



FACTS ABOUT THE AMERICANS WITH DISABILITIES ACT

Title I of the Americans with Disabilities Act of 1990, which takes effect July 26, 1992, prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions and privileges of employment. An individual with a disability is a person who:

- * Has a physical or mental impairment that substantially limits one or more major life activities;
- * Has a record of such an impairment; or
- * Is regarded as having such an impairment.

A qualified individual with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question. Reasonable accommodation may include, but is not limited to:

- * Making existing facilities used by employees readily accessible to and usable by persons with disabilities;
- * Job restructuring, modifying work schedules, reassignment to a vacant position;
- * Acquiring or modifying equipment or devices; adjusting or modifying examinations, training materials, or policies; and providing qualified readers or interpreters.

An employer is required to make an accommodation to the known disability of a qualified applicant or employee if it would not impose an "undue hardship" on the operation of the employer's business. Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources and the nature and structure of its operation.

An employer is not required to lower quality or production standards to make an accommodation, nor is an employer obligated to provide personal use items such as glasses or hearing aids.

MEDICAL EXAMINATIONS AND INQUIRIES

Employers may not ask job applicants about the existence, nature or severity of a disability. Applicants may be asked about their ability to perform specific job functions. A job offer may be conditioned on the results of a medical examination or inquiry, but only if the examination or inquiry is required for all entering employees in the job. Medical examinations or inquiries of employees must be job related and consistent with the employer's business needs.

(over)

DRUG AND ALCOHOL ABUSE

Employees and applicants currently engaging in the illegal use of drugs are not covered by the ADA, when an employer acts on the basis of such use. Tests for illegal drugs are not subject to the ADA's restrictions on medical examinations. Employers may hold illegal drug users and alcoholics to the same performance standards as other employees.

EEOC ENFORCEMENT OF THE ADA

The U.S. Equal Employment Opportunity Commission issued regulations to enforce the provisions of Title I of the ADA on July 26, 1991. The regulations take effect on July 26, 1992, and will cover employers with 25 or more employees. On July 26, 1994, employers with 15 or more employees will be covered.

FILING A CHARGE

Charges of employment discrimination on the basis of disability, based on actions occurring on or after July 26, 1992, may be filed at any field office of the U.S. Equal Employment Opportunity Commission. Field offices are located in 50 cities throughout the United States and are listed in most telephone directories under U.S. Government. Information on all EEOC-enforced laws may be obtained by calling toll free on 800-669-EEOC. EEOC's toll free TDD number is 800-800-3302.

If you have been discriminated against on the basis of disability, you are entitled to a remedy that will place you in the position you would have been in if the discrimination had never occurred. You may be entitled to hiring, promotion, reinstatement, back pay or other remuneration, or reasonable accommodation including reassignment. You may also be entitled to damages to compensate you for future pecuniary losses, mental anguish and inconvenience. Punitive damages may be available, as well, if an employer acted with malice or reckless indifference. You may also be entitled to attorney's fees.

This fact sheet is available in the following formats: print, braille, large print, audiotape and electronic file on computer disk. For further information call the Office of Equal Employment Opportunity on (202) 663-4395 (voice), (202) 663-4399 (TDD) or FTS 989-4395 (voice), 989-4399 (TDD).

Legislative Update

The ADA and Business in the 1990s: A Look at the Public Accommodation Provisions

Previous issues of *Corporate Communique* have focused on Title II of the Americans with Disabilities Act (ADA), which addresses employment issues. Under Title III of the ADA, the Public Accommodations component, businesses are required to ensure that, whenever possible, people with disabilities are provided equal access. This provision not only affects businesses that provide direct goods and services to the public, such as restaurants, retail outlets, and hotels, but it also businesses' employee travel, on-site cafeteria and recreation facilities, and off-site meeting plans. Under Title III, employers must ensure that all terms and privileges of employment afforded other employees are accessible to employees with disabilities, unless it would pose an undue hardship to do so. This means that employers must accommodate their employees with disabilities in all areas of the company and at off-site meetings unless to do so would cause a significant financial cost, and/or it could be demonstrated that given the resources of the company, the alterations would have a demonstrable negative effect on business operations.

The key points of Title III are:

- ◆ Public facilities such as hotels, restaurants, theaters, stores, offices, transit stations, museums, parks, schools, social service agencies, doctor's offices, and gymnasiums must not discriminate against individuals with disabilities.
- ◆ These provisions become effective January 26, 1992.
- ◆ Policies and practices must be changed in order to avoid discrimination.

- ◆ Auxiliary aids and services are required unless the business can demonstrate undue hardship.
- ◆ *Existing facilities:* Barriers must be removed when such removal can be accomplished without much difficulty or expense. If not, alternative methods of making goods and services available must be in place.
- ◆ *Altered facilities:* Altered area must be accessible to the maximum

"No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation."

—Title III, 1990 Americans with Disabilities Act

extent feasible. In major structural alterations, a path of travel to the altered area and restrooms serving the altered area must be accessible.

- ◆ New facilities must be accessible unless structurally impracticable.
- ◆ Elevators need not be provided in buildings under three floors or with less than 3,000 square feet per floor, other than in shopping centers and health care buildings.
- ◆ Bona fide private clubs and religious groups are not covered by these provisions.

As an employer, you have a responsibility to make sure that the vendors with whom you do business comply with these provisions and do not engage in discriminatory practices when providing services to your employees who have disabilities. Following are some examples of questions to ask when planning off-site corporate events. You may want use them to develop a checklist for

the service provider to complete and/or for your staff to use.

Hotels/Meeting Sites

- ✓ Are there accessible sleeping rooms that meet code for accommodating persons who use wheelchairs?
- ✓ Is the meeting space accessible?
- ✓ Are the public restrooms near this meeting space accessible?

- ✓ Can a ramp of the proper incline and with safety rims be supplied for easy access to the stage?

- ✓ Are there TDDs for hearing impaired guests to use?

- ✓ Is there an emergency evacuation plan for guests with disabilities?

- ✓ Are the restaurants able to accommodate persons with disabilities? (Ask about auxiliary aids or special assistance for people with visual/hearing impairments.)
- ✓ Are service/guide dogs permitted in the building? Are there rest areas for these working animals?
- ✓ Is there integrated seating provided in theater-style meeting sites for people who use wheelchairs?
- ✓ Are the airport shuttle services provided by the hotel equipped to transport wheelchairs, including those that are motor-driven?

Airlines

- ✓ Will the carrier transport battery powered wheelchairs?
- ✓ Does the carrier insure against damages to or loss of orthopedic assistive devices that are not permitted to travel in the passenger compartment?

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Notes From the Inside

Changing Places

by Jane E. Shattuck

Free at last! In my mind's eye, I'd been running the New York marathon and swimming the English Channel. In reality, I was recovering from arthroscopic knee surgery. For over a week, I had been dragging myself from bed to bath, battling a stomach virus on top of a bad reaction to the anesthetic. In reality, I could barely move.

After two weeks, having seen nothing more than the interior of my apartment and my husband's anxious face, I was crazy to get out. I had been practising and could now walk using only one crutch—I was ready.

Saturday was bright, sunny, and unusually warm for the end of February in Washington, DC. I couldn't dress myself, but my husband Rob helped and soon I was on my way out the door—only to be confronted with the ten steps leading to the sidewalk. Suddenly, I felt like I was trying to descend the Leaning Tower of Pisa. Daunted but determined, I eventually maneuvered the steps alone, much to the detriment of Rob's nerves.

After a slight struggle, I got myself into the car, and a short drive later, we were at the mall. Trusty crutch at my side, we set out to find the fabric store. However, after a 20-minute walk up and down the mall, we discovered that the store had moved. The walk was tiring, not only for me, but for Rob whose radar was on. Before the operation, my knees had been targets for the under-six crowd and their bicycles, scooters, skateboards, and general bumping pleasure. Now it appeared that nothing had changed. Every small child I hobbled by almost bumped into my knee, despite the crutch—as obvious as a neon warning sign. When I was small, my mother taught me to make way for people with crutches or wheelchairs. Because I was the one who could move with



Photo by Anne Fox

Waiting for the bus

ease, it was my responsibility to clear the path. That day I learned that mothers have been shirking this duty.

Later on that week, I was able to walk without the crutch and so set out on my own. I had a severe limp, but it only looked painful.

Again I faced the front steps. They are two-tiered and as I reached the top of the second tier, I caught the eye of a neighbor walking his dog on the street. He smiled and waved; I didn't know him but returned his greeting. Then I directed my attention to getting down the stairs. I was so engrossed I didn't notice that he watched me. When I reached the bottom I looked up, right at him. The expression that was on his face is hard to describe. It seemed a mixture of disbelief and pity. What had been friendly admiration had turned into "What a shame, such an attractive woman. . . ." It was obvious from the change that when he looked at me the first time, he expected one thing and what he got was another. Suddenly, because I couldn't walk without a limp, I wasn't so attractive. Was this really what it's like to be a person with a disability, I wondered.

Do most people really judge others negatively on physical face value?

On my bus ride to Rob's office I watched similar sentiments transform almost every face. I found myself wanting to explain about the surgery, that it was a sports accident many years ago when I had been a varsity athlete. I was flustered and tried to walk more normally, pushing my knee beyond its limits at the time. Worst of all, I began to devalue myself. I knew that I would be able to walk again, that this was only a temporary state. In fact, my doctor assured me that I would be able to run and swim again. It was just a matter of time before I could travel in public without experiencing the curious stares and unwanted pity of strangers.

But sometimes a short time seems like forever. Sure, the doctor said I could run again, but what if he was wrong? What if from now on I would always walk with a limp, my knee swollen beyond recognition and unbendable? How would I cope with people always showing their impatience at my slowness or their disillusionment that I wasn't "normal"?

As I pondered these questions, I began to examine my own thoughts and feelings about disability. I had always been both mentally and physically very able. Could I deal with it gracefully if this disability became permanent? Would I accept that doing my best within the confines of this limitation would be as good as doing my best without restriction? Would I maintain the faith in myself that others would lose by virtue of the fact that I was different, limited in movement, disabled?

I realized that it's not the people who know them that cause problems for people with disabilities. The employee who breaks his or her leg on a

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Corporate Communiqué

Callahan

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Gross' irreverence in addressing outlandish sexual situations, disabilities, and blindness gave Callahan the encouragement he needed.

"I'm as much a writer as an artist. . . I try to keep the reader's attention focused on the idea, not the image or the language. If a gag seems particularly strong, I draw it in a deliberately offhand, crude fashion to underline that strength. The contrast can be powerful."

Contrasts are something Callahan knows a bit about. One of the biggest contradictions in his life is the Oregon State government. A recipient of Welfare and Medicaid benefits, Callahan is constantly caught between trying to make it on his own and needing governmental help. The cost of his medical care is high, his wheelchair alone costs thousands of dollars and he has a Personal Assistant who helps him

each morning and evening. But the cost to his psyche is equally high.

"I want to get ahead. I have the talent, the ability, the desire, and the moxie to do it. I have twice the drive of the average able-bodied person. What I am being told by the Welfare system is, no, we won't let you do it."

If Callahan were an "average able-bodied person," he could easily be an entrepreneur. He could do his work, pursue his markets, negotiate, and watch his bank account grow. However, because he receives Welfare benefits, he must constantly worry about the amount of money he makes—if he makes what Welfare considers too much, his benefits will be terminated. This doesn't sound like such a great problem on the surface, but when you consider that if his benefits are terminated because he made too much money during one pay period, he must go through

the lengthy application process again in order to reinstate them if he makes less than the maximum allowable in the next period—you begin to realize the magnitude of the problem. If Welfare isn't enough but the system won't let you supplement your income, what can you do? Add to that the fact that your medical expenses make it impossible for you to fully support yourself and you can understand Callahan's problem. He feels that he is one of the lucky few; his notoriety has helped him to be more successful within the system. Many other people with disabilities are not so fortunate.

"I see people as, in the final analysis, helpless. Even with the confidence that comes from success, I never forget that the world remains a tough place."

Beginning with this issue, Callahan's work will appear regularly in *Corporate Communiqué*. His most recent book, *Please Do Not Disturb Any Further*, is available in bookstores.

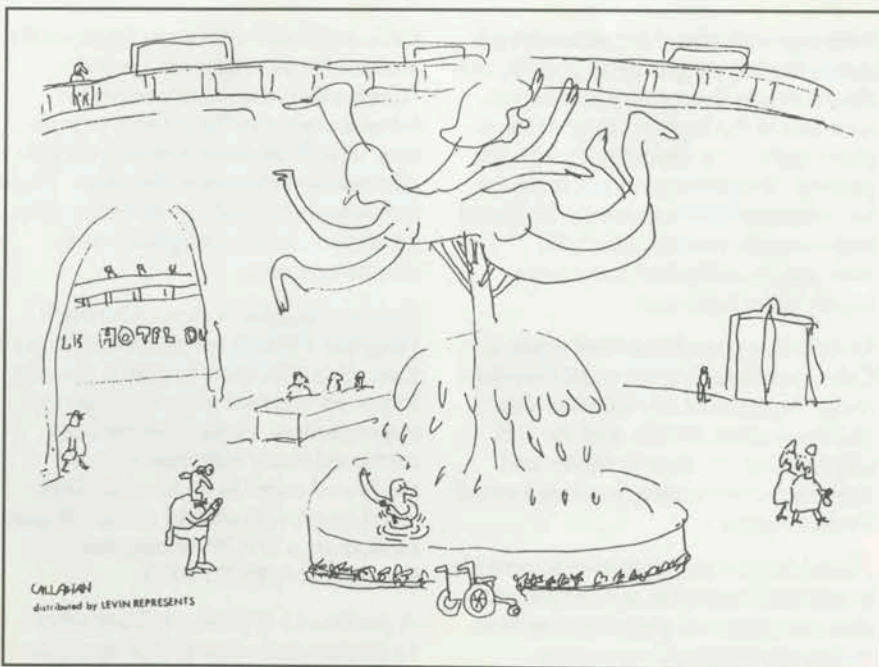
Legislative Update

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- ✓ Is the carrier prepared to assist persons with disabilities in getting on and off the planes? (especially at airports that do not have jetways)
- ✓ Does the carrier's emergency evacuation plan include deplaning people with disabilities?
- ✓ Does the carrier have ground transportation available to their passengers with disabilities including:
 - a. Rental cars with hand controls
 - b. Accessible parking shuttles
 - c. Accessible parking spaces
 - d. Baggage assistance
 - e. Accessible transportation between gates at large airports

These are the types of questions that need to be addressed when planning

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"As manager of the hotel, I promise I will personally find you a room with an accessible bathroom!!!"

ADA

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meetings or making travel arrangements. Companies can get assistance in identifying public accommodations and services that are in compliance with the ADA from travel consultants who have experience in this area.

As an employer, you obviously cannot force the service providers in your community to meet ADA requirements, and you are not liable for their compliance or lack thereof. You are only required to accommodate your employees at both on- and off-site work-related or sponsored functions. By patronizing only those vendors who can meet the needs of all of your employees, your company will be encouraging more facilities to come up to code faster.

On-site Facilities Issues to Consider

When investigating your company's premises for compliance with Title III, it may be helpful to invite an accommodations expert to assist you. Many government and non-profit service providers will visit your

company and help you ascertain what (if any) alterations need to be made to the cafeteria, meeting rooms, restrooms, parking spaces, and other facilities in order to make them accessible. The Bridge-to-Jobs publication, *An Employer's Guide to Disability*, contains listings of accommodation consultants and other resources and answers to questions about hiring and accommodating employees with disabilities. (To order your *Employer Guide*, see insert.)

The ADA's intent is to allow people with disabilities to participate in all activities that are a part of being employed. These include: selecting and sharing a meal with co-workers; traveling to meetings, training opportunities, and business deals; and being a part of all company sponsored events.

For more information, contact Deborah Morris, Bridge-to-Jobs Training Director, at (408) 773-9393.

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ski weekend receives sympathy and understanding. Everyone knows he or she was "normal" before the accident and the cast becomes a sort of medal. "See," it says, "I'm a jock. I was injured in battle." People accept that.

What people find harder to accept is that millions of Americans have lived with disability all their lives—they had no choice. Their friends and relatives know their stories and their abilities. Strangers see only the differences—the wheelchairs and the crutches, the difficult speech, the aberrant behavior. We have been taught to fear what we do not know or understand, people who are different from us. What we need to realize is that people with disabilities are people first.

We need to teach our children to make room for people with crutches or in wheelchairs, teaching them that these things are tools. Children need to realize how fortunate they are, that their ability to move freely is a gift. We need to learn respect for people who are not like us. And we need to realize that people with disabilities are not necessarily less fortunate than we are. They may be able to do things that we can't or to do something we can even better. We need to learn from them. They understand and accept themselves and others. They know their limits and their strengths. They did not choose to take on the challenges they face in daily living and their perseverance is worthy of our respect and admiration. It takes courage to maintain a sense of self worth in a world where many deem you less capable. . . less able. . . disabled.

Jane E. Shattuck is a publishing consultant based in Washington, DC and Managing Editor of Corporate Communiqué. Her column is special to this issue. Look for the return of Troy Wittren's regular column in the next issue.

California Takes the Lead with Project Insight

by Eugene Holloman

Veterans with visual impairments are one of the largest groups of people with disabilities in the country and experience one of the highest rates of unemployment of any disability group—60 percent. In California alone, there are an estimated 8,300 veterans with visual impairments; nationwide, 5,000 veterans are estimated to become legally blind each year.

To help this population find work, the California State Employment Development Department, the Blinded Veterans Association (BVA), and the U.S. Department of Labor Veterans and Employment Training Services formed Project Insight.

Project Insight is an initiative to provide vocational assistance, specialized job development, and placement services to visually impaired veterans in California. Larry Martinez, assistant national field service director of the

BVA, said California was chosen as the location for this program because, "California is the number one state when it comes to the veteran population. The BVA needs help to properly address the veterans in this state. These individuals typically go to EDD offices for service, so this program was a natural outcome."

Twenty Disabled Veteran Outreach Program (DVOP) specialists are located throughout the state to match visually impaired veterans with employment opportunities. Project Insight has contacted many veterans who are ready and eager to go to work. Interested employers should contact Eugene Holloman, a DVOP representative in San Jose, at (408) 277-1873.

A profile of a typical applicant whom Holloman and other DVOP specialists are helping to find jobs appears on page 8.

IN THE MAINSTREAM



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ANNUAL CONFERENCE**

October 29-30

**Radisson Plaza Hotel
at Mark Center
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Twelve-Point Plan for Compliance with the ADA

With the Title I regulations of the Americans with Disabilities Act of 1990 scheduled to go into effect on July 26, many employers (with 25 or more employees) are still scrambling to get ready for the ADA. Here are Mainstream's recommendations to prepare for the new law.

1. FORM AN ADA TASK FORCE

Many employers have designated an "ADA coordinator" to become the in-house resource on the legal and practical implications of the law on the organization. Since the ADA will have such a profound and sweeping impact on businesses, state and local governments, employment agencies, labor unions, and joint labor-management committees, it would be wise for top management to assign a group of persons to handle this assignment. Depending on the size and nature of the employer, the number will vary. But representatives of as many of these ADA-related issues as possible should serve on the task force: employee relations, legal, medical/health promotion, benefits, safety, senior line management, facility management, labor union(s) and employee assistance.

Who should serve as the chair of the task force? For many corporations, it usually comes down to a choice between the corporate counsel and the human resource manager. There's nothing wrong with appointing co-chairs, especially since "the lawyers" and "the personnel people" must work closely together to insure that the requirements of the ADA are effectively put into practice.

2. DETERMINE ESSENTIAL FUNCTIONS AND WRITE JOB DESCRIPTIONS BASED ON A JOB ANALYSIS

Mainstream views the concept of "essential functions" of the job as the linchpin of the ADA employment regulations. Employee qualifications and reasonable accommodations cannot be factually evaluated without a discussion of this elemental term. Without clearly defining the essential functions of a position, we feel it is impossible to ascertain if or how the applicant or employee could be reasonably accommodated in that position. It is the road map for informed decision making. A job description that does not include the essential functions will foster confusion and misunderstanding, and could be the source of considerable litigation.

The most complex and technical job description can be easily and quickly broken down into its essential functions through a job/task analysis. Mainstream has taught this basic skill to employers for over a decade. It can be learned in a few hours. Once understood, it becomes a powerful hiring and performance appraisal tool.

For examples of breaking down jobs into their most basic components by performing a job analysis, see the article "Two Examples of Breaking Down a Job Description" on page 6.

3. EVALUATE THE APPLICATION PROCESS

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CORRECTIONS

Two important errors appeared in our March-April issue.

In MIN Report #3, on page 20 under the question "Are you taking any prescribed drugs?", the text should have read: "Questions about use of prescription drugs are not permitted before a conditional job offer, because the answers to such questions might reveal the existence of certain disabilities which require prescribed medication." (Emphasis added.)

In MIN Report #7, on page 32, the correct telephone number for AboutFace is (215) 491-0602. In addition, the organization has an 800 number: (800) 225-

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Start with the application form. It should include no questions of any kind about the applicant's disability status, health, past medical problems, or workers' compensation claims.¹

But certain employers, such as federal contractors and subcontractors subject to the affirmative action requirements of Section 503 of the Rehabilitation Act of 1973, may invite applicants to identify themselves as having a disability in order to be included under the employer's affirmative action program. The contractor must make sure the information is kept confidential and separate from regular personnel records.

Employers have an obligation to make reasonable accommodations to enable an applicant with a disability to apply for a job. It's a good idea to put this statement on the application form itself; it will encourage those that need one to request it. It's much more effective to deal with the need for an accommodation before the interview takes place. (For example, if the applicant needs a sign language interpreter, the employer needs time to arrange for such an accommodation.)

Of course, some applicants with disabilities--those who are blind, have a learning disability, or a mental disability, for example--may need assistance in filling out the forms. This is also a reasonable accommodation. In addition, applicants who are blind or visually impaired may also request a reader to complete the application and/or interviewing process.

An employer must provide people with mobility impairments with a location that is accessible to them for filling out an application form and/or being interviewed for a job. This does not mean that an organization has to install an elevator in a two-story building so that someone who uses a wheelchair can get upstairs to the personnel

office. However, it does mean that the employer would have to provide an alternative, wheelchair accessible location somewhere else on the premises or, if necessary, in some location off of the company grounds.

An employer is not obligated to provide written information on job openings in various formats in advance, but should make it available in an accessible format on request. For instance, job information should be available in a location that is accessible to people with mobility impairments. If a job advertisement provides only a telephone number to call for information, a TDD (telecommunication device for the deaf) number should be included, unless a telephone relay service has been established. (Many states already have such services. Nevertheless, we suggest employers install at least one TDD in their personnel offices.) It's also a good idea for an organization to include its obligation to provide reasonable accommodation in the application process in the job opening listing.

Printed job information in an employment office or on employment bulletin boards should be made available, as needed, to persons with visual or other reading impairments. Preparing information in large print will help make it available to some people with visual impairments. Information can be recorded on a cassette or read to applicants with more severe vision impairments and those who have other disabilities which limit reading ability.

4. EVALUATE EMPLOYMENT TESTS AND OTHER SELECTION CRITERIA

Under the ADA, employers may use any kind of test to determine whether a candidate with a disability can meet the qualifications of a particular job. But the law has two major requirements in
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IN THE MAINSTREAM

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relation to tests:

(1) If a test screens out or tends to screen out an individual with a disability or a class of such individuals on the basis of a disability, it must be job-related and consistent with business necessity.

This requirement applies to all kinds of tests, including, but not limited to: aptitude tests, tests of knowledge and skill, intelligence tests, agility tests and job demonstrations. Thus, if an agility test requires applicants to shinny down a 15-foot pole in less than 10 seconds, it should be related to an essential function of the job in question, rather than an arbitrary demonstration of agility that individuals are not expected to perform once they've become employed.

(2) The ADA requires that tests be given to people with impaired sensory, speaking or manual skills in a format and manner that does not require use of the impaired skill, unless the test is designed to measure that skill. "Sensory skills" include the abilities to hear, see and process information.

The purpose of this requirement is to assure that tests accurately reflect a person's job skills, aptitudes or whatever the test is supposed to measure, rather than the person's impaired skills.

This requirement applies the reasonable accommodation obligation to testing. It protects people with disabilities from being excluded from jobs that they actually can do because a functional limitation prevents them from taking a test or negatively influences a test result. But an employer does not have to provide an alternative test format for a person with an impaired skill if the purpose of the test is to measure that skill.

Providing extra time to take a test may be a reasonable accommoda-

tion for job candidates with certain disabilities, such as visual

impairments, learning disabilities or mental retardation. But an employer could require that an applicant complete a test within an established time frame if speed is one of the skills that the test is designed to measure. This assumes, however, that being able to do something at a certain speed is necessary to perform an essential function of the job, and there is no accommodation that would enable a particular individual with a disability to perform that function within the prescribed time frame, or the accommodation would cause an undue hardship.

In order to plan ahead, employers should let candidates know in advance -- in job announcements and/or in the application process -- that they will be tested and the nature of the test(s), and that the employer is obligated to provide a reasonable accommodation if requested.

Here are some examples of alternative test formats and accommodations:

- * Substituting a written test for an oral test (or written instructions for oral instructions) for people with impaired speaking or hearing skills.

- * Administering a test in large print, Braille, by a reader, or on a computer for people with visual or other reading disabilities;

- * Allowing people with visual or learning disabilities or who have limited use of their hands to record test answers by tape recorder, dictation or computer;

- * Providing extra time to complete a test for people with certain learning disabilities or impaired writing skills;

- * Simplifying test language for people who have limited language skills because of a disability;

- * Scheduling rest breaks for people with mental or other disabilities that require such relief;

- * Assuring that a test site is accessible to a person with a mobility impairment;

- * Allowing a person with a mental disability who cannot perform well if there are distractions to take a test in a separate room, if a group test setting is not relevant to the job itself;

- * Where it is not possible to test an individual with a disability in an alternative format, an employer may be required, as a reasonable accommodation, to evaluate the skill or ability being tested through other means (e.g. interviews, education, work experience, licenses/certification, or a job demonstration for a trial period).

For specific guidelines for testing applicants who are deaf or hard of hearing, see "Administering Tests to Applicants Who Are Deaf or Hard of Hearing" on page 8.²

5. EVALUATE MEDICAL EXAMINATION PROCEDURES

The ADA prohibits medical inquiries or medical examinations before making a conditional job offer to an applicant. After an employer has offered an applicant a job-- and it is best to put this conditional offer in writing -- it is allowable under the ADA to have the individual undergo such an examination provided that all other entering employees in the same job category do the same.

What about drug testing? The ADA does not view testing for illegal drug use as part of a medical examination. Therefore, an employer can require an applicant to take a such drug test (consistent with applicable Federal, state or local laws or regulations) before making a job offer.

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All information obtained from post-offer medical examinations and inquiries must be collected and maintained on separate forms, in separate medical files and must be treated as a confidential medical record. Therefore, an employer should not place any medical-related material in an employee's personnel file.

