profiles in courage" on health care—except Mr. Moynihan, his own committee chairman. Harold Ickes, the White House health care political genius, is so smart he's never even spoken to his fellow New Yorker.

All of this misjudges Mr. Moynihan, who is a president's man. If given his orders, he will probably fight for a partisan, 11-9, vote in his committee, as he did on last year's tax bill. But it won't be his fault if a partisan bill fails on the Senate floor.



Sen. Moynihan

President Clinton will get credit for any reform that passes, but by ignoring Mr. Moynihan he risks getting nothing at all. Maybe some Republicans will cave under partisan pressure, but as ClintonCare sinks in the polls that becomes ever less likely. On the other hand, Mr. Clinton could easily get 60 votes, and maybe 80, for an insurance reform stripped of mandates, price controls and other Magaziner garboyles.

If they stay united, Republicans wouldn't even have to filibuster ClintonCare per se; they could just offer amendments by the hundreds. Most amendments would sound plausible to Americans who are today much more skeptical of government than they were in the 1960s. The White House threat is that Republicans will pay in November, but they might benefit if they can point to a less radical reform that even many Democrats wanted.

Mr. Clinton wants Americans to believe they can live with liberalism again, but that requires some modesty about liberal purposes. Instead of blaming Mr. Moynihan, Democrats would do better to ask him to relate what happened to liberals following the 1960s, the last time they overreached.

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Wall Street Journal; Friday, May 20, 1994; p. A10.

MEMORANDUM

Date: May 24, 1994
To: Senator Dole
From: Alec Vachon
Re: Finance Committee Hearing/Reemployment Act of 1994

- * On Thursday, May 26th, Secretary Reich will testify before the Finance Committee on S.1951, Reemployment Act of 1994. Among other things, this Administration bill would replace six dislocated worker programs with a larger, comprehensive employment services program -- "one-stop career centers" -- for workers who have lost their jobs permanently.
- * Research by Dr. Edward Yelin at the University of California at San Francisco has found that older disabled men have disproportionately left the labor force over the past two decades as their jobs were lost in a changing economy. Yet, based on current experience, we should anticipate that any disabled person applying for employment help under the S.1951 (or any of the other proposals for overhauling or consolidating the nation's job training programs) would be shunted to state vocational rehabilitation programs rather than have access to any new program. This hearing would be an excellent opportunity to raise both this issue and the need for improved job help to people with disabilities.
- * If you decide to either attend the hearing or submit questions for the record, I suggest this question:

"Mr. Secretary, substantial research indicates that Americans with disabilities disproportionately lose their jobs when factories and businesses close as a result of structural changes in the economy. Moreover, they are often excluded from mainstream job training programs. For example, when they go to the unemployment office, they are more likely to be referred to vocational rehabilitation programs even if they would be better served by another job training or employment assistance program. What guarantees can the Administration offer that disabled workers would have real access to the new employment assistance programs you propose?"

cc: D. Taylor/D. Shea/S. Burke

MEMORANDUM

Date: May 24, 1994
To: Senator Dole
From: Alec Vachon ✓
Re: Draft Remarks for J.C. Penny/NOD Luncheon

- * You agreed to give welcoming remarks to the Eighth Annual J.C. Penney/NOD National Partners Awards Luncheon on Thursday, May 26, at noon, in SC-5. The luncheon honors NOD's National Partners -- 35 associations or other organizations that promote service to people with disabilities among their local affiliates or members.
- * J.C. Penney and NOD annually provide a \$1,000 cash grant to each National Partner, who in turn awards it to one of their local units in recognition of exemplary service. A list of the NOD National Partners is included in the attached press release on this lunch.
- * Incidentally, NOD has a 32-page special section in Business Week (attached) focusing on employment of people with disabilities -- and will be releasing shortly a new survey of disabled Americans. A synopsis of the survey's findings is attached. These findings again confirm the widespread poverty and joblessness among people with disabilities. When the full report is available, it might be the basis of a floor statement.
- * Also attached are draft remarks for your approval.