The employer should take steps to guarantee the security of the employee's medical information, including: Keeping the information in a separate, locked cabinet, apart from the location of personnel files; and designating a specific person or persons to have access to the medical file.

All medical-related information must be kept confidential, with the following exceptions:

- * Supervisors and managers may be informed about necessary restrictions on the work or duties of an employee and needed accommodations;

- * First aid and safety personnel may be informed, when appropriate, if the employee's disability might require emergency treatment or if any specific procedures are needed in the case of fire or other evacuations.

- * Government officials investigating compliance with the ADA and other federal and state laws prohibiting discrimination on the basis of disability (or handicap) should be provided relevant information on request.

- * Relevant information may be provided to state workers' compensation offices or "second injury" funds, in accordance with state workers' compensation laws.

- * Information may also be provided to insurance companies where the employer requires a medical examination to provide employee health or life insurance. Historically, corporations have put

a lot of faith in their physicians to decide whether a particular applicant with a disability is physically and/or mentally qualified to perform the functions of a particular job. But just as architects are not necessarily experts on accessibility, doctors are often not well informed on how individuals with disabilities can be successfully accommodated in the workplace. For some suggestions on the role the medical examiner should play, see "Role of the Employer's Medical Staff in the ADA Framework" on page 9.

6. EVALUATE PERSONNEL POLICIES

In reviewing its personnel policies as they are affected by the ADA, an employer should keep in mind two things: (1) This is a nondiscrimination, not an affirmative action law. (2) The purpose of making reasonable accommodations is to provide equal opportunity, not preferred treatment. Mainstream suggests that employers review these policies in collaboration with an attorney knowledgeable with the Americans with Disabilities Act.

The revised policy manual should include a statement of nondiscrimination consistent with the ADA. It should say something like this: "It is the policy of the Company not to discriminate against any employee or applicant for employment because of a physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Company will provide equal opportunity to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination. The Company will make reasonable accommodations to the physical or mental limitations of applicants or employees, consistent with the qualifications required for the work to be performed, and with the effective operation of the Company.

"The Company's commitment to equal opportunity for persons with disabilities shall include but not be limited to: hiring, advancement, reassignment, recruitment or recruitment advertising, lay off or termination, all forms of compensation, and selection for training. The Company expects all of its supervisors and employees to take an active role in putting this policy into practice."

Whatever the exact wording of the policy statement, it should be circulated throughout the organization.

Particular policy areas employers will want to look at in light of the ADA include attendance, work schedules, evaluations and performance appraisals, disciplinary actions, advancement, benefits (including insurance policies), reassignment, return-to-work programs for injured workers, and grievance procedures.

7. DOCUMENT REASONABLE ACCOMMODATION PROCEDURES

Any lawyer will tell you that this is one of most important steps employers should take to protect themselves from wrongful lawsuits under the ADA.³

8. EVALUATE SAFETY AND EVACUATION PROCEDURES

The need for making reasonable accommodations is often overlooked in these two important areas. Employers need to scrutinize their safety and evacuation procedures in light of the functional limitations of present and future employees with disabilities.⁴

9. CONDUCT A THOROUGH ACCESSIBILITY SURVEY OF THE ORGANIZATION

There are many guidelines available, including the official ones, ADA Accessibility Guidelines for Buildings and Facilities, which
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you can get from the *Architectural and Transportation Barriers Compliance Board*, 1111 18th St., NW, Ste. 501, Washington, DC 20036; (800) USA-ABLE (Voice/TDD). (For suggestions on going beyond the minimum accessibility requirements, see the article "Universal Design" on page 35.)

Employers should be very careful before investing in making expensive alterations to remove architectural barriers in existing buildings. Often there are cost-effective alternatives to the more high-priced suggestions of some architects.⁵

10. PROVIDE TRAINING TO MANAGERS, SUPERVISORS AND OTHERS, AS NEEDED

The specific kind of ADA-related training an organization will need will vary, but the basics should include: (1) an overview of the requirements of Title I of the ADA and who is protected from discrimination under the law; (2) how to perform a job analysis; (3) how to interview applicants with specific disabilities within the boundaries of the ADA and the bounds of disability etiquette; and (4) some kind of sensitivity training.

11. BECOME FAMILIAR AND DEVELOP RELATIONSHIPS WITH LOCAL AND NATIONAL DISABILITY RESOURCES

There are many resources available to employers on the important areas identified in this article: performing a job analysis, making reasonable accommodations, developing nondiscriminatory policies, providing sensitivity training, doing accessibility surveys and numerous other issues. On the national level, the Equal Employment Opportunity Commission has published a comprehensive resource directory, as part of its *A Technical Assistance Manual on the Employment Provisions (Title I) of the Ameri-*

cans with Disabilities Act. It is available from the U.S. Equal

Employment Opportunity Commission, 1801 L St., NW, Washington, DC 20507; (800) 669-EEOC (Voice); (800) 800-3302 (TDD).

On the local level, *Mainstream* has recently completed a survey of over 2,000 organizations that provide ADA-related services to employers. This information will shortly be published in the form of seven regional directories. Look for an announcement from *Mainstream* this summer on the availability of the directories.

In establishing relationships with these resources, employers should be careful to find out who they are dealing with. They should be especially wary of anyone claiming to be a "certified" ADA consultant; there is no such thing.⁶

12. POST ADA REQUIREMENTS

An employer must post notices concerning the provisions of the ADA. The notices must be accessible, as needed, to persons with visual or other reading disabilities. A new equal employment opportunity poster containing the ADA provisions and other federal employment nondiscrimination provisions may be obtained by contacting EEOC at the address or telephone numbers under point number 11 above.

Endnotes

1. For more detailed guidelines on what an employer can and cannot ask on an application form under the ADA, consult "Application Forms: The First Line of Offense?", MIN Report #3, March-April 1992 *In The Mainstream*. The article is available by sending a payment of \$2 to *Mainstream, Inc.*, 3 Bethesda Metro Center, Suite 830, Bethesda, MD 20814.

2. For other guidelines, consult "Suggestions for the Examiner: Testing Applicants with Vision

Impairments," MIN Report #5, July-August 1988 *In The Main*

stream, and "Testing Applicants with Specific Learning Disabilities," MIN Report #5, September-October 1988 *In The Mainstream*. These articles are available for \$2 each from *Mainstream* by writing us at the address in Endnote #1.

3. For a simple 10-step procedure for documenting accommodation decisions, consult *Planning Reasonable Accommodations: A Cost-Effective Approach in a Legal Framework*, page 16. For those subscribers who do not have it, they can purchase the reference guide for \$4.95 from *Mainstream* by sending a payment to the address in Endnote #1.

4. For evacuation guidelines, consult "Fire Safety for Persons with Disabilities in the Workplace," MIN Report #8, May-June 1988 *In The Mainstream*. The article is available for \$2 from *Mainstream* at the address in Endnote #1.

5. For some proven cost-effective ways to make the existing workplace accessible to persons with disabilities and for a copy of the basic accessibility checklist, consult *Making the Workplace Accessible: Guidelines, Costs, and Resources*. For those subscribers who don't have it, they can purchase the reference guide for \$4.95 from *Mainstream* at the address in Endnote #1.

6. For some guidelines on assessing local service providers, consult "Mainstream's Six-Step Program for Evaluating Local Resources," January-February 1992 *In the Mainstream* at the address in Endnote #1.



Two Examples of Breaking Down A Job Description

The following job descriptions illustrate the process of how to effectively break down jobs into their component parts and consequently their essential functions. The positions of Terminal Operator and Equal Employment Opportunity Manager are the examples given.

I. TERMINAL OPERATOR (description provided by the personnel department):

Performs skilled terminal operating duties, as illustrated by, but not limited to, gauging tanks, taking meter readings, calibrating additive injection systems, monitoring spill control system, taking samples and conducting quality tests. (Note: This is a description of some but not all of the essential functions of the job.)

The Job Analysis (based on information provided by an incumbent of the position, his supervisor, and observation by a human resource professional):

ESSENTIAL FUNCTION #1 -- GAUGING TANKS

- a. Physical Tasks -- climbing, walking, grasping, carrying, bending, reaching, lifting, seeing, hand-eye coordination.
- b. Mental Tasks -- Reading, estimating, calculating, interpreting, measuring.
- c. Methods, Techniques, Procedures -- Walk around tanks and climb to "fill" level. Carry instruments and tools weighing 15 lbs. Grasp and turn valves. Read instrumentation.
- d. Output -- Each tank must be gauged four times during an eight-hour shift. It takes 20 minutes to complete this task one time.
- e. Equipment, Aids, Tools, Materi-

als -- Borg Warner standard pressure gauges, 20-ft. aluminum measuring stick, 4 adjustable crescent wrenches.

- f. Working Conditions -- Outside; all weather conditions.

- g. Supervision, Control -- None.

ESSENTIAL FUNCTION #2 -- READING METERS

- a. Physical Tasks -- Same as #1.
- b. Mental Tasks -- as #1.
- c. Methods, Techniques, Procedures -- Same as #1.
- d. Output -- as #1.
- e. Equipment, Aids, Tools, Materials -- as #1.
- f. Working Conditions -- as #1.
- g. Supervision, Control -- as #1.

ESSENTIAL FUNCTION #3 -- CALIBRATING ADDITIVE INJECTION SYSTEMS

- a. Physical Tasks -- Same as #1 plus typing.
- b. Mental Tasks -- as #1.
- c. Methods, Techniques, Procedures -- Walk and climb to tank control panel. Adjust instrumentation to reflect correct volume of additive.
- d. Output -- Once an hour for 4 tanks. The task takes 20 minutes per tank.
- e. Equipment, Aids, Tools, Materials -- Standard gauge box wrench set (weight: 12 lbs.); Fujitsu 2800 Laptop computer (weight: 8 lbs.).
- f. Working Conditions -- as #1.
- g. Supervision, Control -- as #1.

ESSENTIAL FUNCTION #4 -- MONITOR SPILL CONTROL SYSTEM

- a. Physical Tasks -- Same as #1.
- b. Mental Tasks -- Same as #2.
- c. Methods, Techniques, Procedures -- Check freedom of motion of spill control check valve on each tank. Climb to top of spill overflow tank and check level.
- d. Output -- Once a day. It takes 30 minutes each time.
- e. Equipment, Aids, Tools, Materials -- None necessary.
- f. Working Conditions -- as #1.
- g. Supervision, Control -- as #1.

ESSENTIAL FUNCTION #5 -- TAKING SAMPLES

- a. Physical Tasks -- Same as #1.
- b. Mental Tasks -- Same as #2.
- c. Methods, Techniques, Procedures -- Climb to tank spill pan and extract 10 ml sample in graduated cylinder. Pour sample into transport tube and take to plant lab.
- d. Output -- Once a day. It takes 1 hour.
- e. Equipment, Aids, Tools, Materials -- 50 ml graduated cylinder, test tube, packing material.
- f. Working Conditions -- as #1.
- g. Supervision, Control -- as #1.

ESSENTIAL FUNCTION #6 -- CONDUCT QUALITY TESTS

- a. Physical Tasks -- Same as #1.
- b. Mental Tasks -- Same as #1
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plus understanding of molecular reactions.

- c. Methods, Techniques, Procedures -- Test each test tube sample for contaminants and octane level, using centrifuge and phenol indicator.
- d. Output -- Once a day. It takes 1 hour.
- e. Equipment, Aids, Tools, Materials -- Test tubes, eye dropper, centrifuge.
- f. Working Conditions -- Indoors, 72 degrees.
- g. Supervision, Control -- Same as #1.

II. EQUAL EMPLOYMENT OPPORTUNITY MANAGER (description provided by the incumbent):

Investigate complaints of discrimination, including charges of race, age, sex, disability and sexual harassment. Develop company responses to local, state and federal fair employment agencies. Represent company at hearings, fact finding and settlement conferences. Responsible for designing and updating Affirmative Action Plan model and overseeing annual plan development at headquarters facility and field locations. (This is a partial listing of the essential functions of the job.)

The Job Analysis (based on information provided by incumbent):

ESSENTIAL FUNCTION #1 -- INVESTIGATE DISCRIMINATION COMPLAINTS

- a. Physical Tasks -- Seeing, listening, speaking, writing, grasping.
- b. Mental Tasks -- Comprehending, analyzing, communicating, coordinating, composing, directing, reading and computing.

- c. Methods, Techniques, Procedures -- Ascertain validity of EEO complaints through telephone and personal interviews, and review of appropriate documents.
- d. Output -- As necessary.
- e. Equipment, Aids, Tools, Materials -- Computer, telephone, EEO manuals.
- f. Working Conditions -- Indoors, 72 degrees.
- g. Supervision, Control -- None.

ESSENTIAL FUNCTION #2 -- DEVELOP RESPONSE TO FAIR EMPLOYMENT AGENCIES

- a. Physical Tasks -- Listening, speaking, writing and grasping.
- b. Mental Tasks -- Same as #1.
- c. Methods, Techniques, Procedures -- Respond with facts, policies and procedures of company fair employment agencies.
- d. Output -- as #1.
- e. Equipment, Aids, Tools, Materials -- as #1.
- f. Working Conditions -- as #1.
- g. Supervision, Control -- as #1.

ESSENTIAL FUNCTION #3 -- REPRESENT COMPANY AT HEARINGS

- a. Physical Tasks -- Same as #2 plus stamina
- b. Mental Tasks -- Same as #1.
- c. Methods, Techniques, Procedures -- Present facts and company defense at fair employment hearings.
- d. Output -- as #1.
- e. Equipment, Aids, Tools, Materials -- Manuals, reports, various

forms of documentation.

- f. Working Conditions -- as #1.
 - g. Supervision, Control -- as #1.
- ### ESSENTIAL FUNCTION #4 -- DESIGN AND UPDATE AN AFFIRMATIVE ACTION PLAN
- a. Physical Tasks -- Writing and grasping.
 - b. Mental Tasks -- Same as #1.
 - c. Methods, Techniques, Procedures -- Write company AA Plan.
 - d. Output -- Update once a year.
 - e. Equipment, Aids, Tools and Materials -- Computer, various EEO/legal manuals, and bulletins.
 - f. Working Conditions -- as #1.
 - g. Supervision, Control -- as #1.

ESSENTIAL FUNCTION #5 -- OVERSEE AFFIRMATIVE ACTION PLAN DEVELOPMENT

- a. Physical Tasks -- Same as #2.
- b. Mental Tasks -- Same as #1.
- c. Methods, Techniques, Procedures -- Have discussions at company locations with management and human resource staff.
- d. Output -- Update once a year.
- e. Equipment, Aids, Tools, Materials -- Notebook and dictaphone.
- f. Working Conditions -- as #1.
- g. Supervision, Control -- as #1.

ESSENTIAL FUNCTION #6 -- DIRECT HUMAN RESOURCE REPRESENTATIVES IN COMPLIANCE WITH REGULATIONS

- a. Physical Tasks -- Same as #2.
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- b. Mental Tasks -- Same as #1.
 - c. Methods, Techniques, Procedures -- Instruct human resource personnel at all company locations about EEO regulations and requirements.
 - d. Output -- as #1.
 - e. Equipment, Aids, Tools, Materials -- Overhead display, VCR and television set, and wall charts.
 - f. Working Conditions -- as #1.
 - g. Supervision, Control -- as #1.
- ESSENTIAL FUNCTION #7 --
MANAGE FEDERAL
COMPLIANCE REVIEWS**
- a. Physical tasks -- Same as #2.
 - b. Mental tasks -- Same as #1.
 - c. Methods, Techniques, Procedures -- Monitor reviews and respond to deficiencies.
 - d. Output -- as #1.
 - e. Equipment, Aids, Tools, Materials -- Laptop computer weighing 8 lbs.
 - f. Working Conditions -- as #1.
 - g. Supervision, Control -- as #1.

For further information on performing a job analysis, consult Planning Reasonable Accommodations. (To order see the article "Twelve-Point Plan for Compliance with the ADA", Endnote #1, page 5.)



Administering Tests to Applicants Who Are Deaf or Hard of Hearing

In the testing situation, the most important consideration for individuals who are deaf or hard of hearing is how well they understand spoken instructions (whether through residual hearing or lipreading) and how well they speak. Job candidates who have a good understanding of spoken instruction through hearing or lipreading may wish to be tested with the other applicants. Those who cannot comprehend spoken instructions through these means would usually benefit from individual testing, in which they can communicate extensively with the examiner through writing, gestures and sign language.

Job candidates who are deaf or hard of hearing should be informed when they are tested in classroom-style settings that they may choose between a group and an individual testing. They should also be told (preferably before the date of the test) that they may have the services of a sign language interpreter for the examination.

TESTING WITH AN INTERPRETER

If the applicant chooses to have an interpreter, the employer must provide one who is proficient in the mode of interpretation specified by the candidate. Usually this means someone adept in American Sign Language, Pidgin Sign English or manually coded English (sometimes called "finger spelling"). The individual who lipreads proficiently may instead request an oral interpreter. For this reason, it's always a good idea to check first with the person who's asking for this accommodation before ordering an interpreter.

(How does one locate a qualified interpreter? Contact the *Registry*

of Interpreters for the Deaf (RID), 8719 Colesville Road, Suite 310, Silver Spring, MD 20910; (301) 608-0050 (Voice/TDD). Many state vocational rehabilitation agencies can also provide interpreters or referrals to local organizations. For a list of interpreting service agencies around the country, send \$2 to Mainstream, Inc., 3 Bethesda Metro Center, Suite 830, Bethesda, MD 20814 along with a request for "A Sampling of Interpreter Service Providers Around the Country," MIN Report #6, March-April 1990 In The Mainstream.)

The administrator of the test should acquaint the interpreter with the test procedures beforehand. Usually, there is no need for the interpreter to see written test questions and should only interpret the test instructions.

An interpreter can be used in either a group or individual testing situation. In a group test, the interpreter should stand near the administrator in a well-lit part of the room. Applicants who are deaf or hard of hearing are seated near the interpreter with an unobstructed view of his or her hands.

The test administrator should remember to address remarks to the group rather than to the interpreter (but check occasionally to make sure the interpreter is keeping up). When demonstrating something, such as how to fill in the blocks on an answer sheet, the tester should allow the applicants to watch the action and then leave time for the interpreter to explain it--no one can watch two things at once. The same principle applies when giving an instruction such as, "Look at the front of your answer sheet." The job candidate who is deaf or hard of hearing needs time to look

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down at the answer sheet and then look up to receive further instructions through the interpreter.

During the test itself, the administrator must be sure these applicants are given the same warning about time limits (such as, "You have 10 more minutes to work on this part") as others receive.

TESTING WITHOUT AN INTERPRETER

When an interpreter is not requested, it is important to insure that applicants who are deaf or hard of hearing understand the test instructions, including the time limits.

For a group test, these candidates should sit at the front of the testing room. If an applicant indicates that he or she has adequate hearing or lipreading skills, written instructions may not be necessary. In that case, the

tester should attempt to face the applicant at all times while giving instructions, making sure the mouth is clearly visible. For example, the test administrator should refrain from pacing around the room or turning to write on the blackboard while speaking.

Many who are deaf do not rely on lipreading and speech as the only means of communication. Therefore, when communicating without an interpreter in a testing situation, a tester should use written instructions. The test administrator should write each separate instruction on a blackboard or on index cards. The applicants should be given note paper and pencils at the beginning of the test with an explanation that they may use the note paper to ask for clarification of the directions.

When testing such an applicant individually, the tester has the advantage of communicating one-on-one, and using additional

techniques such as pointing, gestures and demonstration to get the particular instruction across.

Those applicants who are "prelingually" deaf--persons born without hearing or who lost it before learning language skills--often write in imperfect English, and may not understand written instructions that are complicated or cumbersome. This handicap results from the fact that most of us learn a language by hearing it spoken, and our ears set the standard of rightness and wrongness of word usage. For example, why do we say get "on" the bus and not "in" the bus, while we say get "in" a car and not "on" it?

Thus, the message to the tester in writing notes is to keep them simple and unambiguous, and to understand that the way someone who was born deaf communicates in writing is not usually a measure of intelligence.



The Role of the Employer's Medical Staff in the ADA Framework

The traditional role of the corporate physician in the employment process has been something like this. The human resource manager assigns the medical department responsibility for developing physical and mental standards for employment. The medical staff divide company jobs into two categories: blue collar and white collar positions. Then they develop a checklist of conditions that are cause for disqualification or for more intensive medical evaluation. Medical forms and examination procedures are designed to uncover these conditions.

Applicants for company jobs complete the medical forms and receive comprehensive physical examinations before any job offers

are made. The medical staff determines whether applicants are qualified for employment. Applications are forwarded to the personnel department marked "accepted," "accepted with restrictions" or "rejected."

That perhaps was then, but this is now and, of course, the Americans with Disabilities Act would not allow the medical director to play such a primary role in employment decisions. As we know, medical inquiries of an applicant are not allowed under the ADA. It also prohibits pre-job offer medical exams. And rare is the physician who is knowledgeable in the use of reasonable accommodations to compensate for an individual's functional limitations -- a cornerstone of the new law.

Nevertheless, medical examiners will and should continue to play an influential role in hiring decisions. They will still be giving medical exams to applicants who have been offered a job conditional on passing a physical that all potential employees in the same job category must take. And they will still be involved in setting the employer's medical standards.

Here's a model for establishing fair physical and mental qualifications using physicians as part of a team rather than as the ultimate decision maker. In this model the human resource manager organizes a special committee of medical staff, equal employment opportunity specialists, legal experts, and safety and loss

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prevention personnel. That committee is charged with overseeing the systematic analysis of the tasks composing company jobs. The medical staff receives detailed functional descriptions of each job and regular tours of company facilities so that they may become familiar with work environments.

Physical and mental qualifications of applicants are not evaluated until conditional job offers have been made. Before an individual is placed, he or she receives a comprehensive physical examination (again, providing that everyone else in that job category also receives one). Its primary purpose is to assess the person's individual capability of performing job-related functions.

The medical staff converts raw examination results into a statement of the degree to which the individual is capable of performing job functions. In addition, the staff considers the safety factor, preparing a quantitative statement of the extent of current risk any medical condition might pose to the individual or to co-workers.

(Under the ADA, an employer may require as a qualification standard that an individual not pose a "direct threat" to the health or safety of the individual or others, if this standard is applied to all applicants for a particular job. However, the risk must be: (1) significant (that is, have a high probability of substantial harm); (2) specifically identified in terms of duration, nature and severity of potential harm, likelihood of potential harm, and imminence of potential harm; (3) current rather than speculative or remote; and (4) based on objective medical or other evidence related to a particular individual.)

The examination report also recommends accommodations or changes in the health regimen of the individual that would allow the applicant to work.

KEY ELEMENTS OF THE MODEL

(1) Adopting a Team Approach

Physicians, obviously, are highly-trained professionals, but their skills focus on the maintenance of health. They should not make employment decisions appropriate to other personnel professionals.

The medical staff should work as part of a team consisting of the aforementioned EEO specialists, legal experts, safety technicians and others. Human resource managers must integrate the points of view of these professionals into policies and procedures that balance the often conflicting requirements of nondiscriminatory personnel practices, health and safety issues, loss prevention, and productivity maintenance.

Medical standards should be designed by such a team combining the expertise of the physician with that of other personnel specialists familiar with the work process and legal considerations. The medical staff itself should develop at least a general understanding of the scope and purpose of Title I of the ADA.

(2) Performing a Job Task Analysis of Each Position

(3) Using an Individualized Medical Examination Evaluation

The purpose of a medical examination is to evaluate the ability of the individual applicant to perform safely the specific job for which he or she has applied. That means measuring the applicant's physical and mental capabilities against a particular set of job functions.

Contrast such an individualized evaluation with the checklist approach--"Do you have or have you ever had...?" For example, using an x-ray diagnosis to eliminate applicants for laboring jobs is a mistake both because it reflects a checklist mentality and because

there is no absolute correlation between x-rays by themselves and future injuries. Information obtained from an x-ray examination should be considered along with other medical information in the context of evaluating the individual's ability to perform the specific tasks of a particular job.

(4) Quantifying Risk

A physical examination's objective should be to quantify the level of risk to the individual or co-workers if he or she is placed in that job. It is this particular area of the ADA--applying objective standards to measure the level of risk to workplace health and safety--with which medical examiners must acquaint themselves the most.



Recruiting in an ADA Environment

Since the Americans with Disabilities Act is a nondiscrimination rather than an affirmative action law, employers need not go to unusual lengths to recruit qualified applicants with disabilities. All the ADA requires of a company is that its current recruitment practices are not discriminatory. For instance, if an employer goes to college campuses to seek qualified job candidates, the recruiters better not conduct their interviews in a location that is inaccessible to persons with mobility impairments.

So why make an extra effort to find qualified job-seekers with disabilities? The argument from here is two-fold. From a legal standpoint, employers that make a "good faith" effort to reach out to the disability community are less likely to be sued under Title I of the ADA. From a practical standpoint, those employers who seek out qualified applicants now will be better equipped (and "sensitized") to interact with--and judge the capabilities of--applicants with disabilities who will soon be coming around to their personnel offices "off the street."

Here then, are some suggestions for employers on how to contact job-seekers with disabilities who may have the qualifications they're looking for.

MAGAZINES AND NEWSPAPERS

The now-famous 1987 Louis Harris Survey of employers found that "companies that have not hired disabled people in the past three years say that a lack of qualified applicants is the most important reason." But anecdotal evidence makes one wonder if they are going about it in the right way.

Because of the similarity in names, our organization and this publication are often confused with Mainstream Magazine, a California-based publication for

people with disabilities that accepts advertisements. From time to time, we receive calls from recruiters who want to "reach out" to the disability community. They invariably will tell us that their primary method of letting people with disabilities know of employment opportunities in their organizations is by placing ads in such publications as Mainstream Magazine.

While this is not a bad idea, it is, however, shortsighted. If a person has a certain career (or is pursuing one) and is also an avid fisherman, to reach that person would you place your ad in Field and Stream? Of course not, but when it comes to individuals with disabilities, there still exists the prevailing attitude that the only way to recruit them is through "their" publications or organizations. The fact is, a lawyer or law student with a disability is more likely to read the American Bar Association Journal than Mainstream Magazine. That's not to say employers shouldn't advertise in the disability press; but they should see it as a supplement to their recruitment efforts, not the centerpiece.

One of the first things that we tell the job-seekers enrolled in the Washington, DC-area office of Project LINK, our local placement program for persons with disabilities, is make the Sunday employment section of The Washington Post their Bible. The classified ads of the local newspaper is where an employer's recruitment program for persons with disabilities should really begin. By putting at the end of the advertisement "We encourage qualified individuals with disabilities to apply," the organization is sending an unmistakable equal opportunity message. If space is a concern, adding "H" (for handicapped) to the equal opportunity legend--EOE M/F/V/H--is acceptable.

Ability Magazine provides an electronic classified ads system which allows employers to recruit qualified individuals with disabilities and people with disabilities to locate employment opportunities on a national basis. For further information, contact: Ability Magazine, Jobs Information Business Service, 1682 Langley, Irvine, CA 92714; (800) 453-JOBS.

COLLEGES AND UNIVERSITIES

As has been previously documented in this newsletter, the number of persons with disabilities attending institutions of higher learning in this country continues to grow. The clearest evidence of this growth is that almost every college and university, including community colleges, now have a disability services office on their campuses.

The Association on Handicapped Student Service Programs in Postsecondary Education (AHSSPPE)¹, the national umbrella group of on-campus disability service providers, recently announced it is developing a National Resume Database for Students with Disabilities. Students seeking full-time, part-time, summer or co-op employment fill out a standard form and return it to AHSSPPE. The resume information is entered into a searchable software package. This self-contained software package allows recruiters to search the database using any of over 40 selection criteria (such as grade point average, geographical location and major course of study). The system also features word processing capabilities to help recruiters contact individual candidates directly. Employers have the option of searching the database on a one-time basis.

Employers interested in purchasing or searching the National Resume Database for Students
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with Disabilities should contact:
Resume'= Link, P.O. Box 218,
Hillard, OH 43026; (614) 771-
7087.

The cooperative education program that's available to students at over 1,000 schools in the United States is especially suited to organizations with entry-level openings in professional positions but no experience in employing people with disabilities. A 1988 survey of 104 colleges and universities showed that 943 students with disabilities were active in co-op programs.

According to the National Commission for Cooperative Education, 40% of co-op students remain with their employers after graduation, while another 40% find similar jobs with other employers. Graduates often start with higher salaries than their peers, and are able to move up the ladder a little quicker. Employers are given the opportunity to recruit and train students for permanent jobs without making long-term commitments, and co-op employees generally remain longer with their employers, probably because they have a clearer idea of their goals from the beginning.

For more information on cooperative education programs in general, contact: *National Commission for Cooperative Education*, 360 Huntington Ave., Boston, MA 021115; (615) 437-3778.

For information on a co-op program that is 'disability specific,' contact: *Experiential Programs Off Campus*, Gallaudet University, Ely Center, Room 101, Kendall Green, 800 Florida Ave., NE, Washington, DC 20002; (202) 651-5240 (Voice/TDD).

The deaf community is also well-represented on another college campus. The National Center on Employment of Deaf works with students at the National Technical

Institute for the Deaf/Rochester Institute of Technology (NTID/RIT) to place them in appropriate jobs around the country. For further information, contact: *National Center on Employment of the Deaf*, NTID/RIT, One Lomb Drive, Rochester, NY 14623; (716) 475-6834 (Voice); (716) 475-6205 (TDD).

NATIONAL DISABILITY ORGANIZATIONS

If there are over 900 disabilities, as some opponents to the ADA claimed during the debate of the legislation in 1990, there must be at least 1,800 disability groups. They come in all shapes and sizes, and provide a diversity of services. Some of them have chapters around the country and operate employment programs for their constituents. These include, but are not limited to:

Arthritis Foundation
1314 Spring St., NW
Atlanta, GA 30309
(404) 872-7100

The Association for Persons in Supported Employment
5001 West Broad St., Ste. 34
Richmond, VA 23230
(804) 282-3655

Disabled American Veterans
807 Maine Ave., SW
Washington, DC 20024
(202) 554-3501 (Voice/TDD)

The Electronic Industries Foundation
919 18th St., NW, Ste. 800
Washington, DC 20006
(202) 955-5820 (Voice/TDD)

Epilepsy Foundation of America
4351 Garden City Dr.
Landover, MD 20785
(800) EFA-1000 (Voice/TDD)

Goodwill Industries America
9200 Wisconsin Ave.
Bethesda, MD 20814
(301) 530-6500 (Voice)
(301) 530-0836 (TDD)

Helen Keller National Center for Deaf-Blind Youths and Adults
111 Middle Neck Rd.
Sands Point, NY 11050
(516) 944-8900 (Voice/TDD)

Industry-Labor Council National Center for Disability Services
201 I.U. Willets Rd.
Albertson, NY 11507
(516) 747-5400 (Voice)
(516) 747-5355 (TDD)

International Association of Machinists & Aerospace Workers Center for Administering Rehabilitation and Employment Services
1300 Connecticut Ave., NW
Washington, DC 20036
(202) 857-5173 (Voice/TDD)

National Amputation Foundation
12-45 150th St.
Whitestone, NY 11357
(718) 767-0596

National Easter Seal Society
70 East Lake St.
Chicago, IL 60601
(312) 726-6200 (Voice)
(312) 726-4258 (TDD)

National Foundation for the Blind Job Opportunities for the Blind
1800 Johnson St.
Baltimore, MD 21230
(800) 638-7518

National Industries for the Blind
524 Hamburg Turnpike
CN 969
(201) 595-9200

National Multiple Sclerosis Society
733 Third Ave.
New York, NY 10017
(212) 986-3240

The ARC
500 East Border St., Ste. 300
Arlington, TX 76010
(817) 261-6003 (Voice)
(817) 277-0553 (TDD)

United Cerebral Palsy Associations
1522 K St., NW
Washington, DC 20005
(800) 872-5827 (Voice/TDD)

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Many other national disability organizations provide information on such employment-related issues as performing a job analysis, making reasonable accommodations, providing background on specific disabilities and giving sensitivity trainings. The EEOC's new technical assistance manual (see first article, page 5) includes an extensive, up-to-date listing of these groups.

TARGETED DIRECTORIES AND RESOURCES

There are also other useful directories, some of an even more specific nature, that employers can use to recruit qualified job applicants with disabilities. One such resource is Directory of Scientists and Engineers with Disabilities, which costs \$13 complete, and is available from *Project On Science, Technology and Disability, American Association for the Advancement of Science*, 1333 H St., NW, Wash., DC 20005; (202) 326-6630 (Voice/TDD).

A good way to reach persons with disabilities who are not connected with a particular disability organization is through their local library. There is a national network of 56 regional and 102 sub-regional libraries for "the blind and physically handicapped." These libraries often serve as the focal meeting place and exchange of information point for members of the local disability community. They provide many services, sometimes including posting job openings on bulletin boards and on cassette, and/or sending out newsletters that include a classified advertising section. For a free directory of Library Resources for the Blind and Physically Handicapped, contact *National Library Service for the Blind and Physically Handicapped, Library of Congress*, 1291 Taylor St., NW, Wash., DC 20542; (202) 707-5100.

Another nationwide service for individuals who are blind, learn-

ing disabled or otherwise "print handicapped" is the network of radio reading services, which provide exactly that: the reading of newspapers, magazines and anything else of interest to the audience--such as help wanted ads. There are over 100 of these broadcast services in the country. A free copy of the Association of Radio Reading Services Directory is available from *Association of Radio Reading Services, Inc.*, P.O. Box 408, Stillwater, MN 55082; (612) 642-0848.

LOCAL RESOURCES

Those employers who have actively recruited persons with disabilities in the past have usually done so through the local vocational rehabilitation agency, commission for the blind or visually handicapped, state employment services or Department of Veterans Services program for disabled veterans, all of which are usually listed under state government (blue section) of the telephone book.

And there are many other local resources--chapters of national disability organizations, committees on employment of persons with disabilities, rehabilitation hospitals and private vendors--that employers can call on for help in reaching out to the disability community.

But the problem of disconnection between the employer and rehabilitation communities was made painfully clear at a 1990 Mainstream seminar by a representative of the National Federation for Independent Business, the trade association of small business. She pointed out that in the yellow pages of the Washington, DC directory under "Disability Services," there were exactly three--that's right three--organizations listed. (Fortunately for us, Mainstream, Inc. was one of them.) "Not only does the typical small employer--with 15 to 20 employees--not know that he can

find resources like your organizations in his own community," she told the audience of disability service providers, "he wouldn't even be sure where to look for you."

This observation was the inspiration for the national survey Mainstream recently completed (with funding provided by MCI) to help employers find out what's available to them--in terms of disability service providers--right in their own back yard, including the provision of qualified, job-ready individuals with disabilities. We will be marketing these seven regional directories this summer.

Endnotes:

¹ As a sign of the times, AHSSPPE is changing its name to Association on Higher Education and Disability (AHEAD) on July 25, 1992.



Getting Ready for the ADA: An Informal Survey

by Darlene Siska

In The Mainstream contacted 15 of its subscribers representing different industries and business sizes to gather comments on the process they are taking for implementing the ADA. Although some media reports have placed emphasis on what businesses are not doing, most of those contacted were already practiced in hiring persons with disabilities because, as federal contractors, they are covered by Section 503 of the Rehabilitation Act of 1973. However, a majority still expressed anxiety over how to anticipate and meet the needs of individuals with disabilities with the resources and needs of the organization.

Except for the very smallest organizations, all of the employers contacted by In The Mainstream have set up committees with myriad titles and composition of employees to facilitate the ADA implementation process. Particularly for large organizations, the process is very extensive and staffers from corporate offices must travel and coordinate information with many field offices.

Perhaps not surprisingly, the area of the ADA reported most likely to create difficulty is the defining of job functions and the revising of job descriptions. Another area mentioned by three large corporations is how to coordinate corporate ADA policy with front-line managers, and they emphasized the need for sensitivity training of employees for interacting with new workers with disabilities.

For at least one large corporation, the cost of implementing the ADA is very high due to the traveling of staff to field offices and the costs of printing information. A representative of a large oil company says, "In a grassroots company, it is very difficult to educate all the people involved in the hiring

process. There is a giant dollar value attached in trickle-down education and continuously bearing the torch and message."

An administrator with a corporation in the same industry believes that the new law directly conflicts with an employer's U.S. Occupational Safety and Health Administration (OSHA) requirements. "The ADA says you have to prove an accident is likely to happen to prevent a disabled employee from working in an area such as a refinery while OSHA says you have to insure by 99.9% that an accident can't occur for an employee to work there." (According to the EEOC, "The ADA does not override health and safety requirements under other Federal laws. If a standard is required by another Federal law, an employer must comply with it and does not have to show that the standard is job-related and consistent with business necessity.")

Most of those interviewed are aware of the need for discretion in using outside consultants. One large nonprofit organization learned to be careful after an architectural consultant wanted \$40,000 upfront to study its headquarters' accessibility to persons with disabilities. A hospital administrator, who has not used consultants, says she realizes "there is a lot of fear out there, so consultants can take advantage." An official of one corporation observes, "No consultant can tell you all the variables that will arise down the road in hiring the disabled." An insurance administrator's company, which moved into a new facility a year and a half ago, is, however, working with a consultant to create what he says "would be the ideal building."

The majority of those interviewed said they were educating them

selves on the requirements of the ADA by attending seminars held by reputable organizations. Others are also being assisted by local rehabilitation counselors. One small business, which just reached the threshold number of employees to be governed by the ADA, was working with a rehabilitation counselor to revise its job descriptions although they don't have a lot of job positions.

Besides attending seminars and meeting with rehabilitation counselors, some businesses are also using the Equal Employment Opportunity Commission's A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act. Two of the interviewees say they are using computer programs to help them prepare their job descriptions and are both happy with the results.

Although many of those interviewed expressed some anxiety over what they perceive as the gray area in the ADA legislation balancing the needs of businesses with those of individuals with disabilities, some are also philosophical about it. A representative of a medical corporation says, "The ADA is only a basic non-discrimination law." A hospital administrator states, "Under the statute, the workforce will be more diverse, but it's an ongoing process. We'll need to keep looking at the needs of patients, as well as employees." Another interviewee says, "I hope there is some understanding on the part of the [disability] community. There may be a lot of people who are crucified who are complying." Perhaps the current philosophy of businesses can best be summed up by an administrator at a rail transportation corporation who says, "Our only message is that we are working on it."

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Universal Design – Part I

by Mary Johnson

Ms. Johnson is the editor of The Disability Rag. This article appeared in the March/April 1992 issue of The Disability Rag. Copyright 1992 by the Advocado Press. Reprinted by permission.

This article and the ones that will follow in the July-August 1992 issue of In The Mainstream are excerpts from People With Disabilities Explain It All For You: Your Guide to the Public Accommodations Requirements of the Americans with Disabilities Act, just published by The Advocado Press. Written for operators of public accommodations, this easy-to-follow guide explains the thinking behind access and accommodation. It can be a useful tool for helping operators of public accommodations understand why they must obey the law.

The guide is available for \$15.95 from The Advocado Press, 1962 Roanoke, Louisville, KY 40205. Orders must be prepaid. To inquire about bulk orders, call (502) 459-5343.

The Disability Rag is an acclaimed disability rights movement magazine. For subscription information and/or a complete copy of the "Universal Design" articles, contact The Advocado Press at the address above.

Designers and architects have used the model of a "6-foot able-bodied young male" as the standard for designing everything from buildings to automobiles to computer keyboards, says Ronald L. Mace, a Fellow of the American Institute of Architects and President of Barrier-Free Environments, Inc., in Raleigh, North Carolina. Mr. Mace, who uses a wheelchair, has been working for decades to have the design industry realize that something's wrong with this idea. "It's no wonder that

what we need in this society doesn't fit that model. That standard is in fact a minority itself, and it is going to be more of a minority still as the population ages." Or, as disability consultant June Kailes puts it, "Most people don't fit that mold--and if they do they're not there for long." Just watch the ads for things like arthritis medicine, sore back medicine, aching joints medicine, she suggests. Doesn't that tell us something?

Mr. Mace likes to point out that almost everyone, when you stop and think about it, has some sort of a minor disability--and some of our closest friends and relatives actually are severely disabled--even though we don't think of it that way.

When Mr. Mace works with businesses who are remodeling or building new buildings with access in mind, he says "they are astounded to have it brought home to them how many people have disabilities." The "43-million" statistic so often mentioned doesn't really mean anything, he says, "until I point out to them that the Arthritis Foundation, for example, has 35 million members. That makes them sit up. Sometimes they'll say, 'I have arthritis myself.' But they don't think about it, because they can still function fairly well.

"I try to bring home to them things they can't deny: We are all technically part of the disability community" that the Americans with Disabilities Act was designed to help, says Mr. Mace. "We're only one step away from it at any time."

Ms. Kailes adds these facts to support Mr. Mace's point: "Most people have at least one family member with a disability," she says. There's an 80% chance that you, in an average life span, will

experience some disability -- a 95% chance, she says, that you'll have a temporary mobility impairment yourself: "a broken leg, sprained ankle, twisted knee, painful back. And most people, if they live long enough, will age into disability."

A U.S. Census survey in the mid 1980s pointed out that one in every 5 Americans has some trouble hearing, seeing or walking or moving in other ways. Ms. Kailes says that "one person out of 10 over the age of 15 has difficulty climbing steps, walking more than 1,000 feet or carrying a bag of groceries." She also reminds us that "baby boomers are moving into middle age and beyond and are starting to experience increased incidence of disability."

Finally, she makes this not-so-startling assertion: "People with disabilities and who are aging will constitute the majority of the population within the next 30 years." It's clear from these statistics, she says, that "The need for 'barrier-free' or universal design is increasing today because of America's demographics."

So doesn't it make sense to make buildings work for the greatest number of us, rather than for a physical standard that's really in the minority?

That's what "universal design" is about. It goes beyond "accessible design" because it includes everyone.

"Some architects, designers and developers view various 'access regulations' as out of proportion to the need. They say that these regulations mandate designing for 'the worst situation.'" But, Ms. Kailes insists, "Universal design is in fact designing for the best situation--because it better

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accommodates everyone--by meeting the needs of a changing population."

Current building codes calling for access for disabled people (including the ADA's Accessibility Guidelines which come with the Department of Justice rules) are limited by the concept of "minimums," says Mr. Mace. They say, "at least this high, at least this wide." Another way of saying this is to say they're legal minimums. They don't tell us what would work best for everyone.

Though nothing in any of these codes says a builder can't go beyond the minimum (e.g. making a door a few inches wider than the minimum required), seeing an actual number in the code--even when it's a minimum--often makes a builder simply put the light switch, the door handle, or whatever, right at that height. This often isn't the best height for everyone, but is merely a minimum (or maximum) requirement. Often a few more inches will help millions more people.

This approach taken by building codes has, says Mr. Mace, "unfortunately reinforced the idea of just a few accessible features in a few places--just one accessible entrance, just one accessible restroom. Instead, they could simply be making doorways and restrooms universally accessible." The "minimum" approach, Mr. Mace says, has given us some access, but nowhere near universal access. Access advocates like Mr. Mace have "been pushing up those minimums for 25 years now," he says. Now, though, he points out, "we have a nondiscrimination law--Americans with Disabilities Act--that says it's discriminatory to maintain property that people cannot use. Now it becomes a moral issue for design firms, product designers and the industry."

"Maximums" and "minimums" have had a tragic side effect: Some

builders in a hurry read their codes too quickly, and don't think. They see that "the maximum high forward reach allowed is 48 inches," and the "48 inches" part sticks in their mind. They forget that this is a maximum. They install the light switch at 48 inches. If you don't have good use of your arm, you can't reach that when you're sitting in a wheelchair. It's totally inaccessible at that height to people who don't have good use of their arms. The code requires that the switch be no higher than that. What we need is an optimum. The optimum is anywhere from 35 to 42 inches. When making "readily achievable" changes, businesses are allowed some leeway under the ADA. Alterations and new construction, however, must follow the ADA Accessibility Guidelines. Businesses can go beyond them to optimums. (See the next subheading.)

"In new construction there shouldn't be any problem," Mr. Mace reminds us. "Renovation is another matter. That's why the guidelines for the law are flexible. They want you to do what's doable. The problem isn't so much the cost but the not knowing. People are afraid of the unknown. I've had companies say to me, 'We want to do it right. We don't mind paying for it, but we want to do it right the first time and not have someone come back later and say we did it wrong and now we have to redo it,'" says Mr. Mace.

Ms. Kailes gives sound reasons as to why universal design works so nicely. "Wide doors and hallways make moving furniture easier. Adjustable counters and storage spaces are not only helpful to wheelchair users but also benefit people who prefer to sit" while doing things like chopping vegetables or filing.

Developers often complain that ramps take up valuable real estate; but Ms. Kailes points out that ramps aren't necessary at all in new construction if entrances

are merely placed at grade level. "Stairs are not required, but ramps are," she says, referring to the law. The point is you don't need both, she says. "It is steps that are unnecessary, hazardous and expensive."

Ms. Kailes has also heard builders complain that bathrooms and kitchens that can easily accommodate someone in a wheelchair use up too much square footage. "The extra space makes a great place for storage and work islands," she says, "that can easily be removed when more space is needed."

Ms. Kailes says owners often resist universal design because they think it will look "special" or impose strict restraints on a designer's creative process. "Some builders equate 'access' with 'ugly' and with having to respond to a small but loud and fanatical group of people with disabilities."

Instead, she says, look at it this way: "Think about universal design on a personal level. Will your home or shop or store be adaptable for a lifetime of work there for you and your employees? Will you be able to serve any customer who wants your service?" When businesses follow universal design principles, it will.

GOING BEYOND MINIMUMS -- TO OPTIMUMS

1. Put everything at optimal wheelchair-users' reach--at the level they can reach it even if they don't have much arm movement. We suggest an area between 35 and 42 inches from the floor.
2. Give wheelchair users 60-inch by 60-inch space to maneuver in.
3. Put in automatic doors--or lighten your doors so that it takes no more than 5 pounds of force to open them.

4. Make doorways 36 inches wide.
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These examples are just the start of ways you can think of to make your place work for everyone. According to the Accessibility Guidelines of the ADA, "the maximum high forward reach is 48 inches...[and] the minimum low forward reach is 15 inches." Here's something to do that's even better--an "optimum." Install everything like paper towel dispensers, light switches, phones--that is, the "business part" of any equipment customers or disabled employees are likely to use -- at a point where somebody who can't move any part of their body very easily can still reach it.

That turns out to be anywhere from about 35 to 42 inches off the floor -- the height that your arms would be at "naturally" if you were sitting in a wheelchair with your arm resting on the armrest of the chair. That's an optimum reach range. It's a point that everyone can reach -- even children.

(In our next issue, Editor Johnson of The Disability Rag provides further ideas for applying the concept of universal design to public accommodations.)



Mr. Phelan is an associate in the New Haven, Connecticut law firm of Garrison & Arterton, P.C., where he specializes in labor and employment law. He is admitted to practice in Connecticut and New York. He is the Co-chair of the National Employment Lawyers Association's Disability Discrimination Committee. Mr. Phelan is the co-author of a legal treatise on Title I of the ADA entitled Disability Discrimination in the Workplace, which will be published in July by Clark Boardman Callaghan.

What does the sexual harassment of a female high school student by her male teacher have to do with disability discrimination in the workplace? Plenty, according to one Federal district court. A recent Supreme Court decision involving the high school student may lead to a dramatic expansion of the remedies available under Section 504 of the Rehabilitation Act of 1973.

Franklin v. Gwinnett County Public Schools

Christine Franklin, a former student at a high school in Gwinnett County, Georgia, alleged that she was subjected to verbal and physical sexual harassment by a teacher, Andrew Hill. She filed suit in 1988, seeking compensatory damages for her emotional distress under Title IX of the Education Amendments of 1972, which bans sex discrimination in educational institutions that receive federal funds. After the complaint was filed, Mr. Hill resigned on the condition that all matters pending against him be dropped. The high school then closed its investigation.

The Federal district court subse-

Section 504 Remedies Expanded

by Gary E. Phelan, Esq.

quently dismissed Ms. Franklin's complaint, reasoning that Title IX did not authorize an award of damages. The Eleventh Circuit Court of Appeals affirmed the district court's dismissal.

In Franklin v. Gwinnett County Public Schools, 60 L.W. 4167 (Docket No. 90-918) (February 26, 1992), the United States Supreme Court reversed the dismissal. The Court acknowledged that Title IX was silent on the availability of remedies. The Court also noted, however, that Title IX did not prohibit an award of compensatory damages. The Franklin court concluded that compensatory damages were available for intentional acts of discrimination, reasoning that "we presume the availability of all appropriate remedies unless Congress has expressly indicated otherwise....This principle has deep roots in our jurisprudence."

Remedies Under Section 504

Section 504 does not specify whether a plaintiff can recover compensatory damages. Rather, the statute provides that the remedies available under Title VI of the Civil Rights Act shall be available to discrimination victims. 29 U.S.C. Section 794a(a)(2). Title VI, however, like Title IX, does not specify what damages are available. Consequently, the Supreme Court's reasoning in Franklin supports the argument that compensatory damages are available under Section 504. Less than one month after Franklin was decided, that argument was endorsed by the first court to address the question.

Tanberg v. Weld County Sheriff

The plaintiff in Tanberg v. Weld
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County Sheriff (D.C. Colo., No. 91-B-248) (March 18, 1992), was a volunteer sheriff's deputy who alleged that he was fired because he tested positive for the HIV virus. In addition to his claims for reinstatement and injunctive relief calling for the implementation of an AIDS education and awareness program, he sought compensatory damages for loss of employment opportunities, emotional distress, and pain and suffering. The Tanberg court, relying on Franklin, concluded that compensatory damages would be available. The Tanberg court reasoned that neither Section 504 nor Title VI specified what damages were available and that Congress did not expressly disallow compensatory damages under Section 504.

Punitive Damages

Neither Franklin nor Tanberg specifically addressed the question of whether punitive damages are available under Section 504. However, the Franklin court's authorization for courts to award "any appropriate relief" unless Congress has clearly stated otherwise supports a conclusion that punitive damages might be available under Section 504. That conclusion is amplified by the Tanberg court's reasoning that "any appropriate remedy, including compensatory damages, is available to 'make good the wrong done.'"

Jury Trial

Judges are empowered to decide cases where only "equitable" remedies, such as back pay, reinstatement or injunctive relief, may be obtained. However, an individual generally has a right to a jury trial if compensatory or punitive damages are available. Because Section 504 has been interpreted to provide only equitable remedies, claims under the statute have been decided by federal judges. However, in light of Franklin, a discrimination victim

under Section 504 might be entitled to a jury trial. The potential availability of a jury trial, the "great equalizer" of the plaintiff's bar, may be the greatest benefit from Franklin.

Complaints Not Yet Filed

If an individual planning to file suit under Section 504 has suffered genuine emotional distress as a result of an employer's alleged discriminatory conduct, the complaint should claim that he or she is entitled to compensatory damages. The plaintiff should only allege that he or she is entitled to punitive damages if the employer's alleged discriminatory conduct was malicious or willful or reflected a "reckless indifference" to the individual's rights. Finally, the availability of compensatory or punitive damages does not automatically entitle the individual to a jury trial. Rather, the individual must claim the right to a jury trial when the complaint is initially filed.

Pending Cases

For those Section 504 cases currently in litigation, plaintiff's counsel should file a motion to amend the complaint under Rule 15(a) of the Federal Rules of Civil Procedure to allege that, in light of Franklin, the plaintiff is entitled to compensatory and/or punitive damages and a jury trial. Rule 15(a) provides that "a party may amend the party's pleading only by leave [permission] of court or by written consent of adverse party; and leave shall be freely given when justice so requires." Because defense counsel is unlikely to consent to any request to expand remedies and provide for a jury trial, plaintiff's counsel should file a motion for permission to amend.

The trial court has discretion to decide whether or not a party will be permitted to amend the complaint. Such permission is usually given unless there has been

"undue delay, bad faith or dilatory motive," "undue prejudice to the opposing party by allowing the amendment," or if the amendment request would be "futile." Forman v. Davis, 371 U.S. 178, 182 (1967).

Plaintiff's counsel should anticipate that his or her request to amend the complaint in light of Franklin will be aggressively fought by defense counsel. In particular, defense attorneys will strenuously argue that the defendant would suffer "undue prejudice" if the amendment is allowed, especially if the discovery period of the lawsuit is completed or is about to close. Plaintiff's counsel should not assume that the federal judiciary's propensity for permitting litigants to amend complaints will overcome defense counsel's anticipated vigorous defense.

Limited Publicity of Franklin

Attorneys generally learn about an important court decision either through the media or through legal reporting services available in their particular area of expertise. The Franklin decision was widely discussed in the national media. However, newspaper and television coverage of the case focused on the sexual harassment of a high school student, Title IX and the previously unavailability of damages. Similarly, the national labor and employment reporter services either did not address Franklin or merely discussed the expansion of remedies under Title IX. Neither the media coverage nor the law reporting services' coverage of Franklin addressed its potential applicability to Section 504.

Consequently, many attorneys in the labor and employment law field are unaware of Franklin's impact. Therefore, if an individual currently has a pending case or is about to file suit under Section 504, he or she should bring the
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Supreme Court's decision in Franklin, as well as the district court's decision in Tanberg, to his or her attorney's attention.

Mr. Phelen is also a member of the American Trial Lawyers Association and serves on the Executive Committee of the Connecticut Bar Associations Human Rights and Responsibilities Section. He recently wrote "Essential Functions of a Job Under the ADA" which was published in the January 1992 issue of The Federal Bar News and Journal.

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Legal Update

by Gary E. Phelan, Esq.

The first ADA suits are now being filed around the country. Disability rights advocates wasted no time taking advantage of Title III of the Americans with Disabilities Act by filing complaints with the U.S. Department of Justice against public accommodations that are not accessible to persons with mobility impairments.