**SENATOR BOB DOLE
WELCOMING REMARKS
J.C. PENNEY/N.O.D. NATIONAL PARTNERS AWARDS LUNCHEON
THURSDAY, MAY 26, 1994**

WELCOME

- * GOOD AFTERNOON. IT IS A PLEASURE TO WELCOME YOU TO THIS EIGHTH ANNUAL AWARDS LUNCHEON SPONSORED BY J.C. PENNEY AND THE NATIONAL ORGANIZATION ON DISABILITY TO HONOR NOD'S NATIONAL PARTNERS.
- * I AM VERY GLAD TO SEE A NUMBER OF FAMILIAR, FRIENDLY FACES, INCLUDING ALAN REICH, JIM BRADY, JIM OESTERREICHER, RAY SHAFER, AND JACK VALENTI.

THE NATIONAL PARTNERS PROGRAM AND THE SPIRIT OF ADA

- * LADIES AND GENTLEMEN, WITH THE PASSAGE OF THE AMERICANS WITH DISABILITIES ACT IN 1990, THIS NATION EMBARKED ON A GREAT ENTERPRISE.
- * THE POET ARCHIBALD MACLEISH ONCE WROTE, "AMERICA WAS ALWAYS PROMISES." BUT FOR TOO LONG THE PROMISES OF AMERICA WERE DENIED TO PEOPLE WITH DISABILITIES BECAUSE OF DISCRIMINATION, INCLUDING A LACK OF ACCESSIBILITY AND ACCOMMODATIONS.
- * WE ARE NOW DETERMINED TO REMEDY THIS SITUATION, AND ENSURE THAT EVERY AMERICAN, REGARDLESS OF DISABILITY, HAS A SHOT AT THE AMERICAN DREAM AND FULFILLING THEIR PERSONAL PROMISE.
- * BUT LAWS CAN DO ONLY SO MUCH.
- * REAL INCLUSION AND INTEGRATION OF PEOPLE WITH DISABILITIES -- AND NOT MERELY THE APPEARANCE OF INCLUSION -- MUST COME FROM THE HEART AND FROM THE MIND.
- * PERHAPS MORE THAN ANYTHING ELSE, WE NEED TO REMOVE ATTITUDINAL BARRIERS.
- * IN MY VIEW, THIS IS WHY THE NATIONAL PARTNERS PROGRAM IS SPECIAL. YOUR EFFORTS TO INCLUDE PEOPLE WITH DISABILITIES IN YOUR PROGRAMS EXEMPLIFY THE *SPIRIT* OF ADA AND THE AMERICAN IDEAL OF SERVICE TO OTHERS. IT IS ABOUT BREAKING DOWN THE BARRIERS OF NEGATIVE STEROTYPES.
- * LET ME NOTE THAT THE MOVIES HAVE A VERY IMPORTANT ROLE AS WELL, AND I AM SURE JACK VALENTI WILL HAVE MANY EXCELLENT THINGS TO SAY ON THIS SCORE.
- * I SALUTE YOU, THE COMMITMENT OF J.C. PENNEY TO THIS PROGRAM, AND THE INITIATIVE OF NOD.

CLOSING

- * ONCE AGAIN, MY BEST WISHES.



NATIONAL ORGANIZATION ON DISABILITY

910 Sixteenth Street, N.W., Washington, DC 20006

NEWS ADVISORY

Contact Lou Priebe or Shirley Sandage at (202) 293-5960

JACK VALENTI TO SPEAK AT MAY 26 N.O.D. LUNCHEON IN THE U. S. CAPITOL HONORING 35 NATIONAL ORGANIZATIONS

other speakers

Senator Robert Dole, Jim Brady
and J.C. Penney's James Oesterricher

Thirty-five national organizations, with a combined membership of over 100 million members, will be honored by the National Organization on Disability (N.O.D.) at a luncheon in the U.S. Capitol Building on Thursday, May 26. The organizations are being honored for promoting, among their membership, programs that advance full participation for people with disabilities.

The 8th annual luncheon for N.O.D.'s National Organization Partners will be hosted by Senator Robert J. Dole (R-KS). Senator Dole, N.O.D. Vice Chairman and former White House Press Secretary James S. Brady, and J. C. Penney Co., Inc. President of Stores and Catalogs James E. Oesterreicher will jointly officiate.