Reportedly, the first-in-the-nation suit was filed by Disabled in Action of Metropolitan New York against the Empire State Building. According to the plaintiffs, none of the mammoth structure's bathrooms are accessible to people in wheelchairs and there are only steps leading up to the building's famous observatory. The group has also filed suits against three other large public facilities in New York City.

In Washington, DC, an attorney who uses a wheelchair has become something of a local celebrity by appearing on television and radio talk shows to discuss Title III of the ADA and warn area merchants that he would soon be testing their doorways for accessibility. True to his word, at last count he had filed three suits, including one against a prominent clothier located on Connecticut Avenue, about five blocks from the White House.

The mother of a 12-year-old with cerebral palsy is suing the Girl Scouts of America because last summer the girl was turned away from summer camp due to the group's inability to handle her needs. Attorneys for the Valley Forge, Pennsylvania area Scouts said the complaint was premature, since Title III did not go into effect until January 26 of this year. The Scouts say they want to work with the mother and daughter, but need information on the necessary accommodations.

IN THE CONGRESS

Accessibility and The Hill

Meanwhile, on Capitol Hill itself, the legislators who passed the ADA (and did not exempt themselves from its provisions) are themselves facing (informal) charges of discrimination by one of their own. Sen. John McCain (R-AZ) has cosponsored a bill to urge a review of "Congress's leadership on disability issues."

For one thing, Sen. McCain noted, only four visitor parking spaces -- out of thousands on the Capitol grounds--are reserved for persons with disabilities. And all four are regularly occupied by senators' vehicles. Perhaps even more egregious, the office created to assist visitors with disabilities touring the Capitol (the Congressional Special Services Offices) is itself not fully accessible to persons who use wheelchairs.

Sen. McCain, who became aware of these and other problems when he hired a staffer who is mobility impaired, called on the Senate Committee on Rules and Administration to draw up new guidelines to ensure full compliance by the Senate with the ADA.

Senate Committee Wants to Remove Damages Cap Affecting ADA Suits

The Senate Labor and Human Resources Committee passed by voice vote a bill that would remove the cap on punitive and compensatory damages available to victims of intentional discrimination under the Civil Rights Act of 1991. If it becomes law, persons suing for intentional discrimination under Title I of the ADA could make claims for millions of dollars in damages.

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As the Civil Rights Act of 1991 now stands (and as it affects the ADA), the monetary limits for punitive and compensatory damages are as follows: Companies with more than 500 employees can be sued for up to \$300,000; those with 201 to 500 employees, up to \$200,000; those with 101 to 200 employees, up to \$100,000; and those with 15 to 100, up to \$50,000.

Sponsored by Sen. Edward Kennedy (D-MA), the measure faces an uncertain future in the full Senate and in the House of Representatives, and would probably face a veto by President Bush, if it gets that far.

IN THE FEDERAL AGENCIES

EEOC Awards Contract Disability Rights Group to Train Persons with Disabilities about the ADA

The Equal Employment Opportunity Commission (EEOC) has awarded a \$1 million dollar contract to the Disability Rights Education and Defense Fund (DREDF) to teach people with disabilities about their rights under Titles I, II and III of the ADA.

Some 400 people with different disabilities from across the nation will participate in the training, with priority given to those with organizational support for duplicating the ADA training in their communities. All participants will be required to return to communities to train employers and persons with disabilities.

In the first of two training phases, participants will learn about their rights under the employment, public services provided by state and local governments, and public accommodations provisions of the new law.

One hundred participants selected from the first phase of training will receive further instruction on Title

I requirements, regulations and enforcement procedures as preparation for teaching others. Those 100 participating in the second phase will focus on helping others comply with the law and resolving disputes in the most cost-effective and non-adversarial manner possible.

For further information, contact: Reginald Welch, EEOC, (202) 663-4900 (Voice); (202) 663-4494 (TDD).



FROM: Michael Yared
W (202) 863-8728 TDD
H (301) 564-1560 V/TDD

DISABILITY POPULATION STATISTICS

The 24 million physically disabled can be categorized as:

- 2 million profoundly deaf** - according to the National Institute on Deafness and Other Communications Disorders of the National Institutes of Health (NIH).
 - 20 million hard of hearing** - according to the National Center for Health Statistics (Both data are from the Center for Assessment and Demographics of the Research Institute of Gallaudet University.)
 - 900,000 blind** - from a 1991 survey by the National Eye Institute (NIH); John Hopkins University; and Wilmer Eye Institute.
 - 1 million wheelchair users** - Reports from the University of California, San Francisco.
- The 43.7 million emotionally disabled can be categorized as:
- 39.9 million have mental disabilities.** According to the National Institute of Mental Health of NIH, the mental disorders ranged from schizophrenia to simple phobias and anxieties.
 - 13.8 million abuse drugs and alcohol.** according from the National Institute on Drug Abuse and National Institute on Drug Abuse of the Public Health Service.

The President's Committee on Employment of People with Disabilities has listed a total of **43 million** people with disabilities. This study is published by the National Center for Medical Rehabilitation Research of the Medlantic Healthcare Corp., a private health care provider network in Washington, D.C.

The listing is as follows:

- 22 million with hearing impairments, including 2 million deaf.**
- 9.2 million with developmental disabilities (i.e. cerebral palsy).**
- 5 million with mental illness.**
- 2.5 million with mental retardation.**
- 2.1 million with speech impairments.**
- 2 million people with epilepsy - 4/5 take medication thus no seizure.**
- 1.2 million partially or completely paralyzed.**
- 1 million who use wheelchairs.**
- 120,000 totally blind.**
- 60,000 legally blind.**

The National Council on Disability estimated that there are **36 million disabled people** (1988).

The Health and Human Services Department's National Center for Health Statistics' **figure is 33.8 million disabled people (1984)** is from the University of California, San Francisco, whose disability statistics program is the only one in the country that tracks impaired populations systematically. This program is funded by the National Institute on Disability and Rehabilitation Research of the U.S. Department of Education.

A FIRST- ANNUAL READER SURVEY

Readers Say They Are Ready And Able To Tak

THE RESULTS ARE IN — people with disabilities are entering an age of enlightened job opportunity with technical talent, interpersonal skills, heightened self-esteem, and realistic expectations about how they can succeed in a wide variety of careers.

CAREERS & the disABLED presents the results of its First Annual Reader Survey — a profile of the educational, vocational, and social aspirations of a random sampling of 500 of its nationwide audience of college students and professionals, plus results from the survey that was published in the magazine throughout the 1991 volume year, which represents a 46.2% rate of response. We believe this sampling represents an accurate research study plus or minus two percentage points from our readership of 35,000 individuals who have mobility, hearing, visual, and hidden disabilities.

To gain a better understanding of our readers, we asked them about their type of disability, educational achievement, field of study, employment status, job responsibilities, relocation preferences, opinions about discrimination, and if the Americans with Disabilities Act (ADA) will enhance their chances for employment.

In addition, we developed a roster of the "Top 100 Companies" that respondents say are sincere in hiring people with disabilities, and list those manufacturers of high-technology products that readers note have helped people with disabilities to succeed in the working environment.

And, by asking readers to offer advice to employers on how to interact with people with disabilities and to job-seekers on how to find meaningful employment, *CAREERS & the disABLED*'s survey educates college and university placement counselors and human resource professionals on how to bring this pool of underutilized talent into the diversified work force of the 1990s.

The responses overwhelmingly depict a group of job candidates eager to join the mainstream. The consensus is that employers need to look beyond the disability of the potential employee and focus in on his or her abilities. Here is a sampling of these statements:

• "See individuals with disabilities as the people we are. Look at the person's qualifications and abilities. And, consider the positive aspects the individual can bring to the company."

• "Having a disability is not better or worse than not having a disability. It's just different. And people with disabilities can do everything a nondisabled person can, just differently."

• "Job candidates who happen to have a disability are intelligent people, people capable of making great contributions

to your company if only given a fair chance to show their capabilities."

• "Look at the whole person — his or her skills, attitude, past employment history, and, most of all, willingness to work hard in a meaningful job."

TYPE OF DISABILITY

Individuals who are mobility impaired comprise 61.1% of the respondents of the survey, suggesting that this particular segment of the disability community is making strong headway in both the academic and business worlds.

As one reader tells employers, "Concentrate on what our abilities are. Let us show you what we can do, what assets we can provide. Stay away from assuming anything. A person using a wheelchair may not be able to stand, but he or she can do many things. A person with a disability does not apply for a job because of the disability, but because he or she can do the work."

Another respondent who is mobility impaired adds, "Don't look at the chair first. Don't see the disability as a sign of weakness. Give me a chance to prove my abilities to the best I can."

People with hidden disabilities represent 14.4% of the total respondent pool. With a tremendous emphasis today on cultivating the capabilities of students who have learning disabilities and with the openness of individuals to reveal

other non-visible impairments, this portion of the disability population has taken on greater importance.

One respondent reports, "My disability (dyslexia) has made me work harder for what I want in life. It has taught me determination, dedication, and a can-do attitude that most 'normal' people don't have." Another reader targets a comment to employers, "Some hidden disabilities are often affected by environmental and working conditions. Allow the employee to make his or her own judgments as to what he or she can or can't do."

The remaining respondent pool consists of individuals with multiple disabilities (10.1%); people who are visually impaired (7.9%); and those people who are hearing impaired (6.5%). These respondents declare that the commitment of employers to reasonable accommodations and workplace accessibility is extremely important to their job performance.

Some comments typical of the sentiments our readers express are: "Give us an opportunity to do the job with reasonable accommodations. Find work that is suitable or offer an alternative," "Employers need to train those in hiring positions who will help put the interviewer at ease to help see what accommodations can be made to enable the job candidate to do the job well," and "Many of us who have disabilities are intelligent and capable of mak-

on The Demands Of The American Workplace

ing great contributions if only given a fair chance to show our capabilities. Any money used to adapt buildings, office space, or equipment is a good investment that will make it possible for us to do our part."

A profile of respondents indicate an average age of 36.6 years and a male to female ratio of 57.2% versus 42.8%. As for their marital status, 31.3% of the respondents are married, and 30.5% of those answering the questionnaire do have children.

FIELDS OF STUDY

College students and recent graduates who have not yet found employment represent a full spectrum of academic interests. From business administration to fine arts majors, they demonstrate the vocational versatility of people with disabilities.

The ten leading career fields chosen by readers and the numbers of individuals responding by percentage are:

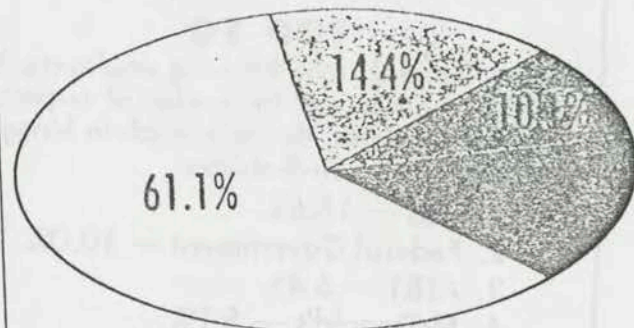
1. Business Administration — 14.3%
2. Counseling/Psychology — 12.4%
3. Special Education — 9.3%
4. Computer Science — 6.2%
5. Sociology — 5.6%
6. Engineering — 5.5%
7. Vocational Rehabilitation — 5.0%
8. Accounting — 4.3%
9. Law — 4.1%
10. Communications — 1.9%

According to our respondents, employers need to become open-minded about the career potential of people with disabilities. They want to be considered for the fast-track to upward mobility. Advice to personnel specialists include, "Concentrate first on the ability of the individual. Slowly increase the area of duties and jobs for the person while keeping an eye on the employee's level, both physical and mental," "When considering a promotion on your staff, look at the individual's record, particularly for attendance, reliability, maturity, and skills," and "Don't be afraid to challenge a person just because a disability might make things a little more difficult. We will only become responsible, productive members of society if we are entrusted with meaningful responsibilities."

The next group of disciplines generated multiple responses from our readers. These areas of interest include international studies, information science, mental health, personnel, economics, humanities, and banking/finance.

Other career options that respondents cite are veterinary medicine, industrial technology, physics, zoology, systems analysis, journalism, lasers, music, mathematics, religion, fine arts, urban management, labor relations, hotel and restaurant management, political science, photography, and occupational therapy.

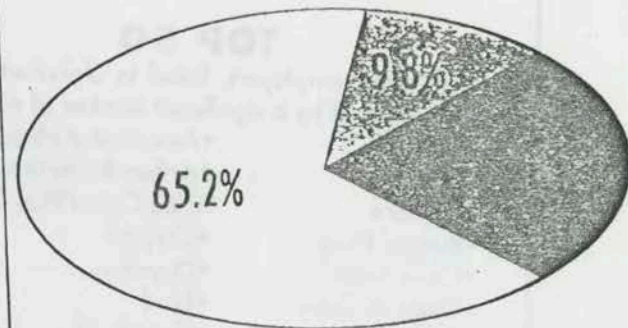
TYPE OF DISABILITY



- ☐ Mobility Impaired
- ☐ Hidden Disability
- ☒ Multiple Disabilities
- ☒ Visually Impaired
- ☒ Hearing Impaired

"Treat people with disabilities like any other professional. Promote us if we deserve it."

EDUCATION



- ☐ Professional with high school diploma
- ☒ College student
- ☒ Professional with college diploma

TOP 100 COMPANIES

Readers of *CAREERS & the disABLED* were asked to list the companies that they believe to be sincere and committed to hiring people with disabilities. The companies are ranked according to the frequency in which they were mentioned by our audience of college students and professionals.

TOP 10

Readers report that the following employers, listed with the percentage of the number of respondents citing that employer, do the best job in hiring and promoting people with disabilities:

1. IBM — 15.6%
2. Federal Government — 10.0%
3. AT&T — 6.4%
4. McDonald's — 5.1%
5. State Government — 3.8%
6. Marriott — 3.3%
7. General Electric — 2.6%
8. Du Pont — 2.3%
9. General Motors — 2.0%
9. Boeing — 2.0%
10. Hewlett-Packard — 1.5%
10. Sears — 1.5%

TOP 25

Rounding out the top 25, in alphabetical order, are:

- | | |
|--------------------|-------------------|
| •Amoco | •Cigna |
| •Citibank | •General Dynamics |
| •Lockheed | •Martin Marietta |
| •McDonnell-Douglas | •MCI |
| •Merck | •NYNEX |
| •U.S. West | •United Airlines |
| •Xerox | |

TOP 50

The following employers, listed in alphabetical order, were mentioned by a significant number of respondents:

- | | |
|--------------------|---------------------------|
| •Aetna | •American Airlines |
| •Apple | •Arthur Andersen |
| •Bellcore | •Blue Cross/Blue Shield |
| •Burger King | •Chrysler |
| •Coca-Cola | •Days Inn |
| •Delta Airlines | •Ford |
| •GTE | •Honeywell |
| •Hyatt | •Internal Revenue Service |
| •Mobil | •NASA |
| •Pizza Hut | •Prudential |
| •Procter & Gamble | •Raytheon |
| •Sara Lee | •Sheraton |
| •Southwestern Bell | •3M |
| •Union Bank | •Westinghouse |

TOP 100

The following companies, in alphabetical order, were also cited as being committed to employing people with disabilities:

Abbott Laboratories, Amdahl, BP America, Brooklyn Union Gas, Ciba-Geigy, Department of Energy, Dow Coming, Eaton, Eli Lilly, Encyclopedia Britannica, Friendly's, General Foods, Giant Food, Glaxo, Goodwill, Grumman, Hallmark, Hardees, Hartford Insurance, Hughes, Johnson & Johnson, Kaiser-Permanente, Kentucky Fried Chicken, Lever Brothers, Manufacturers Hanover, Nationwide Insurance, Mellon Bank, National Westminster, NCR, New York Port Authority, Pacific Bell, PPG, Ponderosa, Postal Service, Radisson, Ricoh, Rockwell, Shared Medical Systems, Sharp, Tandy, Tiffany & Co., Unisys, USF&G, Veratec, Wal-Mart, Wendy's, and Zenith.

Special Mention

Readers also noted the following employers, listed in alphabetical order, as progressive in their efforts to hire people with disabilities: Allied-Bendix, Ameritech, Braun, Caldor, Digital, Hoffman-LaRoche, Holiday Inn, Illinois Bell, ITT, Macy's, Mitre, Mutual Of Omaha, Philip Morris, Simon & Schuster, UPS, Wang, and Washington Post.

A C H

EMPLOYMENT STATUS

The Harris Poll estimates that nearly two-thirds of all people with disabilities who wish to work cannot find meaningful employment. *CAREERS & the disABLED's* poll includes responses from 51.1% of working professionals and 48.9% of people who have disabilities who are not able to find jobs. (Please note that the latter percentage includes an approximate 25% share of college students who are not yet in the labor force.)

When asked what type of work they currently perform, readers cite a variety of job responsibilities. At the top of the list are the following fields along with the percentages of response:

1. Clerical — 12.1%
2. Counseling — 11.0%
3. Administration — 6.6%
4. Computer Operation — 5.5%
5. Employment Management — 4.4%
6. Consulting — 4.3%
7. Accounting — 3.3%
8. Engineering — 3.3%
9. Law — 3.3%
10. Teaching — 3.3%

Readers indicate that employers need to cultivate the talents of employees with disabilities in order for them to achieve career fulfillment. "Accept us for what we are. There are many ways to do a job."

AVERAGE AGE

37 years

CHALLENGE TO EMPLOYERS

Maybe the generally acceptable way is not necessarily the best way. And don't crowd us. A happy worker does more than an unhappy one. Let us work in peace for awhile before you check on us," one respondent remarks.

In addition, readers suggest ways in which employers can bring qualified people with disabilities into the workplace and provide a cooperative working experience for them and their co-workers and supervisors. "Treat us the same as anyone else. Do not give us preferential treatment. We don't want to be singled out or be made examples of. We just want to contribute to the well-being of a company like everybody else," "Relax. People with disabilities are people first. Don't be afraid to ask questions — they help you learn. And, it's okay to be nervous at first," and "Look for our abilities. Joyfully introduce us to the staff" are three suggestions submitted by readers.

Other industries to which our readers contribute are recruiting, library science, human services, public relations, special education, desktop publishing, retailing, merchandising, school admin-

istration, software design and testing, insurance, auditing, travel, mathematics, purchasing, and independent living center management.

READERS SPEAK OUT

In an effort to determine additional priorities and preferences of students and professionals who have disabilities, *CAREERS & the disabled* polled its readers to determine their opinions on a number of matters — the first, whether they would accept a new job in a different city.

Cementing their strong desire to be contributing members of the work force, 62.7% of the respondents state that they would relocate, while 34.0% say they would not, and 3.3% are not certain. This determination to find employment is also apparent in the advice that respondents offer to those who are seeking jobs.

For example, according to one reader, "Write a good résumé and cover letter. Be aware of your rights as a person with a disability. Develop a positive attitude and be assertive in your pursuit of employment. Find out what agencies and organizations can assist you in finding employ-

GENDER

Male 57.2%
Female 42.8%

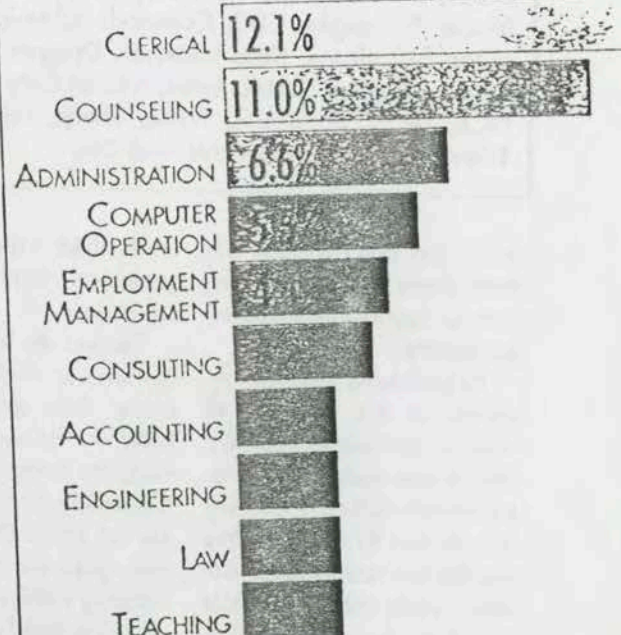
EMPLOYMENT

Employed 51.1%
Unemployed 48.9%
(includes college students)

FIELD OF STUDY COLLEGE OR GRADUATE STUDENT



IF EMPLOYED, TYPE OF WORK:



FIRST ANNUAL

HIGH TECHNOLOGY AND YOU

Which high-technology companies have been progressive in helping people with disabilities assimilate into the mainstream of American life? According to our readers, the following manufacturers, listed by the percentage of responses, have been in the forefront of creating devices that aid them in their daily living:

1. IBM — 49.3%
2. Apple — 18.3%
3. Hewlett-Packard — 3.8%
4. AT&T — 3.6%
5. Tandy (Radio Shack) — 2.8%
6. Xerox — 1.9%
7. Artic Technologies — 1.4%
8. Digital — 1.3%
9. Honeywell — 1.1%
10. Sperry — 1.0%

In addition, Wang, Prentke-Romich, Novell, Unisys, Kurzweil, and Microsoft received support from a significant number of respondents.

The following companies, listed in alphabetical order, also were mentioned by readers: Amstrad, Blozie, Burroughs, CDC, Commodore/Amiga, Computer Associates, Data General, Dragon Systems, Epson, General Electric, Lotus, MicroInfinity Services, NCR, NEXT, Panasonic, Prime, Sharp, Telesensory, Televideo, Texas Instruments, and 3M.

ment, but don't depend on them alone. Search on your own for opportunities all over the country."

Respondents resoundingly agree on the question of whether companies currently discriminate against hiring people with disabilities. The survey reveals that 87.4% of readers say that businesses do discriminate, while only 12.6% state that they do not. In addition, 72.4% believe that people with disabilities are discriminated

more than other minority groups or women and 27.6% say they are not.

Readers do, however, point out ways in which companies can avoid or stop discriminatory behavior. "Be sure the people doing the hiring are not prejudiced. Sometimes employers are not aware that personnel managers are not following company policies about people with disabilities," "Go to a local organization that helps people with disabilities or hire a consul-

tant who has a disability to implement a program that is designed from the point of view of a person who has a disability." "In the interviewing process, close your eyes and pretend you are that person in a wheelchair, and then borrow a wheelchair and stay in it for 48 hours," "Attend conferences, visit homes, and serve on committees that help people with disabilities," and "Get some qualified people with disabilities in decision-making positions so that they can make a difference" are an assortment of opinions offered by respondents.

THE ADA

The Americans with Disabilities Act (ADA), scheduled for implementation regarding employment issues on July 26, 1992, has been hailed as the most important civil rights legislation since the Civil Rights Act of 1964. Advocates, legislators, and people with disabilities look to this law as being a door to opportunity for them in the job market of the 1990s.

Respondents concur —

If hired by a company or government agency, would you relocate?

Yes 62.7%
No 34.0%
Maybe 3.3%

64.9% say that the Americans with Disabilities Act will enhance their chances for employment, while 27.6% state no and 7.5% are not certain at this time. Those that are uncertain reflect doubts as to how fiercely the law will be policed and enforced.

One respondent tells employers, "Be aware of the laws involved in hiring people with disabilities. Be open-minded and willing to make adaptations. Treat people with disabilities like any other professional. Promote us if we deserve it. Realize that our disability may require us to exert more effort to accomplish what others can."

The message that our readers send is clear — em-

Do you think companies discriminate against hiring people with disabilities?

Yes 87.4%
No 12.6%

If yes, is it more so than for members of other minority groups or women?

Yes 72.4%
No 27.6%

LEADER SURVEY

employers need to offer individuals with disabilities an equal and fair chance at employment and advancement. The fact that they have a disability does not mean that they should be treated differently from other workers.

"Touch on our track record." Don't let disability become the main focus of the hiring process. "See beyond the physical barriers." "Look at us, not the disability." "We have more abilities than disabilities." "Try to imagine how you would feel if the tables were turned," and "The basic thing employers can do is remember that everyone is one accident away from being disabled" are but a few of these emotional responses.

One respondent sums it up by saying, "People with disabilities have career potential. We have, in fact, patience, perseverance, and determination to reach our goals. Reap the potential in us and help us live a better and more productive life." ◊

Do you think that
the Americans with
Disabilities Act
will enhance
your chances
for employment?

Yes	64.9%
No	27.6%
Maybe	7.5%

ADVICE TO JOB-SEEKERS

TODAY'S JOB MARKET is difficult for college graduates, both those with disabilities and those without disabilities, to enter. Here is a sampling of the advice that professionals offer to those individuals with disabilities who are on their way to corporate America:

"Be positive and project a cooperative attitude. Volunteer to discuss your disability to set the employer at ease. Discuss your capabilities and be informed about the position and the company. Be patient and persistent."

"Dress for success. Be persistent and enthusiastic. Use your disability to prove you are a winner and a strong, determined worker. Dispel preconceptions by being honest and open about your disability. Talk to other workers with disabilities and network."

"Be up front. Don't apologize for your disability. If asked, submit ways in which you would take charge of any situation. Tell the employer what you will need to be a productive team player."

"Be honest and straightforward at the interview. Do your homework and be prepared. Try to identify and predict questions you might be asked, and have solutions ready. Look professional no matter what job you are seeking."

"Be competitive — you must meet minimum qualifications. Remember that employers hire applicants because of their ability to do a job, not because they have a disability. All rules that apply to people without disabilities apply to us."

"Don't dwell on your disability. Believe in your capabilities. Consider volunteer work to gain experience. Contact any agency or group that could be even remotely helpful."

"Discuss honestly what accommodations you need. Don't put your disability before your ability. Remember that the interviewer may be disabled, too."

"Have the best résumé, best suit or dress, and best answers to the interviewer's questions. Show the employer that you are able to work out solutions to anything that might arise. Be yourself. Don't assume you will get a job because of your disability — be qualified."

"Set goals. Be flexible and adaptable. Know your needs and express them clearly."

"Most people are still very ignorant in their dealings with people with disabilities. They see a person with a disability and think that because someone can't see or walk that that someone can't do anything else either. The greatest asset a person with a disability looking for a job can have is a beaming self-confidence and an assertive manner. Do not make excuses for your disability."