Jack Valenti, President of the Motion Picture Association of America, will deliver luncheon remarks. The MPAA represents major American producers of film and television programming.

"Our surveys have shown that films are a significant factor in shaping how people with disabilities are perceived by the general public," said N.O.D. President, Alan A. Reich.

The presentations and Mr. Valenti's remarks will take place in **Room SC-5 of the U.S. Capitol Building** between 1:00 and 2:00 p.m., following a luncheon for honorees (see other side). **Directions:** Go to the Crypt on the first floor (below the Great Rotunda). Proceed West (toward the National Mall) down two flights of stairs. Continue forward, then turn right before you reach the exit. SC-5 is just to the North.

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NATIONAL ORGANIZATIONS TO BE HONORED BY N.O.D.

American Association of Community Colleges
American Association of Homes and Services
American Association of Museums
American Association of State Colleges and Universities
American Indian Higher Education Consortium
American Lawyers Auxiliary
American Library Association
American Legion
American Federation of State, County and Municipal Employees
Big Brothers/Big Sisters of America
Boys and Girls Clubs of America
Camp Fire Boys and Girls, Inc.
Evangelical Lutheran Church in America
General Federation of Women's Clubs
Hispanic Association of Colleges and Universities
League of Women Voters
National 4-H Council
National Association of County Officials
National Association of Home Builders
National Association of Secondary School Principals
National Association of Social Workers for the Aging
National Association of Towns & Townships
National Black Child Development Institute
National Catholic Conference of Bishops
National Council of LaRaza
National School Boards Association
Pilot International
Telephone Pioneers of America
Travelers Aid International
U.S. Conference of Mayors
Union of American Hebrew Congregations
Women in Community Service
YMCA of the USA
YWCA of the USA

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SPECIAL ADVERTISING SECTION

N.O.D. Survey of Americans with Disabilities

Employment-Related Highlights

By Humphrey Taylor, President and CEO
Louis Harris and Associates, Inc.

In January 1994, The National Organization on Disability commissioned Louis Harris and Associates to conduct the N.O.D. Survey of Americans with Disabilities. This extensive study provides up-to-date measures of the quality of life, employment and social opportunities, financial status, and lifestyles of adults with disabilities and how these have changed.¹

This is the most comprehensive survey of adults with disabilities concerning work and employment issues. Several of the important findings concerning these issues are noted below.

1 Two-thirds of Americans with disabilities between the ages of 16 and 64 are not working. This number shows no improvement since 1986.

- Two in 10 (20%) are working full-time, and 11% are working part-time.
- It is still true, as it was in 1986, that "not working is perhaps the truest definition of what it means to be disabled."

2 The overwhelming majority of non-employed people with disabilities in the working age population want to work.

- Fully 79% of non-employed people with disabilities aged 16 to 64, including 84% of people aged 16 to 44, say they would like to have a job.
- The proportion of these non-employed working age people who want to work has increased by 13 percentage points, rising from 66% in 1986.



3 Six in 10 adults with disabilities (59%) live in households with earnings of \$25,000 or less, compared with fewer than 4 in 10 nondisabled adults (37%).

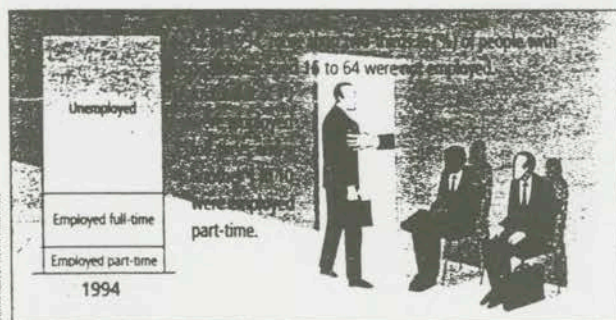
- However, the proportion of employed adults with disabilities with household incomes of \$25,000 or less (37%) mirrors that of the nondisabled population.

4 Adults with disabilities who are working are employed in a wide range of occupations:

- 16% hold professional or managerial positions or are proprietors;
- 14% are service workers;
- 13% are clerical or sales workers;
- 12% are unskilled laborers or farmers; and
- 7% are skilled craftspeople.