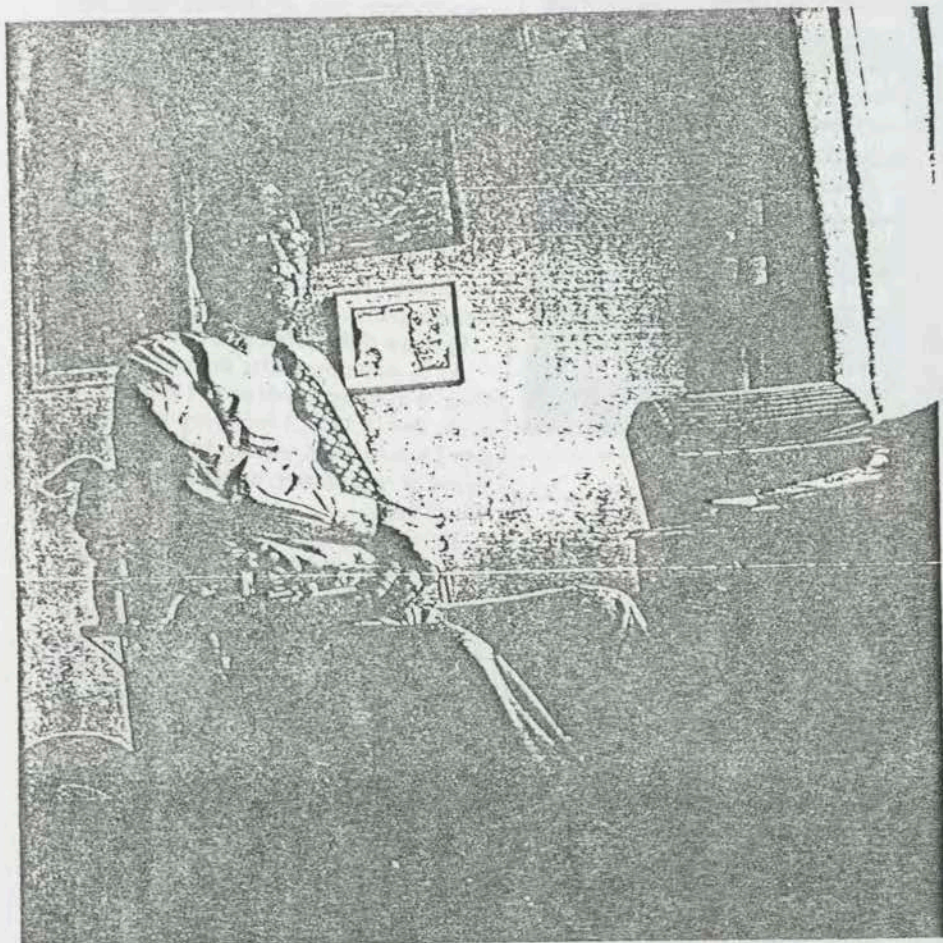
"Be your own advocate in gaining access to training programs. Be aware of innovations in adaptive equipment."

"Don't be frustrated or abandoned, and don't give up. You will get an opportunity to prove your great abilities and make the employers feel that they should have hired you sooner."

Rolling Thunder

Evan Kemp Gets the Law Behind
the Only Minority Group Open to All

Interview by Ken Adelman



Evan Kemp starts enforcing the Americans With Disabilities Act this month. "The ADA," he says, "will diminish disabled people's reliance on luck."

For Evan J. Kemp Jr., chairman of the Equal Employment Opportunity Commission, the good news is that the Americans With Disabilities Act—legislation that he has championed for 25 years—goes into effect this month.

The bad news is that much of the burden of the new anti-discrimination law falls on his small agency.

He's used to change, however. This is a man who, in the service of a cause,

went directly from Ralph Nader to Ronald Reagan.

Born in 1937, Kemp grew up in Cleveland. He was 12 when a rare, polio-like disease almost killed him, leaving him able to walk only with difficulty. He graduated from Washington & Lee, and he went on to finish in the top 10 percent of his law-school class at the University of Virginia.

But because of his disability—he has used an electric wheelchair since 1971—

not a single private law firm would hire him. Instead he became an in-house counsel for the Internal Revenue Service, then spent thirteen years at the Securities and Exchange Commission. From 1980 to 1987 he was executive director of the Disability Rights Center, a Nader-sponsored advocacy group, and taught a seminar on disabled people and the law at Catholic University.

Then President Reagan named him an EEOC commissioner—the first disabled person on the five-member panel that enforces federal laws against job discrimination. Three years later he became chairman, replacing Clarence Thomas. President Bush now has nominated him to a five-year term as EEOC chairman.

Kemp's wife has been in a nursing home since 1982, after she was diagnosed with a brain tumor. He lives in Georgetown with his fiancée, Janine Bertram, who in 1978 was sentenced to prison in connection with a radical faction's bank robberies and bombings in Washington State. She is now a public-policy consultant.

With his agency's budget reduced during the 1980s, and with the Disability Act's employment-discrimination provisions for most businesses taking effect on July 26, Kemp expects stormy times in the months ahead.

In his tenth-floor office at 18th and L streets, Northwest, its reception area hung with framed photos of President Bush signing the Americans With Disabilities Act (ADA), Evan Kemp discussed what he's learned.

Q: How will the ADA affect people in Washington?

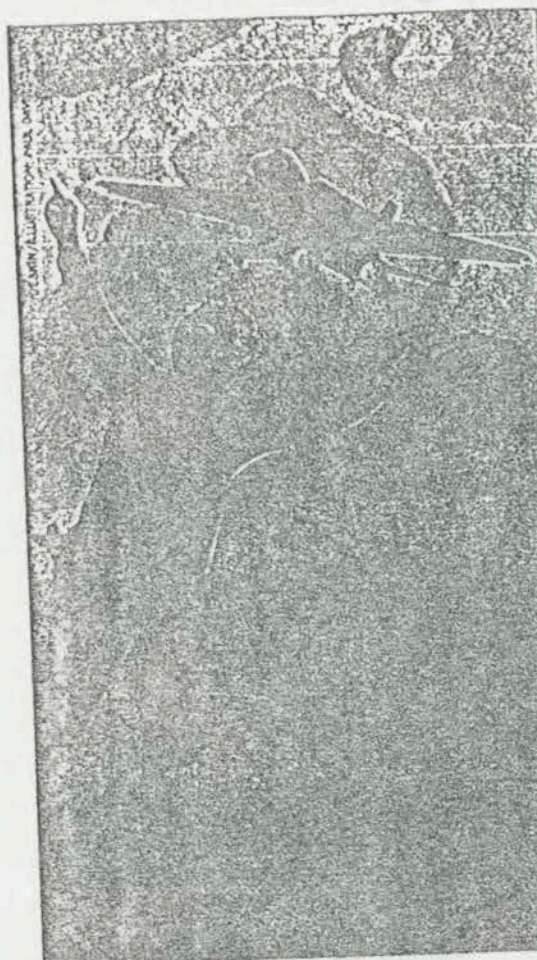
A: It will affect people here as dramatically as everywhere. It's a grand experiment—which will be successful. In the United States we've chosen to mainstream disabled people, not to consider us a special group needing only more medical treatment.

Q: Won't it inconvenience business?

A: Any change inconveniences. But it's been very expensive to *exclude* disabled people from society.

In 1986, the last year we have good statistics, \$169 billion of transfer payments—like Social Security Disability Insurance and workers' compensation—went to keep disabled people out of society. We all pay for that, businesses and individuals alike, through taxes. We shouldn't have to pay so much.

Besides, businesses offering goods or



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services to the public should be pleased by the legislation. There are 43 million disabled Americans. We provide substantial buying power. The ADA is intended to integrate disabled people into society, to help us enter regular stores and buy things. I think now we will.

Q: How many of these 43 million disabled people could realistically join the work force?

A: At least 8 million. Look at my case: I was denied a job after graduating near the top of my law-school class. I landed a GS-5 job as a bureaucrat but was turned down for a job supervising two employees—because I was in a wheelchair, they told me. I eventually sued the federal government and won. It was a friendly suit. By winning I goaded the government to issue helpful regulations. By 1990 President Bush could appoint me head of the EEOC, to supervise 2,800 employees.

Clearly many other disabled have been denied jobs. Many still are. I meet people in nursing homes who could probably make a better chairman of the EEOC than me. They had bad luck; I had good luck. The ADA will diminish disabled people's reliance on luck.

Q: How did you become disabled?

A: A neuromuscular disease, Kugelberg-Welander syndrome. I could still walk, but in 1971 I broke my leg. After that I would often lose my balance, and I found it was easier to get around in a wheelchair.

But that exposed me to all the negative connotations of being so obviously disabled. By then I was a GS-13. Yet after I began using a wheelchair, I never got another promotion. I was never invited to another training course, even though I had the same strength and was as good a worker as before.

Q: Why was that?

A: Attitudes. I hadn't been perceived as disabled until I was in a wheelchair.

Q: Did you get depressed?

A: I became very depressed when I didn't get a job out of law school. I was engaged to be married and broke the engagement. She didn't break it; I did. I had expected to find a great job. I had heard that hiring the handicapped is good business.

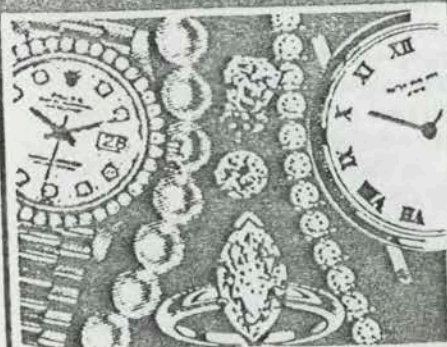
Q: But you weren't really handicapped then, were you?

A: Sure I was, as much handicapped as I am now. I wasn't in a wheelchair yet, since I could still retain my balance to walk. But in many respects, I can do more things in a wheelchair now than I could walking then.

Q: Even with great grades from a great law school, you weren't hired. You suspect it was discrimination?

A: No, I don't suspect it. I know it. I

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Directors

was told. This all happened before the civil-rights laws, so the law firms could tell me straight. I was interviewed by 39 firms and refused cold 39 times.

Q: What did they tell you?

A: That as a young lawyer I would have to travel a lot for depositions and the like, which would be a problem.

Q: Did they have a point? Would you have had a tough time traveling around?

A: I could have done it, just as I've done it since then. Besides, I would have worked harder. That's what many disabled people do. To this day, I work a long week and almost every Saturday and Sunday. We overcompensate.

Q: What does discrimination feel like?

A: Being a member of any excluded group arouses all sorts of emotions and reactions. Excluded people come to feel that there's something wrong with them: "Somehow, if I had been a little better, this wouldn't have happened to me."

Mostly it just hurts—the unfairness of it. The more someone is exposed to that pain, the greater the tendency to pull back from society. That's partly why the unemployment rate for disabled people is about 70 percent. The 30 percent of us who do have jobs don't need an ADA to help us get and keep those jobs. It's the other 70 percent that this and other rights legislation helps.

Q: Do you still feel discriminated against?

A: Yes. I meet people who won't address questions or comments to me. They'll address them to those with me who aren't in a wheelchair. Servers at a restaurant will turn to my friends and ask, "What does he want to eat?"

More important, when issues arise that I know a lot about, staff in the White House won't call to ask my advice.

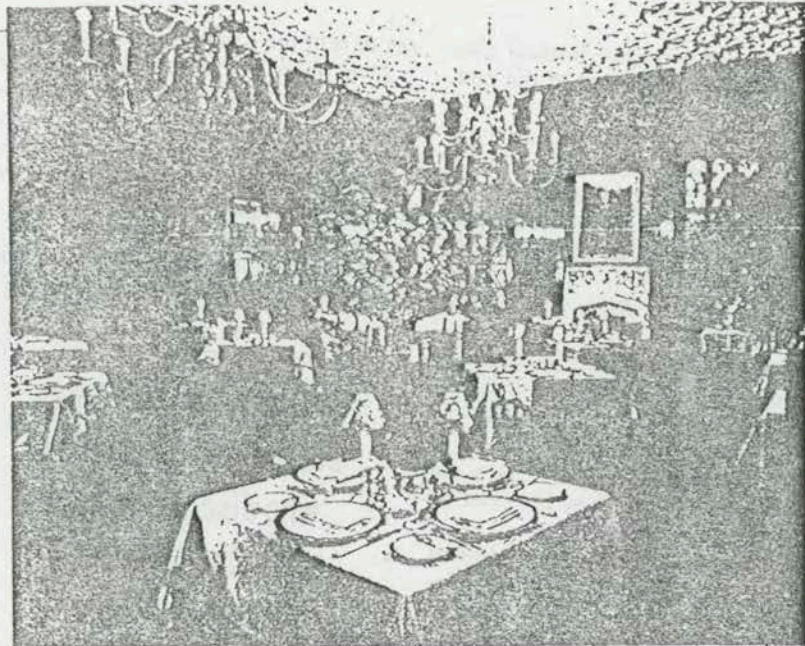
Q: Is that because you're head of a relatively small agency or because you're handicapped?

A: I think it's because I'm handicapped. Sam Skinner, the White House chief of staff, and his staff wouldn't even ask me to respond to Jerry Lewis's request for the President to fire me.

Q: Why are you fighting with Jerry Lewis?

A: Because I've long opposed his "pity" approach for raising money. In his muscular-dystrophy telethon we're portrayed as children or as people who are so sickly that we're about to die. This contributes to attitudinal barriers, which are the biggest barriers to the integration of any excluded group.

Pity and compassion are close, but there's a distinction. Last year Jerry Lewis said that if he found out he had Lou Gehrig's disease, he'd shoot himself. That's wrong. I know many people



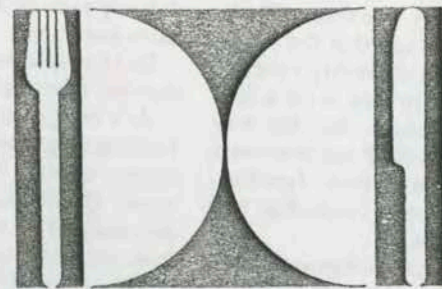
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with this disease who are leading productive lives, and will right to the end. They shouldn't be stigmatized.

I took on Jerry Lewis starting in 1981, without much effect. But I have affected Easter Seals and United Cerebral Palsy campaigns—their telethons don't represent disabled people as such pitiable stereotypes now.

Q: So you'd have Jerry Lewis drop his annual telethons?

A: He could make adjustments. He talks about disabled people as if we're children, unable to have adult views.

Jerry Lewis wrote to the President to say I should be fired. A week later, he wrote to Skinner and raised hell that he hadn't gotten an answer.

I know this issue, I'm in the middle of it, and yet I wasn't called. I asked Skinner personally to read me the letter, to please let me help with the response. I suggested that he offer to bring Lewis and me together. And I asked to read the response before it went out. He and several staff members assured me I'd be able to, but I didn't get the chance. It was a positive response, from my point of view, but it did leave the impression that the President thinks the telethon is a good idea.

Q: Why weren't you consulted?

A: Sam Skinner might not like me or the ADA. I don't know. But one major problem with being in an excluded group is that it makes me think that they didn't call because I'm disabled. That they think disabled people are children.

The Democrats now take credit for the ADA, but we wouldn't have it without the personal push by President Bush. That's why I used to say that the President couldn't lose the disability vote unless he was caught in bed with a live male and a dead woman. But the way Skinner reacted costs the President votes of disabled people and their families. Skinner found the only issue that will cost Bush this support.

Q: Does discrimination happen in other ways?

A: Sure. People with disabilities are treated differently abroad, where they're treated like medical problems. I was recently invited to Czechoslovakia, and when I landed at the Frankfurt airport an ambulance took me to a special holding area for "Handicapped." Someone asked if I wanted a bed. I didn't need to be met by an ambulance and taken to a place to lie down. It was ridiculous.

Q: Because of such experiences, do you have more understanding for the situation of blacks or Indians or Chicanos in our society?

A: Yes. Unfair exclusion happens to all such groups. But disabled people are the only group that people of any race or

sex or religion can join at any age.

I've been criticized as being concerned only with disability. That's not true. As a leader of the disability-rights movement, I've pushed to enlarge our civil rights along with those of all other excluded groups.

Americans have usually thought of civil rights as a black issue. But everyone must be included in society. We're

"Discrimination is bad business. Any employer who discriminates is excluding some highly qualified people."

not one nation yet. We're still a nation being formed.

Q: Why is this so tough? Why do people discriminate?

A: Differences make people uneasy. They're uncomfortable with people unlike themselves.

All excluded people feel this, which binds them and makes them sensitive to other excluded groups. Boyden Gray, the White House counsel, is a friend of mine, a real champion of disabled people. He was the only southerner at a prep school in Massachusetts when many northerners thought southerners were bigots and mentally retarded. He felt unfairly excluded then and has been sensitive ever since.

Q: If people have been excluded, why shouldn't they be helped by quotas?

A: I'm against quotas. And whenever I address a group of disabled people and oppose quotas, I get a ringing endorsement. Quotas or preferences are very detrimental to society. They engender jealousy and resentment.

Q: At the EEOC, do you believe that job discrimination is getting worse in the United States?

A: No way to tell. Only one percent of those who feel discrimination in the workplace file charges with us. Overall, employer-employee relationships are atrocious. The decline of unions has hurt—unions helped make the workplace less discriminatory and hostile.

We've definitely learned that discrimination is bad business. Any employer who discriminates is excluding some highly qualified people from a particular race, sex, religion, or whatever. He ends up taking less-qualified workers.

Q: You're known as a conservative, yet the ADA—and EEOC regulations—

put the federal government into the most minute details of daily American life. Isn't that awfully interventionist?

A: I have trouble with both parts of your question. I'm not sure I'm all that conservative, coming from a very Democratic family and having voted the straight Democratic ticket consistently until 1983. I'm a populist with libertarian leanings, and very suspicious of the federal government.

Q: Still, you hear about towns in Iowa having to change their libraries to put in ramps for wheelchairs even though no disabled residents live there.

A: About 16 percent of the American people are disabled, so I can't believe that a town wouldn't have any. Why haven't they used the library? Because it was impossible for them to get in!

People complain about the expense. At Duke University, they spent \$1 million to build a ramp into the chapel—but it's made out of marble and it's so slippery that we can't use it. In rain or snow, it becomes positively lethal.

The Republican National Committee long resisted handicapped-accessibility changes in its headquarters as too expensive. Then Vice President Quayle said he wouldn't go there until they made it accessible. We put up the money for it—disabled people. I don't think we should have, but we did. It cost \$27,000, which was way too much. Sears Roebuck made all the common-sense accessibility changes in its Chicago headquarters for only \$7,000. Expense is just an excuse.

Q: What have you learned about overcoming not just a physical handicap but the depression that often comes with it?

A: Many of my friends with disabilities have become acutely depressed. When I ask what is worse, depression or the visible disability, every one of them answers the depression. That was true in my case, too. Depression is much worse than any physical disability. I felt some of it when not getting a job out of law school, breaking my engagement, being told I couldn't become a supervisor.

But I became most depressed when my wife developed a brain tumor in 1982. I was told she had only a few months to live. She's still alive, living in a nursing home, paralyzed on one side. She sleeps a lot and has lost much of her short-term memory. It keeps receding and is now back roughly to when we were married, September 1970. I don't know how I'm going to take it when it goes back to before we met.

Q: How do you bounce back?

A: I was told then that I could take drugs or undergo analysis, but that if I did neither—and didn't kill myself in the meantime—I would bounce back in a year to eighteen months. There's a natu-

ral coming back. It happened.

Q: So there's nothing you did? Just watched the clock?

A: At first I denied being depressed. Then I learned of the six or seven key signs of depression—problems sleeping and eating and relating, the whole bit. I couldn't *do* anything. My friends were terrific and took over parts of my life for me. But after a year or so I recovered, largely on my own.

Q: The EEOC was in the headlines during the Clarence Thomas/Anita Hill hearings. Did all that help the agency?

A: No. We're an underfunded agency, as we've been since our beginning in 1965. In the six months after those hearings, the number of charges filed with the EEOC increased from 60,000 to more than 68,000 across the board, and not just in sexual harassment. Now that the Civil Rights Act of 1991 and the ADA are kicking in, we'll be hit with a 30-percent rise in our case load. We'll be in desperate shape.

Q: You already are. There's an eight-and-a-half-month backlog on the nearly 46,000 cases you have pending.

A: And it's expanding fast. What's more, state agencies that investigate discrimination complaints are cutting back. So we'll have to take some of their load.

Q: Tell us your lessons of life.

A: People with disabilities go through the same process as those who really are dying. At the age of 12, I was told I would die in two years. Later I was told I would die in my teens. But I made a deal with God to live to 40.

Q: What was your deal?

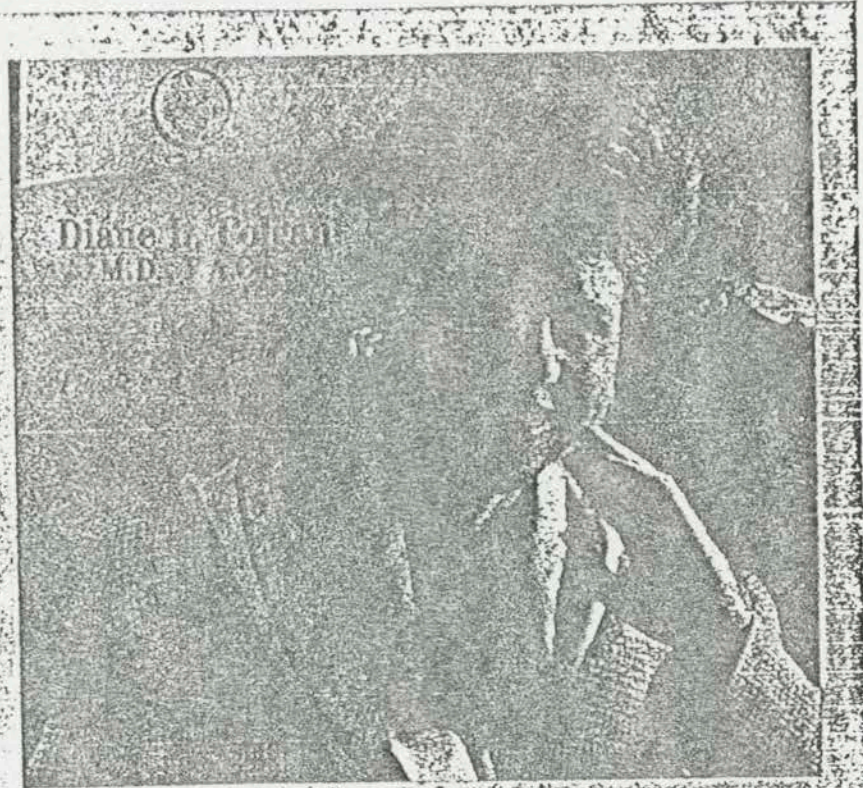
A: That I would lead a good life. I became a Catholic and tried to serve. I've been extraordinarily successful. I don't know if that was because of hard work or luck or something else, but I think it was God. He's kept His part of the deal and then some.

Q: You're 55. Do you have another deal with God now?

A: No, I don't plan far ahead. If somebody asks for my opinion, I give it without thinking. "Gosh, this is going to affect me down the road." There may not be a long road.

Q: Other big lessons in life?

A: That without resorting to quotas or preferences, we can bring groups together. We wouldn't have an ADA if we hadn't gotten deaf, mentally retarded, blind, and disabled people all singing from the same hymnal. There are bigger differences among them than among Hispanics and African-Americans and Asians. These groups have got to sit together and talk about their common problems. We've got to make integration happen throughout our society. It's the genius of America to take all kinds of people in and make us one nation. □



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ON THE NEWS

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THE DOWNSIDE OF THE NEW DISABILITIES LAW

DISABLING BUSINESSES



By Charlotte Allen

Summary: Proponents of the Americans with Disabilities Act say it will give millions of disabled citizens access to many things in life that the more able-bodied among us often take for granted. They also say the act will lead to a more productive economy as more of the disabled join the work force. But some see the law as potentially harmful, saying it places undue burdens on business.

The Americans with Disabilities Act was supposed to be the nice civil rights law. No affirmative action, no quotas, no punitive damages — no damages at all, in fact. Just civil fines on the rare occasion that the Justice Department caught an egregious violator and, for disabled workers denied jobs or promotions, some back pay.

With such paltry rewards for litigation, who would sue? Parties would iron out their differences voluntarily. That was the way it had worked after Congress passed the 1973 Rehabilitation Act barring discrimination against the disabled by entities receiving federal funds. In nearly two decades the act has generated only about 400 lawsuits. Everyone wants to give a break to the disabled.

And so the disabilities bill breezed through Congress after its 1989 introduction. It had the backing of President Bush, who has two sons with disabilities and who during the 1988 campaign promised that making it easier for the disabled to get jobs and hotel rooms and movie seats would be part of his "kinder, gentler" approach to governing. The law had the backing of Bush's Equal Employment Opportunity Commission chief, Evan Kemp Jr., himself a wheelchair user. And the backing of President Reagan's press secretary, James Brady, paralyzed in the assassination attempt on his boss in 1981. And Senate Minority Leader Robert Dole, with a crushed arm from World War II combat.

Add to that list Senate Labor and Human Resources Committee Chairman Edward Kennedy, with a mentally retarded sister and a son who lost a leg to cancer. And recent Democratic presidential contender Tom Harkin, with a hearing-impaired brother. And former California Democratic Rep. Tony Coelho, who has epilepsy and talked about the "hidden army" of the disabled. Forty-three million disabled people, said Coelho. That's nearly one out of every six Americans, your family and mine.

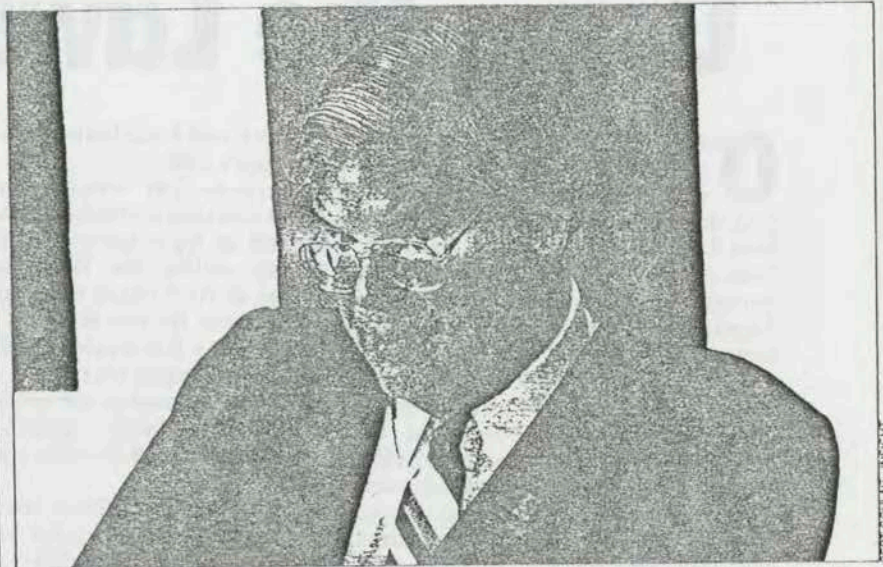
And so the law passed with just token opposition — a 337-28 vote in the House; a 91-6 vote in the Senate. Bush signed it on July 26, 1990. There were staggered phase-in dates so all affected could get ready in steps, accommodate the disabled gradually, in a "reasonable" way, as the language of the act stated repeatedly.

Although a few provisions affecting new transportation became effective shortly after the act's signing, the

suits in the District of Columbia Superior Court after spending the previous two days canvassing local businesses where he had had trouble with access in the past.

The suits targeted two department stores, a hotel and a multiscreen cinema whose wheelchair spaces were clustered in the back, instead of scattered throughout, leaving no choice of where to sit. The suits alleged violations of a District human rights ordinance as well as the federal disability act. The local law allowed Fiedler to ask for \$25,000 in damages in each suit on top of the federal remedy of removing barriers.

"I'm not going out of my way to find these places," says Fiedler, who had previously written letters to all his targets requesting removal of barriers, letters that he says were ig-



EEOC chief Kemp expects a rise in employment complaints under the act.

first major phase-in did not occur until a full 18 months later, Jan. 26 of this year, when places of public accommodation with 25 or more employees were required to take "readily achievable" steps to remove barriers to access by the disabled, so long as the removal did not cause "undue hardship" to the business. Later this year the law's employment provisions will kick in, and, gradually, smaller businesses will have to comply. How nice, no problem. And then along came —

The hidden army of the disabled. On Jan. 28, two days after the act's public accommodations provisions went into effect, Marc Fiedler, a 36-year-old Washington lawyer who has been in a wheelchair since a 1975 automobile accident, filed four law-

suits. "I asked for a ramp and they said no when I called," he says of one of the department stores. "If in the course of my going to shops, bars, restaurants, movie theaters, I see something, I'll let them know. I've written to a number of other places, and if push comes to shove, I'll file other lawsuits."

Fiedler's are not the only suits filed under the act. The day before, a deaf lawyer filed a class-action suit in the U.S. District Court in Manhattan on behalf of 200,000 hearing-impaired New Yorkers, alleging they had no access to the city's 911 emergency telephone service. A 12-year-old girl with cerebral palsy has sued the Girl Scouts, saying she was turned away from summer camp last

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year and expected it to happen again.

The Justice Department, which has authority to enforce the public accommodations provisions of the act, has already received dozens of formal complaints, including one against the owners of the Empire State Building, a target of demonstrations by wheelchair users.

The Disability Rights Education and Defense Fund, a national advocacy group, has trained 5,000 disabled activists as "barrier busters" with a mission to seek out and file test

cases against violators among the 5 million U.S. establishments affected by the law, from giant shopping malls down to one-person operations such as home-based day-care centers that the accommodations provisions will begin covering Jan. 26.

Fiedler is handling his litigation in gentlemanly fashion. Woodward & Lothrop, one of the department store chains he sued, has already settled with him, agreeing to widen a door at its offending flagship store to fit wheelchairs, and negotiations are

proceeding with his other three targets. He has no plans to try to collect damages from any of the targets as long as they agree to the accommodations he seeks. "I'm not trying to extort money from anyone," he says. "Each of these lawsuits is costing me several hundred dollars."

Restraint like Fiedler's may turn out to be rare. Observers predict the real eruption of disability lawsuits will come in July, when the employment provisions of the law take effect and the Equal Employment Opportu-

Using the Laws to Learn

One of the first beneficiaries of the Americans with Disabilities Act was Randi L. Rosenthal, a 29-year-old graduate of Stanford Law School who sued the New York State Board of Law Examiners demanding that she be allowed four days to take the state bar examination instead of the usual two.

In a federal lawsuit filed Feb. 13, she said that she suffered from severe learning disabilities that included dyslexia and attention deficit disorder. She also asked to be allowed to take the exam in a separate room because the only way she can read a text and remember its contents is to say the words aloud, sometimes repeating them several times.

Rosenthal, who grew up in Roslyn, Long Island, graduated from Stanford in June. She sat for — and failed — the New York examination in July after bar officials denied her request for special accommodations. By the time her second chance to take the examination came in February, the federal disability rights law was in effect.

Shortly after she filed her suit, charging the bar examiners with violating both the disability law and last year's civil rights act, state officials reached an interim settlement that allowed her the extra time and the separate room. She is now awaiting the results.

But the lawsuit is far from over because Rosenthal's lawyers have asked for \$550,000 in compensatory and punitive damages for her mental

distress and humiliation, along with attorney's fees.

Because bar examinations test quick thinking and time management as well as legal knowledge and reasoning ability, the Rosenthal case seems at first blush to stretch legal protections for the disabled to their outer limits. Bar exams are designed on the principle that quick reading and comprehension are essential to a profession whose essence is the wording of court decisions and statutes.

However, Rosenthal's case is actually an open-and-shut one under the Americans with Disabilities Act. The 1990 law specifically requires those who administer trade and professional exams to offer "alternative accessible arrangements" to disabled people who cannot take the tests under normal circumstances. Justice Department regulations issued last year — over some objection from bar officials — make it clear that bar exams and learning disabilities fall under the law.

Rosenthal, who is working as an associate at the New York law firm of Kaye, Scholer, Fierman, Hays & Handler, says that all through law school almost no one, not even her professors, knew about her disability (Stanford gave her double time for exams and like most law schools used blind grading). The story she tells about her academic career, which includes a bachelor's degree from Brandeis University and a master's from Harvard University's John F. Kennedy

School of Government, is truly amazing. Too old to benefit from the 1974 Education for All Handicapped Children Act, which made testing youngsters for learning disabilities commonplace, Rosenthal was considered a bright but lazy child.

"I did not know how to read at age 17," she says. "I had never read a book."

After her Scholastic Aptitude Test scores came back "horrendous" despite tutoring, Rosenthal says, an educational psychologist tested her for the first time and discovered the dyslexia, a condition in which letters of words appear scrambled, and the attention deficit disorder, which slows her comprehension and makes it difficult for her to write legibly. She then enrolled in a new program for learning-disabled students at Adelphi University, learned how to read, got straight As and transferred to Brandeis.

At each stage, she says, the universities she attended required her to prove her disability by independent testing, then gave her the double examination time and separate room she requested.

In August she took and passed under these special conditions the Multistate Professional Responsibility Examination, an ethics test whose passage is a prerequisite for practicing law in most states.

Rosenthal is working in Kaye, Scholer's real estate department. "It's perfectly suited for someone like me," she says. "I have great verbal skills, I

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Rose:

nity Commission begins to receive complaints. Kemp himself has anticipated that up to 15,000 employment complaints a year will be filed with the EEOC, which has enforcement authority over that part of the act. The annual number of lawsuits could be even higher, approaching the 115,000 cases filed each year under older federal laws banning racial and sex-based discrimination in employment and elsewhere.

There are a number of reasons experts anticipate an explosion of litigation.

In order to be as inclusive as possible, Congress purposely left the definition of disability vague: "an impairment that substantially limits one or more of the life activities of an individual." Also in the interests of flexibility, lawmakers declined to say what a "reasonable" accommodation would consist of, what "readily achievable" means or even the kind of "undue hardship" that a company would have to prove to avoid making a site accessible or a job performable for a person with a disability.

Nor do the voluminous regulations issued by the Justice Department and the EEOC solve the definition riddle. The Justice rules, for example, contain a list of suggested barrier removals—such as widening doors and installing vehicle hand controls—that may be reasonable for some businesses and impose undue hardship on others.

"The ultimate question is: What is a reasonable accommodation?" says Ronald S. Cooper, a Washington employment lawyer. "The bottom line is

have great abstract reasoning—that's what practicing law is all about. I'm a great lawyer. I read aloud at my desk. My handwriting and spelling are poor, but I have a secretary."

Psychologists agree with Rosenthal that dyslexia—which is a brain disorder, not a psychological one—has nothing to do with intelligence. Indeed, there have been famous dyslexics, including Neil Bush, the president's son, the late Vice President

Nelson Rockefeller and the eminent sociologist Seymour Martin Lipset.

Ever since the early 1970s, when federal law made it illegal for institutions receiving federal funds to discriminate against the handicapped, colleges have operated special offices for disabled students. Students claiming learning disabilities, sometimes shading off into mere test-taking anxiety, have availed themselves of the special services.

"I had a couple of students identified as learning-disabled," says University of Minnesota psychology Professor William Iacono. "I got a letter from the office explaining they had problems and asking me to take special steps. I've had disabled students in the past. I had a blind student, so the test was offered her in audiotape form. I had a blind and deaf student who took a special test by physical contact with an interpreter."

One of the two learning-disabled students in Iacono's abnormal psychology course last fall never approached him, but the other identified her disability as "inability to

form memories." She had failed the midterm and wanted to take the final examination, a two-hour closed-book test, in 10 hours with an open book. Iacono refused to make the accommodation, offering her a choice of special tutoring or dropping the class without prejudice.

The young woman refused both options, took the final and earned a C.

Iacono says, "When you put her in a position where she had to push herself, she actually could perform. I recommended that she have a thorough evaluation of her problem. It could be psychological or it could be physical."

He continues, "She wanted to be a teacher. . . . If she got the testing, she could be counseled about a vocation which wouldn't put her at a disadvantage."

Despite the skepticism of some academics like Iacono, the trend in higher education and other professions is to take learning disabilities seriously and grant maximum accommodations.

California, Connecticut and Pennsylvania have for several years allowed alternative bar exams for learning-disabled takers. The District of Columbia recently dropped its practice of inquiring into bar applicants' mental health history, citing the Americans with Disabilities Act.

Says Rosenthal: "We have a whole generation of learning-disabled people that we have committed so many resources to over the last 20 years—we have educated them, they have been mainstreamed—that they are entitled to the same rights as anyone else."

—CA



Rosenthal took the bar under special conditions.

that the guidelines will be set by litigation, at least for substantial employers. Litigation is a very long and slow process. It means whole new categories of experts." Other lawyers are predicting that, given the vagueness of the law, it will be impossible for judges to resolve many of those lawsuits without a full trial.

But the major reason to expect thousands of lawsuits has nothing to do with the act itself and everything to do with legislation Congress passed the following year: the Civil Rights Act of 1991.

The ostensible purpose of the civil rights legislation was to make it easier for people claiming race- or sex-based employment discrimination to prove their cases, by rolling back recent Supreme Court decisions that had shifted the burden of proof in such cases away from employers. The 1991 law ended up greatly expanding the damages available in those kinds of lawsuits, which are governed by a 1964 civil rights law. And that 1964 law, which contains provisions for public accommodations and employment, was the model for the Americans with Disabilities Act.

The 1964 law, like the disability act in its original form, limited relief for victims of job discrimination to back pay and reinstatement. The 1991 law allows compensatory damages (designed to cover emotional suffering) and punitive damages in job discrimination cases. It also makes clear that the disabled are entitled to collect them. The 1991 law also allows the disabled to collect compensatory and punitive damages from public entities under some circumstances.

Without the compensatory and punitive damages allowed by the 1991 civil rights law, the Americans with Disabilities Act probably would have achieved its aims without many lawsuits. With damage awards allowed, it is an invitation to hire lawyers and go to court, which ups the financial ante considerably.

The 1991 law also allows jury trials for the first time in disability rights and other job discrimination cases. And although Congress put caps ranging from \$30,000 to \$500,000 on punitive damages in disability and certain other kinds of job discrimination lawsuits, a bill is moving through the Senate that would remove those limits. The EEOC has promised to seek the full legal limits of relief

on every claim it gets.

Jerry Mashaw, a Yale University law professor specializing in disability issues, was an early defender of the Americans with Disabilities Act, writing to refute economists' arguments that the costs of complying with the 1990 law could hinder business growth. He pointed to the relatively few suits filed under the 1973 Rehabilitation Act, with its strictly limited remedies, as an indication that most disabled people would rather negotiate for their rights than sue for them.

Now, Mashaw is not so sure. "I didn't consider the punitive damage issue," he says. "You add punitive damages to anything and you're going to get litigation. There's some backup of folks out there who are disappointed and frustrated with the way they've been treated, and it's going to take five years at least to get through the lawsuits."

"Every building in the United States is in violation of this law," says Richard Epstein, a University of Chicago law professor whose new book, *Forbidden Grounds*, argues against all antidiscrimination laws.

The interesting political question is how a potential bonanza for lawyers

There are a number of reasons experts anticipate an explosion of litigation. In order to be as inclusive as possible, Congress left the definition of disability broad and vague: "an impairment that substantially limits one or more of the life activities of an individual." Also in the interests of flexibility, lawmakers declined to say what a "reasonable" accommodation would consist of.

and professional disability experts came to be backed by an administration whose vice president, Dan Quayle, preaches U.S. economic competitiveness and has called, with White House backing, for the virtual abolition of punitive damages. The

Americans with Disabilities Act has led to probably the most far-reaching regulations on the country's books. Unlike other civil rights laws, it calls for businesses not to refrain from certain actions, such as discrimination against blacks or women, but to take positive steps to modify their premises and work rules. Critics call it more a mandated benefits law than an antidiscrimination law.

The act also reaches tiny businesses — a basement neighborhood hair salon, for example — that have typically been exempted from the purview of federal regulations. And with its stringent architectural rules for future construction, it promises changes at the most mundane level. "Will federal regulation change the look and feel of everyday objects?" is a seminar topic at an upcoming furniture industry convention. The answer is yes. The new trend is called "universal design." Translation: no more shag rugs (too hard to roll across) or doorknobs (handles are easier to manage).

What happened, of course, is a triumph of compassion. Listen to Sandra Swift Parrino, chairwoman of the National Council on Disability, the 14-year-old federal agency that wrote the first draft of the Americans with Disabilities Act. Parrino's oldest son has been in a wheelchair since early childhood.

"So many places are inaccessible for him," she says. "He adores the Dallas Cowboys, but you can't sit in a stadium. You're constantly being told you're in the way. I would take him to the Metropolitan Museum [of Art in New York], and I couldn't get a cab to stop for us. When my son was in middle school, there was a meeting and one of the teachers said, 'He should be with his own kind.' I went up to him afterwards and said, 'If someone crashes into your car and you are paralyzed from the neck down, do you want someone to say, 'Put him in a nursing home?' Nobody trained me for this job. I thought I was going to have a healthy little boy.'"

Almost everyone on the 15-member National Council is disabled or has a close relative who is. So it was that although they were all appointed by the antiregulation Ronald Reagan, they also supported an even stricter antidiscrimination law than the one that finally passed.

The handful of diehards who opposed the bill knew they were fighting a lost cause. "Certainly every time you have the White House out early and fairly actively behind a bill



The disabilities act will require businesses to adopt more changes such as special hand-activated doors.

like that, there isn't much you can do," says an aide to Republican Rep. Dick Armey of Texas, one of the opponents. "We spoke against it," says the aide. "We said it was part of regulatory overkill, that it was just a boon for lawyers, that we ought to depend on the goodwill and common sense of the American people rather than lawyers in Washington."

The National Federation of Independent Business, whose members include 500,000 small businesses, put together a coalition of large and small

entities in 1989 to fight the law's passage. Six months later, all the large businesses and their trade organizations had dropped out, apparently fearing publicity and picketing by the disabled. The U.S. Chamber of Commerce, the National Association of Manufacturers — gone. The federation cut its losses and concentrated on winning minor concessions such as a tax credit for small businesses that remove barriers.

The forces that led to the business coalition disintegrating persist and

can be seen in the divergent attitudes toward the law expressed by large and small companies. The bigger the company, the more it will have to spend to comply with the new regulations. That goes without saying. Though it is unclear what the courts will ultimately decide it means to take "reasonable" steps to accommodate the disabled, it's clear the concept will be closely tied to a company's size, number of employees and financial resources.

Bigger companies, with bigger

Painting by Numbers

Forty-three million is a number encountered in almost every story about the Americans with Disabilities Act and is enshrined in the law itself. It is the number of Americans who "have one or more physical or mental disabilities," declares the first sentence of the act. The sentence continues ominously: "This number is increasing as the population as a whole is growing older."

Now, 43 million is a very large number, nearly one out of every six inhabitants of the United States. And it turns out, as Insight learned from the public and private entities that collect statistics on disability, that 43

million is also a bogus number. On the one hand, the number of physically disabled Americans may double or triple under the act's definition of disability: an "impairment that substantially limits one or more of the major life activities of the individual." On the other hand, 54 million American adults have mental, emotional or substance abuse problems, according to official estimates. So the 43 million figure could be a severe undercount of the population covered by the act.

Where did the number come from? The original draft version of the act that the National Council on Disability prepared in 1988 men-

tioned a total of 36 million disabled people. The Health and Human Services Department's National Center for Health Statistics cites a lower total: 33.8 million, with 2 million of those in institutions. The center's figure comes from the University of California, whose disability statistics program in San Francisco is the only one in the country that tracks impaired populations systematically.

The university arrived at the figure after conducting a survey in 1983-84 that showed 32.5 million people with conditions that limited their activities. The extra 1.3 million people represent the likely 1990 total given overall population increases, says program spokeswoman Karen Miller.

"That's people experiencing physical impairments," Miller explains. "That means impaired but not necessarily disabled as the act defines it. But on the other hand, the figure doesn't include mental disabilities."

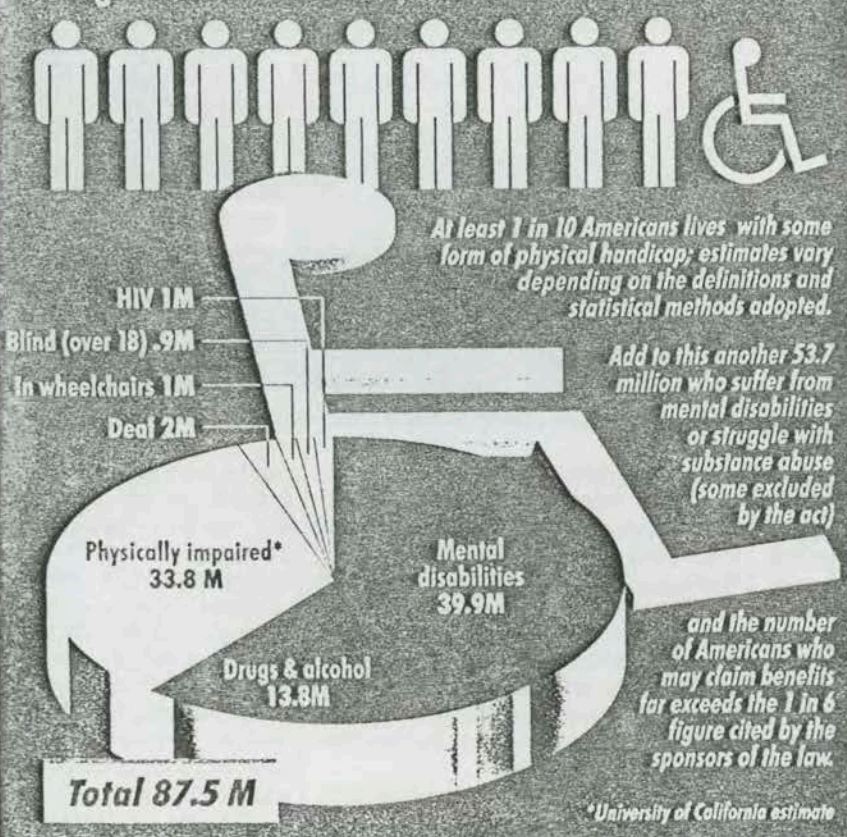
What about the 43 million the act mentions? "It's a good figure, but it's not the most accurate figure," says Miller. "It was probably put in there as a way of getting in those people who are definitely disabled but who aren't physically disabled."

The University of California study does not indicate how many impairments translate into out-and-out disabilities. When the National Council on Disability drafted a 1986 report calling for massive antidiscrimination legislation and federal aid programs for the handicapped, another resource it had for counting the disabled was the 1980 census report. In that report, 22.7 million people ages 16 to 64 said they had disabilities that affected their ability to work; one-third of those said they were working anyway. All but a small percentage of those reporting disabilities were over 55.

A Census Bureau report issued in 1986 found 13.5 million people who were unable to perform such basic physical activities as seeing, hearing, speaking, walking, using stairs or lifting. The 1990 census figures

Who Counts as Disabled?

The number of Americans who can potentially claim protection under the new disabilities law is far larger than 43 million.



showed 14.7 million Americans ages 16 to 64 reporting a work disability, 8 million fewer than in 1980.

The disability council also commissioned a poll by Louis Harris & Associates in 1986. Asking questions that focused not on people's participation in the labor force, as the Census Bureau had, but on their subjective views of themselves and their impairments, the Harris poll found a disabled population of 30 million to 32 million, 58 percent of them over age 55. The council decided the Harris figures represented an undercount and rounded the number up to 36 million in its preamble to the draft version of the act it presented to Congress. By the time the act had meandered through congressional committees and Congress passed a final and somewhat different version of it in July 1990, the figure had crawled up to the 43 million that is now part of national folklore.

When asked to visualize a person with a disability, most people think of someone who is blind, deaf or permanently in a wheelchair. These impairments account for the bulk of the physical alterations an environment must undergo to accommodate the disabled, and people with these impairments receive the most public sympathy, the most willingness by employers and others to go the extra mile.

The blind, the deaf and wheelchair users combined account for less than 2 percent of the U.S. population. There are slightly more than 1 million wheelchair users in the United States, the University of California's disability statistics program reports. A 1991 survey conducted by the National Eye Institute, Johns Hopkins University and Baltimore's Wilmer Eye Institute found 900,000 blind Americans age 18 and over. About 2 million Americans are profoundly deaf (beyond assistance by hearing aids), according to the National Institute on Deafness and Other Communications Disorders.

People with AIDS have protection under the Americans with Disabilities Act, but they, too, account for a small segment of the population. An estimated 1 million Americans test positive for the human immunodeficiency virus, typically without visible symptoms; of those, about 210,000

had full-blown AIDS as of Jan. 31, the Centers for Disease Control report.

In contrast to the relatively small number of Americans with physical disabilities, the number of people who might claim protection under the disabilities act because of mental, emotional or substance abuse problems is potentially large enough to be frightening to employers. According to the National Institute of Mental Health, some 39.9 million people, 21.7 percent of the U.S. adult population of 184 million, have mental disorders ranging from schizophrenia or severe depression to simple phobias and anxieties. Another 13.8 million, 7.5 percent of the over-18 population, abuse alcohol or drugs.

Unlike the blind, the deaf and wheelchair users, people with psychological or chemical problems get little sympathy as potential employees and customers. Most people believe that the severely mentally ill should not be working and that those who demand accommodation for milder problems spell trouble for supervisors and coworkers.

The government seems to have been sensitive to some of these concerns. Congress excluded users of illegal drugs from the disability act's protection. The Equal Employment Opportunity Commission's regulations state flatly that a spectrum of personality traits with negative social overtones—including kleptomania, pyromania, compulsive gambling, transsexualism, pedophilia and voyeurism—do not qualify as disabilities. These regulations may not stand up in court, however. A human rights commission in Florida recently ruled that a county jail discriminated illegally when it fired a male guard who started dressing like a woman on the job.

The much-used 43 million figure thus bears no relation to the actual workings of the law. While mandating architectural and other physical changes in public sites and workplaces that will benefit far fewer than 43 million Americans, it obscures the fact that, numerically speaking, most of the beneficiaries of the Americans with Disabilities Act are not the physically impaired but the emotionally troubled. Had the number not acquired a life of its own, Congress and the public might have had some second thoughts about the law. —CA

pockets, are also likelier to attract more and bigger lawsuits. They are also, at least on the record, the biggest advocates of the Americans with Disabilities Act. Corporate public relations officials at retail giants such as Sears, or huge manufacturers such as Coca-Cola, have only positive things to say about the act, enthusiastically pointing to years of voluntary efforts to accommodate disabled workers and customers.

The owners of several small businesses expressed fear that the law's main effect will be pointless expense that benefits few of the disabled.

Moving down the size ladder to a business world in which corporate public relations is not a full-time and carefully honed art, there is markedly less optimism about the act. The owners of several small businesses Insight contacted expressed antagonism toward the federal government and the courts and fear that the law's main effect will be pointless expense that benefits few of the disabled.

Here is a sampling of attitudes and compliance efforts at three companies, from large to small, that were willing to discuss for the record how they are being affected by the Americans with Disabilities Act:

Marriott Corp.: Hotels (161,000 rooms in 700 facilities); restaurants; time-share resorts; food service contracts for airports, hospitals, toll road stops, businesses and schools; senior living centers; corporate child care contracts; golf course management; conference centers, operating in all 50 states and abroad. Gross annual revenues: \$8.3 billion. Number of employees: 187,000. Headquarters: Bethesda, Md.

The publicly held, high-gloss Marriott, which styles itself as a "hospitality company," its hotels as "lodging products" and its employees as "associates," is the firm that advocates for the disabled point to as a shining example of how to comply with the letter and spirit of the disabilities act. So eager is Marriott to protect its handicapped-friendly image that it was one of the few large U.S. businesses that did not sign on to

(continued on page 26)

Disability continued from page 13

the 1989 coalition that tried to block passage of the act.

What does complying with the act mean for Marriott? A lot of time and expense, its managers say with pride.

The disability act's employment provisions do not go into effect until July 26, but the company's equal employment staff of 10 professionals and four support personnel has already set up a program to train Marriott's 24,000 managers and their subordinates in interviewing and hiring disabled applicants.

"We started the process some time ago, even before the ADA was signed and the regulations were issued," says David Sampson, Marriott's vice president in charge of equal employment opportunity. At Marriott, as at most large U.S. corporations, preventing and dealing with job discrimination disputes is a full-time job for a high-level executive. Sampson says that he and one or two other members of his staff devote as much as 35 percent of their time to the disability act, sometimes bringing in lawyers from Marriott's legal staff.

Although the disabled already account for 6 percent of Marriott's employees, and the company has a reputation for working productively with mentally retarded employees and other people once regarded as unemployable, Marriott is leaving nothing to chance. Its human resources department has put together a 10-hour sensitivity training program that managers will first go through themselves, then lead their subordinates through. "It's called 'Breaking Down Barriers,'" explains Sampson. In five two-hour sessions, groups of employees will do such things as pretend they have a disability and then discuss how the company could accommodate it. Conducting the sessions is expected to become a full-time job for several employees at Marriott.

At the public accommodations end, Marriott also acted early: A company representative sat in on the regulatory negotiation sessions that were part of the six-month rule-

making proceedings (December 1990 to June 1991) at the Justice Department, which is charged with enforcing the accommodations provisions of the act. "The people writing the law were not design professionals," explains Robert Reinders, Marriott's design manager.