These proportions are not very different from the employment patterns of employed people without disabilities.

5 Most adults with disabilities who are currently working or are willing and able to work (69%) do not need special equipment or technology in order to perform effectively at work: one quarter (26%) of these adults do need special equipment or technology.



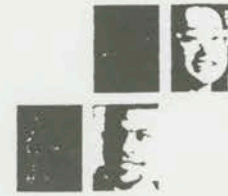
¹ Where applicable, comparisons are made between the findings of this study and a similar 1986 "ICD Survey of Americans with Disabilities" conducted by Louis Harris & Associates, Inc., as well as N.O.D.'s 1991 Harris Survey of "Public Attitudes Toward People with Disabilities."

Louis Harris and Associates conducted this 21-minute survey by telephone within the United States between February 4 and March 3, 1994, among a nationwide cross section of 1,021 adults with disabilities ages 16 and over.

To obtain the full report "N.O.D. Survey of Americans with Disabilities," contact the National Organization on Disability. The report will be available on tape for those with visual impairments.

To obtain reprints of this special advertising section "The New Competitive Advantage," contact the National Organization on Disability. Reprints will be available on tape for those with visual impairments.

SPECIAL ADVERTISING SECTION



6 The most important reasons why working age adults with disabilities are not working (or not working full-time) are:

- Their disability or health problem severely limits what they can do (81% consider this an important reason);
- They need medical treatment for their disability or health problem (58%);
- Employers won't recognize that they are capable of doing a full-time job (40%);
- They think no full-time work is available in their line of work or they can't find it (35%);
- They don't have the skills, education, or training needed to get full-time jobs (32%);
- They would risk losing benefits or insurance payments (31%);
- They can't get affordable, convenient, or accessible transportation to and from work or housing near work (24%);
- They need a personal assistant to help them get to work, or to do their job (24%);
- They need special equipment or devices to do their work, talk to or hear other workers, or get around (16%).

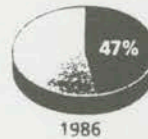
7 A substantial minority of people with disabilities who are employed or willing and able to work confront discrimination, unfavorable attitudes, and physical barriers in the workplace.

- **Three in 10 have encountered job discrimination;**
- Two in 10 have encountered physical barriers in the workplace;
- Almost half of those working age people with disabilities who are not working believe that employers are insensitive to people with disabilities.

8 Eight in 10 working age adults with disabilities who are unemployed but looking for work (81%) believe that they would have the kind of job they would like to have if they did not have a disability or health problem.

9 One of the most encouraging findings from this N.O.D. survey is that Americans with disabilities are better educated today than eight years ago.

- Three in 4 adults with disabilities now have completed at least a high school education, compared with only 3 in 5 disabled adults in 1986. Furthermore, the proportion of adults with disabilities who have completed at least some college almost mirrors the nondisabled population.

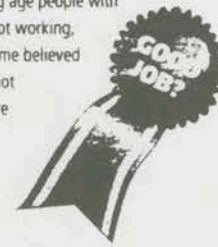


1986



1994

In 1986, 47% of working age people with disabilities who were not working, or were working part-time believed that employers would not recognize that they were capable of doing a full-time job. By 1994, this percentage had dropped to 40%.



10 Students with disabilities are pessimistic about their job prospects.

- Half of current students and employment trainees (49%) with disabilities expect to encounter job discrimination because of their disability or health problem when they look for jobs; 43% do not expect to, and 8% are not sure.
- Two-thirds of students believe that their disability will have (or has had) a strong negative (35%) or somewhat negative (31%) effect on their job opportunities.

11 Fear of losing benefits may be an important disincentive to work.

- Almost 6 in 10 adults with disabilities between the ages of 16 and 64 who are not working and are not looking for work report that they would lose income, health care benefits, or other benefits that they currently receive from private insurance or the government if they worked full-time.

12 There has been a significant increase since 1991 in the number of people with disabilities who are aware of the Americans with Disabilities Act (ADA), but half of all working age people with disabilities still do not know about it.



1991



1994

The number of Americans with disabilities who were familiar with the ADA, has increased from 16% to 40% in the past three years.