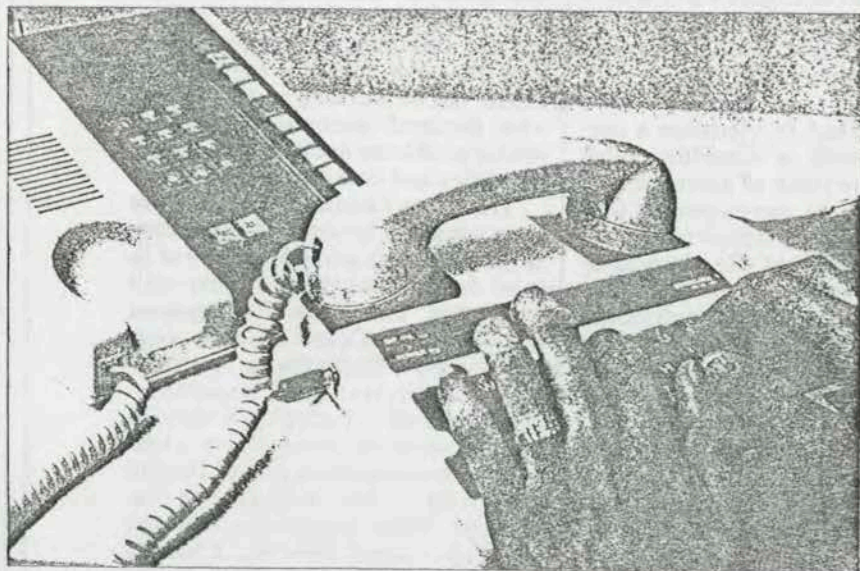
Marriott is inspecting the thousands of properties it operates to see what kind of "readily achievable" changes — such as ramps for wheelchairs — it needs to make to comply with the law. Fortunately, "we're a proactive company," says Reinders. For the past 10 years, all new Marriott construction has been in voluntary compliance with disability-friendly architectural guidelines issued by the American National Stan-

cility will have at least one \$1,300 kit containing a telecommunications device for the hearing-impaired, a visual fire alarm, an under-the-pillow vibrator that operates as an alarm clock and a closed-circuit decoder for the room's television set.

"Eventually we're all going to benefit from things like larger bathrooms," says Reinders. "I look at the ADA as an opportunity."

Sweetheart Cups: Manufacturer of paper and plastic drinking and eating utensils, operating 16 plants and warehouses throughout the country. Gross annual revenues: \$800 million. Number of employees: 9,000. Headquarters: Chicago.

At the far smaller, privately held



dards Institute, a private group. One of Marriott's regulatory lobbying efforts was to persuade Justice to use the guidelines as a basis for its regulations. The department came fairly close to what Marriott had wanted,

requiring a few more rooms per facility to be accessible to disabled customers than the guidelines and mandating such amenities as roll-in showers. Marriott, like other businesses, will have to comply with the regula-

tions only in future construction.

Marriott is spending more than \$1 million to comply with one specific feature of the regulations: a requirement that deaf customers have access to telephones. Every Marriott fa-

Sweetheart, figuring out how to comply with the Americans with Disabilities Act is the responsibility of just two employees: general counsel Victor Copeland and paralegal Jane Banta. They make up half of Sweetheart's two-attorney, two-paralegal legal department, and learning the act is a full-time preoccupation for Banta, who also handles employment and real estate issues.

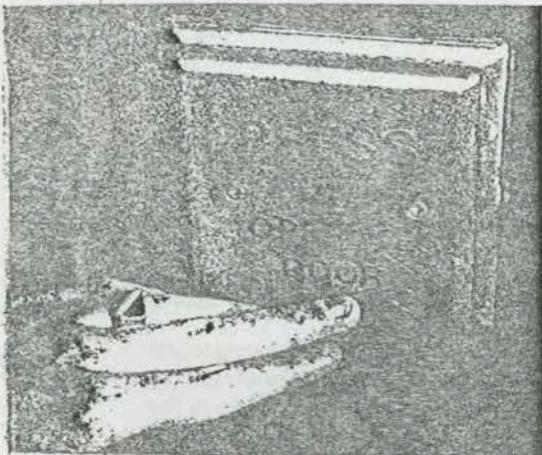
"I've put in well over 150 hours on this," she says. "I've got the EEOC and the Justice Department regulations. It's somewhat of a burden on a company that doesn't have existing resources to hire anyone to work on this or delegate the work to someone. We have had to let other things go to work on this."

Nonetheless, says Banta, Sweetheart set up — or at least started setting up — an internal compliance program last year, several months before the public accommodations pa-

At Marriott, as at most large U.S. corporations, preventing and dealing with job discrimination disputes is a full-time job for a high-level executive.



Marriott is pleased to provide phones for the hearing-impaired, special fire alarms and entrances that accommodate the disabled.



the act went into effect. She says, "It's just such a tremendous project that we couldn't get it done before the effective date. We've more or less made sure that the buildings comply and that the employment offices are accessible."

Banta has been holding training sessions for plant managers and human resources people and working on her other major project: revising Sweetheart's employment application and preemployment testing procedures. "We wanted to use the

word 'disabled' instead of 'handicapped.' We've reworded the questions dealing with 'Do you have a physical or mental disability that would prevent you from working?' into what the regulations say we can ask. In the old days, we would just ask: 'Can you or can't you do this job?'"

Sweetheart already has several employees who are blind, deaf or in wheelchairs, but so far, Banta says, no Sweetheart employee has made a formal request to be designated as disabled and to have the company make specific adjustments to accommodate him or her. That may be because the employment provisions of the law do not go into effect until July. "I'm sure we have a whole realm of people we don't know about," she says. "Once July 26 comes around, we'll have whole new set of problems."

Banta has an idea of what those problems might consist of, for already some lawyers and agencies are proceeding as if the law's employment provisions are in effect.

"The company doesn't accommodate work schedules," she says. "If we have a full-time opening, it's a full-time opening. But part-time is listed as a reasonable accommodation in the regulations. We have had a couple of terminated employees initiate discrimination complaints or hire attorneys who said, 'You're not complying.'

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In one instance, the employee did not want to work overtime. She has smoke sensitivity and hypertension, high blood pressure. It's really a union issue, and we haven't had to deal with the act. But a state agency recognized the act as being in effect."

Banta adds, "Some of the things listed in the act as reasonable are for the employer a hardship. In a small office, when an employee wants to work part-time, it can be a hardship, and sometimes even in a larger one. There's a question of whether someone who can work just mornings has to be accommodated under the act."

Dorothy's Ruffled Originals: Manufactures custom curtains and bedding for the upscale dual-income market, operates eight retail stores, mostly in the South, and a mail-order catalog division. Gross annual revenues: \$9 million. Number of employees: 100. Headquarters: Wilmington, N.C.

Dorothy's is an archetypal family business that Chuck and Dorothy Noe started in their garage in 1976. Dorothy is the designer, Chuck the chief executive officer, running the entrepreneurial end of the business with a management staff of 15.

"Basically, we're not in any kind of

employment mode because of the recession," says Chuck. "But we have hired disabled people without discrimination for a long time. We've hired some people who have had a difficult time with disabilities — I won't give you the specifics because I don't want to violate their privacy. We've found they've made good employees."

So far, Chuck hasn't seen a copy of the ADA regulations; he is relying on handouts from the Small Business Administration and the National Federation of Independent Business. With the help of an outside personnel expert he has used in the past, he plans to conduct a three- or four-month audit of all the operations, especially the company's interviewing and hiring methods. "It's not something you can do overnight," he says.

As for the public access aspects of the law, he says, "We've done a lot of this already because we grew during the 1980s," when local laws started mandating accommodations for the disabled. "We've had the handicapped ramps and the bathrooms put

in — we did all that stuff, even though we haven't hired a lot of people in wheelchairs. We're a progressive company in that direction.

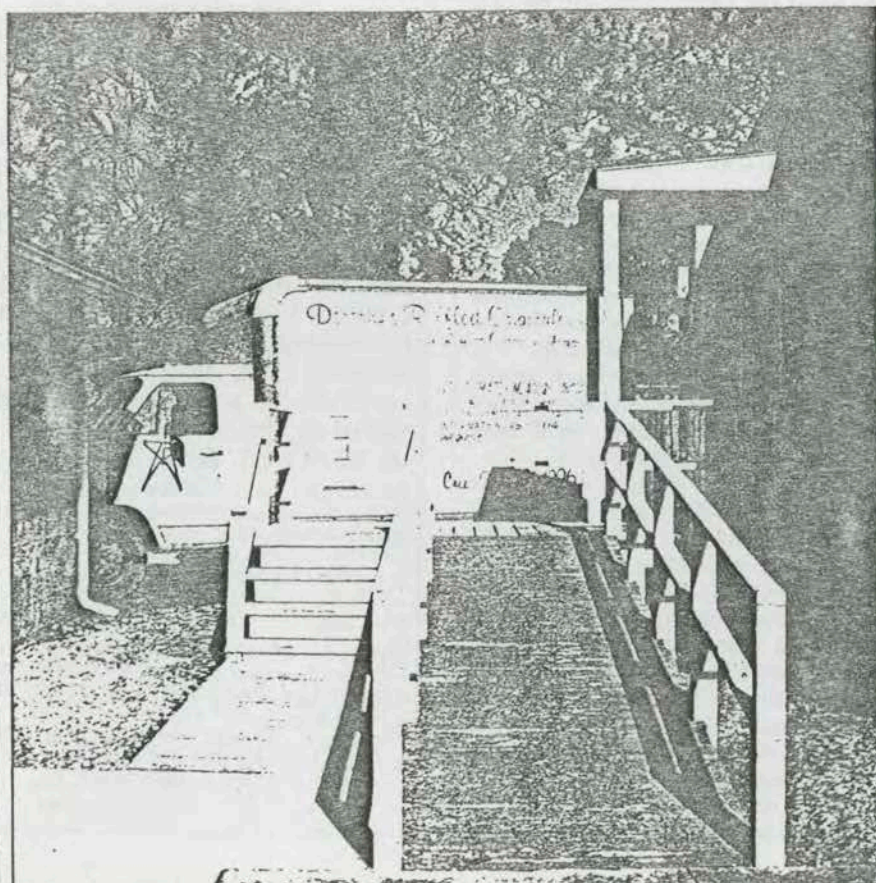
"I don't see a problem with the act and its intent," says Chuck Noe. "I see a problem with the language. It talks about 'reasonable' accommodations and 'reasonable' business judgment. In three months, you can't ask if someone has a disability. You can't ask if they can lift a bale of hay. Readers, interpreters for blind and deaf employees — that's a double cost of hiring people if you're a small business. I'm very concerned that it's going to hinder job growth. Small businesses are responsible for most of the jobs in this country. A small business is always going to go for the good people, so if a person with some sort of handicap wants to work, a small business is going to hire them. When you add something that just adds controversy, I'm very concerned."

Dorothy's is a seasonal operation with a heavy Christmas rush and slow periods at other times of the year. Chuck Noe has already sparred with local authorities on disability-access issues in putting up and taking down mobile plants and office quarters.

"You go to some bureaucrat and say, 'I'm only going to be here four months,' but they want you to put in a ramp, even though you don't have anyone in a wheelchair working there. I try to say I don't need a \$1,200 or \$1,500 ramp in a temporary building. Then they'll come back a few months later and say, 'What about that building?' and it won't be there anymore. I'm going to spend a lot of money, have legal expenses I can't afford," he says. "I don't know how to protect myself."

Proponents of the Americans with Disabilities Act say that over the long run the law will mean a more productive economy, as more disabled people are able to find jobs. This is hard to verify. Census Bureau figures indicate that about one-third of the working-age disabled are already working. No one has tried to calculate how many of the rest are in the physical or mental condition to work under any circumstances. Carolyn Weaver, an economist at the American Enterprise Institute, estimates that at most the new law could add 2.5 million more people to the work force.

"It probably would have been better," says Yale's Jerry Mashaw, "if Congress had just appropriated some money to encourage employers to hire these people."



One of Dorothy's owners says ramps shouldn't be required when not needed.

Dialog

Fielding Perceptions About the Disabilities Act

I am writing to voice my displeasure with "Disabling Businesses" [Cover Story, March 29]. The cover, indicating that the Americans with Disabilities Act will handicap the economy, is very insensitive to the handicapped. An attitude such as yours is the reason there has to be a law.

Ann McRae
Director, Special Education
Anderson County Schools
Clinton, Tenn.

Your readers deserve more than innuendo and loaded terms about the Americans with Disabilities Act. In part this is a response to your incredibly biased article and in part an explanation of the act and its implications. The ADA did not "breeze through." Thousands of people worked on its passage, despite lukewarm support from the White House. The issue is not to "give a break to the disabled," but to treat human beings as human beings.

Charlotte Allen cites Marc Fiedler's suits, filed after he contacted violators and got no response — and then suggests that we "depend on... goodwill." For shame. As Fiedler says, he has no plans to collect damages. He wants to get in the door. Jerry Mashaw suggests hordes of people want to sue because they are "disappointed and frustrated with the way they've been treated." Try being treated as most people with disabilities are: disappointment and frustration have nothing on that.

As an eager supporter of the ADA, I did not once hear of plans to picket large businesses that opposed it. We knew our cause was just. Some business associations continue, as you do, to spread inflammatory misinformation about the act. I know of no one who supports it who is not working very hard to correct misinformation, to educate employers, to direct people to resources, to make integration a reality.

We have explained carefully some issues. The margin for most businesses is close. Why would anyone in business willfully bar the door, eliminate a substantial market? In addition, until changes are made in medical coverage, most people who are disabled and who receive assistance cannot afford to work because they would lose medical coverage. The myth that hordes of people who use wheelchairs are lining up attorneys to sue is just plain

idiotic. A job, a place to live, the possibility of a life like any other life. Reasonable. Perhaps more than Charlotte Allen, terrified that people with disabilities might join into community life, perhaps more than her lack of reason would find reasonable.

Jacqueline T. Alfonso
Executive Director
United Handicapped Federation
St. Paul, Minn.

Certainly, people with disabilities have been treated unfairly, and I am certain that many of them are justly quite angry. But in today's society, where hardworking, motivated employees are at a premium, employers would be foolish not to hire and make accommodations for qualified disabled people. In fact, long before the Americans with Disabilities Act became law, employers were reaching out to the disabled: Witness the proliferation of curb cuts, parking spaces for the handicapped and braille elevator signs that have been part of the landscape for more than a decade. All the employers I interviewed, from giants like Marriott down to tiny family businesses, told of positive experiences in hiring the disabled; if accommodating a disabled work force and customer base will make the economy more productive, there is no need for a law forcing accommodations.

But the Americans with Disabilities Act is not about this sort of thing. It is about using litigation — an extremely expensive mechanism that adds nothing to a society's productivity — to force businesses and state and local governments to comply with standards that may or may not have anything to do with the kind of people who actually need accommodations and that certainly have nothing to do with whether there is any payoff of benefits for the cost. Congress refused to define what a "reasonable" accommodation is, leaving the task to judges on a case-by-case basis. What better guarantee of years of lawsuits?

Congress did not even bother to make an accurate count of the disabled. Only about 5 million Americans actually need the kind of massive architectural changes the act decrees. The disabilities act not only requires litigation to define its parameters but enthusiastically invites litigation now that disability advocates have managed to secure their constituents certified victim status under the 1991 Civil Rights Act, which gives them access to compensatory and punitive damages and attorney's fees in cases of employment and public-sector discrimination.

If the history of suits under the 1973 Rehabilitation Act (outlawing disability discrimination among federal contractors) is any guide, future lawsuits are not likely to be over wheelchair use or learning disabilities. They will be over stress, smoke sensitivity, mandatory overtime and so forth — CA.

A Dispute over Factors in the Ozone Equation

Your article titled "The Ozone Scare" [Cover Story, March 22] was misleading and factually incorrect in several instances. It was seriously wrong: (1) in its assessment of the motives and scientific basis for the president's action on advancing the phaseout schedule of chlorofluorocarbons; (2) on the motives of NASA, NOAA and the scientists in issuing their press release; (3) on questioning the integrity of the scientists involved in environmental research; and (4) on the exclusive role of chemists in shaping our understanding of ozone depletion.

The information presented in the NASA/NOAA press release was timely, precisely scientific and presented in a factual manner. Neither the information nor the process was alarmist, as suggested by your article. The press release had the complete support of the scientists involved in the campaign and the program managers at NASA and NOAA, and was not a case of "grandstanding" by the project scientist.

The article suggests that President Bush was rushed into making a policy statement concerning chlorofluorocarbons and their accelerated phaseout based on the NASA/NOAA press release. This is totally incorrect. The United Nations ozone assessments, which were finalized in October — not the press release — were used by the administration as the basis for its recent policy statement concerning the chlorofluorocarbons and their accelerated phaseout.

The scientific data presented in the press release significantly strengthened the key conclusions of the peer-reviewed U.N.-sponsored international scientific ozone assessment. These conclusions are: (1) The weight of scientific evidence suggests that ozone depletion observed over the last two decades at temperate and high latitudes throughout the year is in large part caused by chlorine- and bromine-containing chemicals; and (2) As atmospheric levels of chlorine and bromine increase in the future, significant additional ozone losses are expected at temperate latitudes and in the arctic.

Dialog

Being Informed Is Best Shot at Avoiding Vaccine Injury

The National Vaccine Information Center, Dissatisfied Parents Together, a national, nonprofit organization, would like to offer information for anyone concerned about vaccines after reading "Will It Hurt?" [Cover Story, April 5].

The federal government receives nearly 1,000 reports of adverse reactions to vaccine each month. Sadly, vaccine injury and death are very real.

What can parents do to lessen the chance that their children will become statistics? Be informed. Know the contraindications for each vaccine as well as possible side effects, and know why each particular vaccine is being recommended for your child.

The most complete source of information on warnings, side effects and vaccine schedules (which vaccines should be given when and in what combinations) is the package insert for each vaccine.

This information is compiled by the manufacturer under the supervision of the Food and Drug Administration.

The same information is available in the Physician's Desk Reference, universally available in libraries, doctors' offices and pharmacies. Be sure to compare any other information you might be given about vaccines to this major reference.

Although most children do not suffer serious problems from vaccinations, when it happens to your child, the risk is 100 percent.

Ann Millan
Director, NVIC/DPT
Vienna, Va.

In response to "Will It Hurt?" *Insight* has received numerous calls from concerned parents. The purpose of the article was to inform, not to scare.

Whenever a news medium singles out specific incidents for coverage — whether auto accidents, getting hit by lightning or severe reactions to a vaccine — there is a risk of causing alarm.

We want to reiterate that reactions to the pertussis vaccine are very rare; one pediatrician of long standing in the Washington area whom we spoke to said that in more than 20 years of practice, he has never seen a severe reaction to a DPT shot.

If you are wary of inoculating your children, contact your pediatrician or call your

state immunization program or local health department. Vaccines are important; they save lives — E.N.

Disabilities Act Carries Far Too Heavy a Cost

Again, *Insight* has presented both sides of an important issue fairly [Cover Story, March 29]. How many of your readers realize how much it will cost them to have all existing buildings that are open to the public (or employees) made wheelchair-friendly?

I say "cost them" because these costs will be reflected in the price of everything they buy (or the producers will go broke). Making over public buildings will be on our tax bills. To avoid enforcement of this act, more millions of jobs will be exported to Mexico. The new high prices of our products will mean less selling in foreign markets.

We, as a people, have great sympathy for the disabled, but being disabled does not make the victims more honest or less greedy than the rest of us. Watch for millions of lawsuits to fill the calendars of our already crowded courts.

But would any politician have the intestinal fortitude to suggest that this law goes too far for us to pay for? Would any red-blooded lawyer want to see such profit potential removed?

Carleton Ward
Winfield, Kan.

A Little Unpredictability May Be Just What We Need

I am wondering about Ed Crane's comment in "Supply-side Brownoser or Savior?" [April 5]: "He's far too unpredictable and he's far too unprincipled." Sometimes I think this country is stuck on the predictable and principled — which usually does not help when drastic changes are needed. Don't more data on a subject have value? Does a candidate have to commit to an early issue when situations change with him?

This country is voting on the steadfast, and it isn't working. Part of this comes from the Christian culture of fear of change. I'm not sure about Brown as a potentially good leader for this country, but I would hope candidates can be more candid and back up their new ideas.

Mary Shaffer
Melrose, Mass.

C'mon, Give Atticus a Break and Catch Up with the Times

After reading "Mockery" [Hall of Shame, April 5] I am appalled at Monroe Freedman's attack on *To Kill a Mockingbird's* Atticus Finch.

I grew up in that small south Alabama town referred to in Miss Lee's book. I am proud to say that my own father was a man much like Finch.

Oviously, Freedman wouldn't know that it takes a real gentleman to admit when something is socially wrong and risk his life and reputation to change it.

Atticus Finch never was referred to as a racist by the black community, but people who believe those days still exist, complete with "Whites Only" signs, are the real racists. The white man's way of thinking indeed has changed — for the better, I believe.

Come out of the Stone Age, Professor Freedman. Look around you and see the changes and the acceptance of a younger, enlightened generation.

Laura J. Sellers Hughes
Montgomery, Ala.

President Took a Bum Rap on His Policy Toward Israel

"Tough Love" [Hall of Shame, April 5] unfairly accused President Bush of giving Israel "the back of his hand," presumably because he denied Israel's \$10 billion loan guarantee request.

If the president approved the guarantee he would undermine his own foreign policy. Israel, under Prime Minister Yitzhak Shamir, has given every indication that it will use the funds to settle more Jews in the occupied territories — a lot more.

So the loan guarantee would make President Bush's land-for-peace formula even more problematic.

If anyone deserves to be inducted into your Hall of Shame, it's Shamir for his bigotry and greed, and the Democratic presidential candidates for their pandering to a special interest group.

John McGrane
Potomac, Md.

Write: *Insight*, Dialog Editor, 3600 New York Ave. N.E., Washington, D.C. 20002. Fax: (202) 529-2484. Please include an address and a daytime phone number. Letters may be edited for space.

Dialog

One Man's Wild-geese Chase with the Law and Semantics

Thank you so much for Joe Comerico's story and his absurdity [Hall of Shame, April 12]. The poor fellow has "wild" confused with "feral." A large portion of our population seems to suffer so; they will equate a lack of ownership with the wild state.

I am so glad that the Honorable Charles B. Cloud is trying to set at least one of those Norfolk gentry straight.

Edward E. Gaspar
Carpinteria, Calif.

Whoever did the item on Joe Comerico must not know much about geese. One look at the picture should tell you that these are domestic fowl. The judge was right in his ruling. In the future, screen junk like this before you give it space.

Doyle V. Carmody
Mill Creek, Wash.

Goose experts we belatedly consulted agree that the fowl in the picture are not wild — Ed.

Kudos for Chemistry Lessons in the Ozone Controversy

Referring to Michael Dunn's letter [Dialog, April 12], please convey to him my congratulations for such an informed and lucid account of the interaction of ultraviolet radiation, oxygen and ozone.

Sadly, it will not lay to rest the controversy, but it should.

Also, my best expressions of appreciation to you for publishing his letter and the many great articles exposing the errors promulgated by the environmentalists.

E. J. Stanton
Flossmoor, Ill.

A Vietnam Vet Still Thinks Those Dodgers Were Traitors

If it comes to making a choice between the viewpoints of Jonathan Hayes [Dialog, March 22] and Douglas Gray [April 12], this onetime GI will go with Hayes.

It may dismay some folk that most Vietnam veterans (in my case, two tours, one ending with a return to the States WIA on a stretcher) still consider the draft card burners, draft dodgers and student protesters traitors and willing tools of Hanoi (though to a degree immature and childishly irresponsible).

But at the same time, it should be recalled that during the war most of us who were in uniform paid hardly any attention to the protesters, et al. They were so contemptible as to be unworthy of notice.

William D. Livingston
Colorado Springs, Colo.

Strange Static on Airwaves Concerning Comrade Sergei

Apropos of The Last Word by Tod Lindberg [April 5], here is a transmission picked up on shortwave while monitoring ham radio the other day:

April 6, 1992 (Sergei): "Now is Sergei to be considering taking a job with NASA if U.S. Congress will be, as Americans say, getting off unreliable steed called ass and please to be offering employment to peace-loving cosmo — er, astronauts.

"Now is Sergei sending big hello to yours truly or whoever is big brother at NASA."

Lee G. Modland
Ridgecrest, Calif.

More Reasons for Bush to Stay Away from Rio

Although I agree with Richard Starr's editorial "Five Reasons Not to Go to Rio" [The Last Word, April 12], I feel he omitted the most important reason for President Bush not to attend the U.N. Earth Summit in June in Rio. That reason is the lack of commitment by Third World countries to stabilize their populations.

Most of the world's problems, whether environmental, political or concerning the quality of life, are related to population growth. It has been calculated that if world population growth continues at the present rate for 700 years, there will be 1 square foot of land per person.

This won't happen, but it makes a point: No matter what one may think is the "optimum" size for world population, it has to be stabilized sometime. I feel the sooner the better, and then world population should shrink as people become more prosperous.

If Bush buys into the Earth Summit, and the Third World countries develop like they want to, the result could spell disaster for the world's environment. I don't see most of us reducing our consumption of resources and energy nearly enough to make up the difference, either. Population reduction is the only long-range answer to this dilemma.

Charles I. Roth
Fountain Valley, Calif.

Richard Starr's commentary was right on the mark.

Before we participate in any environmental talks, the U.S. should demand that the Russian bloc and 27 other European nations come up with a unified solution of their own.

Anyone traveling in Europe can attest to the terrible pollution problems all over those countries, so why blame us as if we were the prime offenders?

Want to bet on those 27 nations, plus Russia, agreeing on anything?

Bill Bandle
Jennings, Mo.

Shopping for Solutions to the Disabilities Law

Your March 29 article on the Americans with Disabilities Act was headlined as giving "The Downside of the New Disabilities Law."

Yet most of the actual or potential problems you cited arise either from the Civil Rights Act of 1991 (compensatory and punitive damages and jury trials in employment cases) or from local building codes.

I believe the ADA has been a great consciousness-raiser for American business. Looking at one's operations from the perspective of disabled customers and employees can be productive and rewarding for businesses of every size. Is there a retailer anywhere who wouldn't benefit from making shopping a pleasure, instead of a challenge, for all customers?

Coming up with cost-effective accommodations for the disabled is just one of the many management challenges we all face. **Insight** could provide a genuine service to the business community by focusing on the many ADA success stories — businesses that have found low-cost solutions to access problems, for example.

Robert J. Mulligan
Vice Chairman
Woodward & Lothrop Inc.
Alexandria, Va.

Woodward & Lothrop was one of the department store chains sued under the Americans with Disabilities Act's public accommodations provisions shortly after they went into effect — Ed.

Write: **Insight**, Dialog Editor, 3600 New York Ave. N.E., Washington, D.C. 20002. Fax: (202) 529-2484. Please include an address and a daytime phone number. Letters may be edited for space.

Dialog

An All-American Doctor and All American Doctors

I read "Foreign Country Doctors" [Cover Story, April 19] with much interest. I cannot say whether doctors who enter the U.S. on temporary visas to study, and later want to stay, are right or wrong. I was born in the U.S., fought in World War II in the U.S. Army, went to medical school in the United States and did a two-year residency here. How "American" can you get? But because my name is Asian I am considered a "foreign" doctor.

I question what Evan Gahr considers an "American" doctor.

Albert J. Fong, M.D.
Novato, Calif.

Who considers Fong a foreign doctor? Pat Buchanan? Fong seems pretty American to me. And it seems pretty dear that "foreign doctor" means one born and trained in another country — E.G.

As the wife of a WASP obstetrician who practices in rural Wisconsin (I like it very much here, thank you), I found your Cover Story on foreign doctors shallow and one-sided. You made it sound like there is a simple solution (more foreign doctors) to the problem of medically underserved areas. Apparently you didn't stop to think about why there are medically underserved areas in the United States.

One of the biggest reasons is that there is a growing shortage of Americans going into medicine. Why go deeply into personal debt (we're talking \$50,000 to \$100,000 or more) to get to med school graduation, not to mention years of underpaid residency) to practice a demanding and often thankless profession when you can get a law degree or an MBA and make lots more money for less effort?

And why put yourself and all you've worked for on the line every day for patients who are just waiting to jump on you for a bad outcome so they can win millions in the legal charade known as the malpractice suit?

One must also ask why foreigners want to practice medicine in the United States. I'll tell you why: As with most other immigrants, they seek a higher standard of living. And for the doctors you mention who've taken Agency for International Development money and then married Americans in order to stay here, I have nothing but anger and indignation.

What happened to the idea of helping our own citizens get medical degrees (there must be some prospective MDs among the citizens of Appalachia) in exchange for an agreement to serve a medically underserved area? Now there's an idea worth a Cover Story.

Paulette Arnold
Marinette, Wis.

No one said that "more foreign doctors" is a simple solution to the problem of medically underserved areas. But they could help — E.G.

Punching More Holes in the Ozone Loss Theory

The letter concerning the alleged ozone "problem" by D. Allan Bromley [Dialog, April 19] strikes me as being slippery bureaucratic babble — impossible to get a handle on, grasp or refute. But when he says that the chlorine monoxide radical is the "key agent" for stratospheric ozone depletion, it becomes arrant nonsense.

It appears that the people writing about the ozone hole feel that the only contaminant in the upper atmosphere is fluorocarbons. Not so. There is water vapor, methane, dust, Chanel No. 5 and dandruff, all of which lead to ozone depletion when attacked by ozone. The scientific johnnies should know that the "key agent" is ozone, which enthusiastically combines with itself to form oxygen. Any theory that does not take this into consideration is pure baloney.

J. B. Lankes
Hampton, Va.

After a lifetime of studies in science and a career devoted to it, I have nothing but contempt for the scientific establishment of today. Your "ozone hole" story and the political response engendered by it are just the tip of an obscene iceberg that has been constructed by ignorant and self-seeking bureaucrats with the collusion of fanatics and industries hopeful of obtaining subsidized profits from the media-generated panic.

Earl B. Lancaster
Peoria, Ill.

Seeking the Whole Story on Hiring the Disabled

Charlotte Allen made the asinine statement of the decade (and the decade is less than 2 years old) — when she stated in her response to Jacqueline T. Alfonso [Dialog,

April 19]: "If accommodating a disabled work force and customer base will make the economy more productive, there is no need for a law forcing accommodations."

In the half of that sentence preceding the phrase cited above she admitted that she had a bias in her selection of employers to interview when she wrote, "All the employers I interviewed, from giants such as Marriott down to tiny family businesses, told of positive experiences in hiring the disabled."

It is obvious that Allen spent little time talking to handicapped people. Perhaps she, as do many business executives, feels uncomfortable around people in wheelchairs, on crutches or with missing limbs. And she feels that all people with disabilities that don't show, such as serious heart conditions or serious back injuries, are just a bunch of fakes.

Not only do many businesses discriminate against handicapped people, they discriminate against short people, fat people, swarthy people, blacks (especially dark-colored blacks), Jews, Catholics and Irish (Boston job ads used to carry the notation NINA, which meant No Irish Need Apply). Allen isn't much of a reporter if she could find only people who had "positive experiences in hiring the disabled."

Mr. Kahn
Lafayette, Calif.

Mr. Kahn's is not the only letter *Insight* received accusing me of feeling "uncomfortable" around the disabled because I criticized Congress's successful effort to turn their handicaps into litigation gold mines for enterprising lawyers. My family includes disabled people, so this accusation won't wash.

Mr. Kahn also describes a country whose businesses — despite nearly 30 years of federal antibias legislation, class-action lawsuits and affirmative action — are shot through with discrimination on just about every conceivable basis.

If so, what does he expect this latest layer of legislation to accomplish? Is he seriously suggesting that it may be time for the short, the fat and the swarthy to lobby for their own antidiscrimination laws and the right to punitive damages? — C.A.

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Dialog

Rising to Moyers's Defense; and We Forgot to Genuflect

I was hurt, shocked and amazed at the image with which you slanted your article "Civic Lesson" [Hall of Shame, April 26] about Bill Moyers. You made it appear as if he were nothing but a money-grubbing, self-serving journalist because he merely works for public television, which happens to face, instead of avoid, issues.

I have followed Moyers's television shows, books and articles for years, and it has been my observation that while other journalists have been chasing Gennifer Flowers and the like to find out what color panties a presidential candidate happened to prefer, Moyers was ferreting out and reporting on really pressing and urgent issues, politically, morally and spiritually.

While other television shows or newspapers sought to find out answers to the burning questions of whether Jerry Brown or Bill Clinton inhaled marijuana many years ago, Moyers was researching and revealing laundered money that went into President Bush's campaign. He explained to us in no-nonsense language about the S&L debacle and its implications for America's future. While he was addressing the problems of leveraged buyouts, other publications were (and are) talking about hairstyles of the candidates.

Is your publication too afraid to face these issues that Moyers so bravely brings to light? Do you report, instead, on lesser issues to sell your magazine for your own self-interest? You decide. As for me, I'll listen to Moyers and believe what he says.

E. Whitney Weihe
Alexandria, Va.

"Hurt, shocked and amazed?" Let's see now. Did we note the possibly conflicting interests of a fellow journalist or desecrate a religious shrine? This publication and thousands of others covered the S&L debacle and leveraged buyouts, to name just two of the issues the correspondent seems to think his hero was uniquely courageous in reporting. The interesting question is whether Moyers would find the level of belief evidenced here — in his own work or that of any journalist — compatible with the civic literacy he's campaigning for — Ed.

Two More Opposing Views Aired on the Ozone Layer

White House science adviser D. Allan Bromley's rebuttal to "The Ozone Score" [Dialog, April 19] is a beautiful piece of the

pseudoscientific steer manure that is being fed to a gullible public about the ozone layer.

He accuses you of insulting the scientists who have been involved in the (I want to say scam, but I won't) arctic and Antarctic aircraft campaigns and the international scientific ozone assessments. He mentions their findings of 1.5 parts per billion of the chlorine monoxide radical over Canada and northern New England.

That is an infinitesimal amount. A far greater danger to the ozone layer is the one substance from which ozone cannot escape: itself!

The chemical properties of ozone are such that it reacts with itself to form dioxigen or O₂ in a matter of minutes.

If it were not for the fact that ozone is continually being produced by the action of sunlight with (among other things) our pollutants (CO's CO₂'s etc.), the relatively minuscule ozone layer would disappear in a short time, and we are not talking about years, months, weeks or even days. Ozone is unstable and reacts with any convenient substance, including itself.

Another fact that is being conveniently ignored by these prophets of doom is that all of our atmospheric gases filter and protect us from the rays of the sun. It's for this reason that we are able to be outside on a warm, sunny day in the winter without sunscreen and not be burned to a crisp. The sun's rays have to travel farther through the atmospheric gases to reach us.

Frank Webster
Detroit

I fear that conservative thinking is tarnished by your notion that thinning of the Earth's ozone shield is an ideological position cooked up by self-serving scientists and liberal bleeding hearts. You are so deluded by your own crackpot ideology that you deny factual scientific evidence available to all. My idea of a conservative is one who deals in sensible reality, not fancy or dogma. In this regard, are you not closer to the party-line thinking of bygone Pravda than true conservatism?

Edward A. Mainland
McLean, Va.

In the good old days of Pravda, we recall, its stock-in-trade was uncritical cheerleading for government policy. So no, Mr. Mainland, we don't accept your analogy. Nor, obviously, do we consider reporting on a conflict of opinion among scientists a denial of the evidence. When it comes to atmospheric studies,

there is a smaller set of facts and a wider variety of opinion than is commonly supposed. We note that in a May 11 news conference, NASA announced, as we predicted, that the feared ozone hole did not open up over the North Atlantic this winter — Ed.

Disabilities Law Will Cost the Public Sector, Too

The March 29 edition of Insight addressed the Americans with Disabilities Act and its potentially adverse financial impact on the private sector [Cover Story]. While the article outlined many of the pitfalls that private employers will undoubtedly experience as this act is phased into law, it failed to address a significant fiscal impact: the cost of bringing the public sector into compliance with the ADA.

At the Washington Metropolitan Area Transit Authority, we have set up a separate department to bring Metro into compliance with the law. Start-up costs alone for the coming fiscal year total \$1.2 million, and that includes little in the way of physical plant retrofits. We anticipate the cost to provide para-transit service throughout the transit zone will run well into the millions, and that is exclusive of any retrofits that may become necessary to the many Metro facilities across the region. This cost will be borne by our regular passengers and the local taxpayers.

David L. Gunn, General Manager
Washington Metropolitan Area
Transit Authority
Washington

For the Record

The March 29 Cover Story, "Handicapping the Economy: The Downside of the New Disabilities Law," erroneously attributed a prediction that the Americans with Disabilities Act would add at most 2.5 million people to the U.S. work force. The correct source is an essay titled "Disability Accommodation and the Labor Market" by Sherwin Rosen, chairman of the economics department at the University of Chicago. The essay appears in a book, *Disability and Work*, edited by Carolyn Weaver, an economist with the American Enterprise Institute.

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Dialog

law, as explained by the judge's instructions. As Joseph Wambaugh pointed out in an interview on TV, the prosecutor "overreached" by charging the officers with a felony. This required a higher level of proof, including intent.

Did Starr base his conclusions on more than just the edited tape shown on TV? A review of the closing arguments, and the judge's instructions, would seem to be a minimum required by investigative journalism. However, that still would not be as much information as the jury had.

The current, probable indictment of the rioters who nearly killed the truck driver on charges of "attempted murder" (which requires proof of intent) rather than attempted manslaughter, or assault and battery, could yield similar results — in which case, I would not claim prejudice, regardless of the jury's composite.

Eric Peterson
Lakeland, Fla.

Richard Starr's editorial was worth every cent we paid for our subscription, and more. There is no way it could have been stated any better that the policemen were guilty but that no one is guaranteed a trial with "fair" results, just a trial.

Being human, juries frequently make mistakes and there is no way you can justify anarchy. And it was anarchy. Just an excuse by the gangs to steal and loot. Outstanding, Mr. Starr.

Wendell Jordan
Fort Worth, Texas

As a conservative, I would like to respond to Richard Starr's editorial to say that I also was startled by the verdict in the King beatings, but feel it necessary to support the jury's decision in order to support our system of justice.

The charge was severe, felonious assault, which required stringent proof of prior intent on the part of the policemen, which was not proved. Had the prosecution used milder charges, convictions and jail time might well have ensued.

Many have complained that there should have been blacks on the jury. We are guaranteed a jury of our peers, but this was not a trial of King. Rather, it concerned four white policemen. Would a black jury have given an unbiased verdict? Can an unbiased jury now be found for the one count that is still to be tried? Obviously, Starr should not be on it.

The greatest danger concerning the incident is the making of King into a folk hero by Afro-American activists and the liberal press. Starr pulls away from mentioning the

crime for which King was on parole at the time of this arrest on the traffic violation. He was on parole after serving a year in prison on a robbery conviction.

He is not exactly a role model for our youths.

Robert W. Pease
Riverside, Calif.

Typical of so many Americans who are visually oriented and think they understand the concept of justice, Richard Starr jumps on the bandwagon to condemn the jury's decision in the Rodney King case. This brings to mind a number of points worth considering:

Jury trials are not about justice, but about jury judgments based on evidence presented and the give-and-take going on in the jury room. The trial is never final. Appeals all the way to the Supreme Court can be made, and only the jury has access to all the evidence.

The presumption of so many politicians and writers to slam the jury's decision shows their ignorance of our constitutionally mandated system and their ease in being manipulated by an excerpted piece of film, which, in effect, was antiforce propaganda.

Anthony D. Lutz
Vienna, Va.

Thanks to Richard Starr for clearing things up. Damn it all, I just didn't understand. How could I? The jurors, and people like me, are as guilty as those cops. We are blinded by racial prejudice, class prejudice and copophilia. It was nice of Starr not to add "stupid and vicious," but he was writing more in sorrow than in anger — and we appreciate it.

At least I do. And I suspect that those members of the jury, who were quickly identified by the press and are now in fear for their lives, also appreciate *Insight's* insight.

Starr saw the tape and knew all the truth he needed — unclouded by repetition, explanation or an additional 20 seconds showing poor King going after the cops. Somehow, he also missed understanding that the juror who said King was "in control" of the situation meant that King could have done what the two passengers did — surrender.

But then the cops wouldn't have shown what wild beasts they are, the jurors wouldn't have shown up guilty, white, racist America, Los Angeles would still be worrying more about water than about fire, and we bigots wouldn't have learned our lesson, would we?

Arsenio Hall led a meeting of mostly black show-biz notables, plus Mayor Bradley, after the riots started. And, while most deplored the violence, all admitted that it was long overdue and, in a larger sense, justified. They applauded when someone suggested that the riot should be seen as a new Boston Tea Party.

Of course all of them — Starr, too — are in favor of justice as long as the outcome is certain. It's an old American tradition: Give them a fair trial and then hang them.

Soul David
Van Nuys, Calif.

Trying to Help Disabled Without Crippling Economy

In his comments to your article on the Americans with Disabilities Act [*Dialog*, April 26], reader Carleton Ward asked, "But would any politician have the intestinal fortitude to suggest that this law goes too far for us to pay for?"

In voting against this bill, as it emerged from conference with the Senate in 1990, 27 of my colleagues and I said just that. But apparently the 377 members who voted for the bill didn't know, didn't care or felt its "political correctness" outweighed the fact that it put another stake in the heart of American competitiveness.

Happily, there are very few individuals who do not truly care about the special barriers faced by the handicapped and who do not agree that reasonable accommodation for the handicapped is our moral obligation. Unfortunately, there also seem to be few who realize that our lack of international competitiveness, our high unemployment and our horrendous recession are in large part attributable to the ever-increasing burden of taxes and regulation on American business.

Businesses are fleeing the states whose burden is the greatest — perhaps nowhere more so than here in California. They are also beginning to leave the U.S. altogether. Unless the trend to make business our national whipping boy is reversed, we will soon all be unemployed and on welfare. Who will pay for it then?

William E. Donnemeyer
House of Representatives
39th District, Calif.

Write: *Insight*, Dialog Editor, 3600 New York Ave. N.E., Washington, D.C. 20002. Fax: (202) 529-2484. Please include an address and a daytime phone number. Letters may be edited for space.

TRENDS

Coping with The Disabilities Act

It won't be cheap, but complying with the new federal law needn't be a budget-buster either.

BY ANNE CHASE

Homer Page sees the issues raised by the new federal Americans with Disabilities Act from both sides.

As a blind person, Page spent years fighting local governments for more jobs for qualified disabled people. ADA puts the force of the federal government behind that campaign: It requires governments, and businesses as well, to eliminate discrimination against the handicapped in employment and the provision of services, and it sets timetables for removing structural barriers that prevent handicapped people from entering buildings or participating in public services.

But Page is also a member of the Boulder County, Colorado, board of commissioners. Along with state and local government officials across the country, he and his colleagues must find ways to pay the costs of complying with the law.

Obviously, Page says, Boulder County can't do everything at once. His advice to other public officials trying to cope with the law: Set priorities, and don't panic. "People really get into the mindset that there's a formula answer for everything. 'We've got to buy the most expensive elevator. We've got to tear the whole side of the building down.' The legislation says, be flexible; think about the goal rather than the formula."

When ADA was passed in 1990, there were many predictions that complying with it would cost governments and business billions of dollars. Edward I. Koch, then mayor of New York City, claimed that it would be cheaper for the city to pay cab fare for every disabled New Yorker than it would be to make its sprawling subway system accessible.

Now that the law is in effect, officials charged with implementing it are find-

ing that while ADA may not be cheap, it need not be prohibitively expensive either.

Take the example of the Seattle Center, a complex of city-owned buildings including the Opera House, the Coliseum and several museums. Elaine Marklund, the ADA coordinator for Seattle, estimates that if the city did everything to bring the existing buildings in the center up to the code for new construction, the tab would be around \$2.5 million.

However, the law does not tell governments that they have to tear down their 90-year-old city halls and rebuild them according to new specifications. It only says that governments must provide "program accessibility." In terms of the Seattle Center, that means that the city has to figure out some way to make it possible for people with disabilities to enjoy the performances. This may mean amplified hearing systems for the auditoriums (already in place) or attendants to help wheelchair users to their seats.

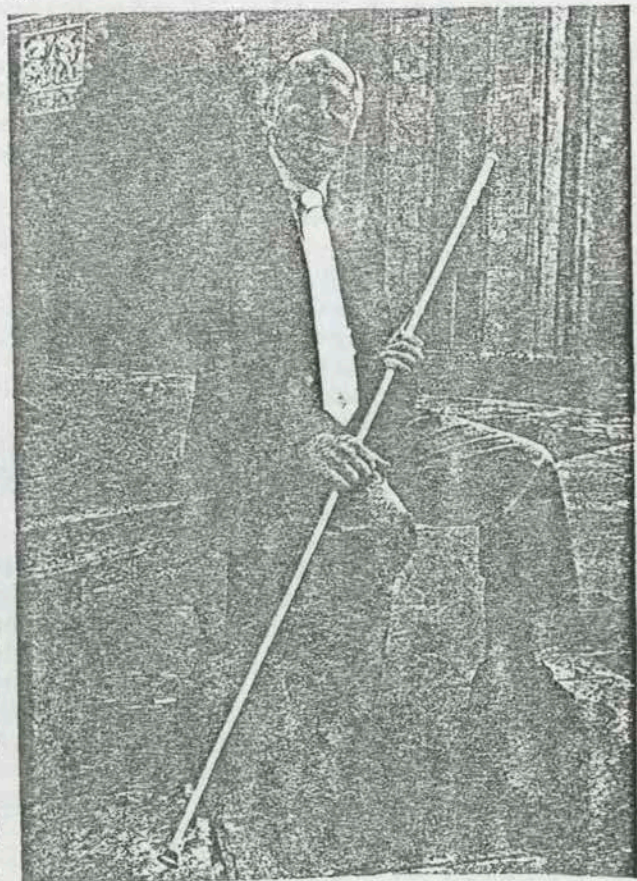
Far from spending \$2.5 million on just one complex, Marklund estimates that the city will spend that amount in the next two years making all its buildings and programs more accessible. "We're not going to be required to do all the work," Marklund said. "We'll have to figure out what we'll have to do."

Making the inaccessible accessible need not involve construction. In Pittsburgh, Allegheny County has 50

years worth of municipal records stored on a balcony between the first and second floor of a county building. David Engel, an administrative assistant and ADA coordinator, says if a citizen in a wheelchair needs information from those files, his office simply sends an employee to look it up. "That's program accessibility. This is something that is just common sense," Engel says.

EVEN BEFORE ADA, MANY states and localities had already done some of the work to make their buildings and programs accessible. Section 504 of the Rehabilitation Act of 1973 mandated accessibility for all programs and facilities supported or built with federal funds. And laws in many states already covered much of the ground of ADA.

What's new is that, with ADA, all businesses and government entities with at least 25 employees are covered. (In 1994, the law will expand to cover businesses and governments with 15 employees.) And ADA brings to the fore issues involving disabilities not covered in the earlier laws.



Boulder County Commissioner Homer Page: 'Think about the goal rather than the formula.'

Anne Chase is a Washington, D.C., writer.

Buildings and programs, for example, must be accessible to the deaf and blind populations. Does that mean that all government documents must be reproduced in Braille? In most cases, the answer is no. Only a small percentage of blind people read Braille, points out Ramona Walhof of the National Federation of the Blind of Idaho. "You can put information on tape, have it read aloud on the radio, or put it on a telephone answering machine so people can call in to get it."

Government agencies are also confused about when they need to install a telecommunications device for the deaf, and when they can use a cheaper relay system offered by telephone companies. With a relay system, a deaf person calls an operator who has a TDD; the operator calls the office the person wants to reach and acts as an interpreter.

The advice from members of disability groups: Use common sense. "You shouldn't have to go through a relay when a burglar is breaking into your house," says Sharon Mistler, the director of the Disability and Business Technical Assistance Center in Arlington, Virginia, one of 10 federally funded centers set up to provide advice to employers on what is needed to comply with ADA.

As for hiring, Title I of ADA says people cannot be denied employment because they have disabilities. But the law does not require any government or business to hire a disabled person. If a disabled person is qualified for a job, but needs some kind of special equipment or modified working hours, the law says the employer must try to make a "reasonable accommodation."

The law, however, does not define "reasonable accommodation," and employers are nervous. "We've had more calls in hysteria over reasonable accommodation than anything else," says Mistler. "People say things like, 'Oh, my God, I read in the paper there's a machine that costs \$25,000 for blind people. Stevie Wonder has one. Do I have to buy it?'"

Mistler and others point out that the average cost of reasonable accommodation used by the federal government when hiring a disabled person is under \$100. Governments, with the exception of very small towns, are probably not going to be able to use cost as an excuse for failing to hire a disabled person or to

WHERE TO TURN FOR ADA-VICE

A multitude of organizations and government entities are writing handbooks, holding seminars and setting up 800 numbers for bewildered government officials and private-sector employers trying to cope with the provisions of the Americans with Disabilities Act:

- In the federal government, the Employment Provisions of ADA are being handled by the Equal Employment Opportunity Commission (1801 L St. N.W., Washington, DC 20507). ADA Helpline (800-669-EEOC, TDD number 800-800-3302) connects callers with EEOC staff members who can answer questions about hiring practices. EEOC's free *Technical Assistance Manual* explains the regulations in plain English, and contains a list of organizations representing people with various disabilities. The manual is available in large print, audio tape or Braille.

- The Department of Justice (P.O. Box 66738, Washington, DC 20035-9998) handles Title II of ADA, involving the provision of public services. The Justice Department has an ADA Information line (202-514-0301; TDD: 202-514-0383; electronic bulletin board 202-514-6193). Its *Title II Technical Assistance Manual* is available in large print, Braille, audio tape and computer disk.

- The Adaptive Environment Center (374 Congress St., Suite 301, Boston, MA 02210; phone 617-695-1225) is publishing a *Title II Action Guide*.

- Three disability groups have received Justice Department grants to answer questions pertaining to ADA for state and local government officials. The American Foundation for the Blind (202-223-0101) has information on reproducing signs and documents for the blind and visually impaired. The National Center for Law and Deafness (202-651-5343; V/TDD: 202-651-5373) handles issues pertaining to the deaf and hard of hearing. The Disability Rights Education and Defense Fund (800-466-4232) handles questions about physical accessibility and employment of disabled persons.

- Disability and Business Technical Assistance Centers also have federal grants to answer questions pertaining to ADA. Call 800-949-4232 to be connected to the one nearest you.

- The National Association of Towns and Townships (1522 K St. N.W., Suite 600, Washington, DC 20005; 202-737-5200) is publishing a guide to ADA for small towns.

- The National League of Cities (1301 Pennsylvania Ave. N.W., Washington, DC 20004; 202-626-3000) has published a comprehensive guide entitled *Complying with the Americans with Disabilities Act of 1990*.

- The University of Tennessee's Municipal Technical Advisory Service (615-974-0411) has published *A Look at the Americans with Disabilities Act: A Guide to Compliance for Tennessee Local Governments*, which contains much useful information for local governments anywhere.

In addition, many disability organizations, including the National Federation of the Blind, United Cerebral Palsy and Easter Seals, have local affiliates that are available to advise governments on ADA issues.

—A.C.

make modifications to buildings.

ADA's employment provisions also call upon employers to examine their job descriptions. Some of them, for example, require that applicants have drivers' licenses—a requirement that would eliminate blind job seekers or those with epilepsy—although no driving is involved. Employers, including state and local governments, have to decide what the "essential functions" of the job are and what parts of the job are not essential or might be done by another employee.

But coping with those and other challenges presented by ADA may have a beneficial effect beyond helping to better integrate today's disabled people into society.

Someday, most of today's able-bodied will enter the ranks of the disabled, points out Marian Vessels, executive director of the Governor's Committee on Employment of People with Disabilities in Maryland. "We all will encounter disability," says Vessels. "What we do to provide access to severely disabled individuals will help us." □

NEWS YOU CAN USE

Away with barriers

Employers can satisfy the new disabilities act without spending a mint. Here's a guide

Business owners from beauticians to restaurateurs are in a sweat. On July 26, the provisions of the Americans with Disabilities Act kick in, and federal hot lines are being swamped by calls from concerned managers.

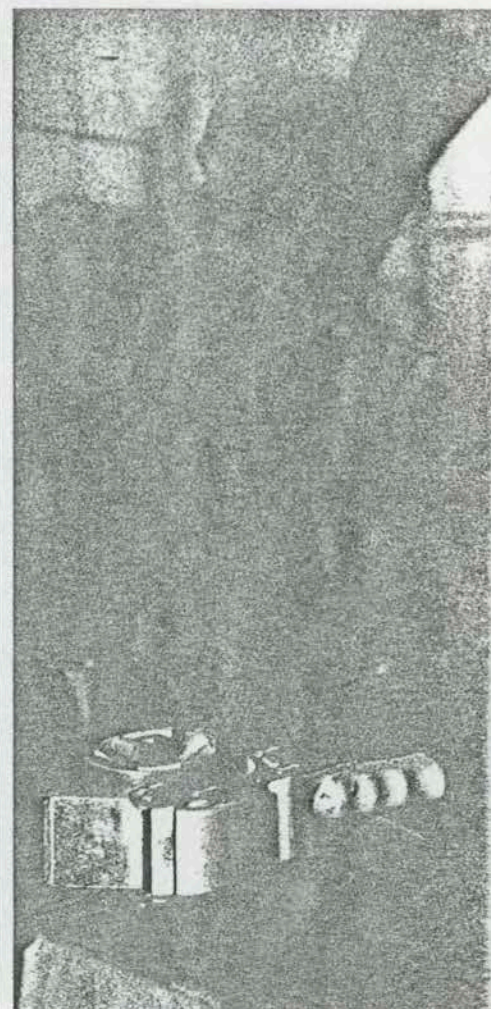
While few employers quarrel with the ADA's aim of integrating some 43 million disabled Americans into the workplace, many are uncertain about their precise obligations in achieving it. Can companies be sued if they fail to install elevators or undertake other costly renovations? What if reassigning a disabled employee violates union seniority rules? To anxious retailers like Mike Madison, who is trying to determine whether he must build ramps and new restrooms in his Madison's Home Furnishings stores, in Boise and Nampa, Idaho, the law seems maddeningly vague. "I'd like to accommodate everyone," he says, "but not to the detriment of my business."

No sweat. Phil Kosak, co-founder of Carolina Fine Snack Foods in Greensboro, N.C., isn't worried. Four years ago, chronic absenteeism and carelessness nearly destroyed the firm just as it landed a lucrative contract to supply gourmet pork skins for the Republican National Convention. Instead of closing shop, Kosak hired a disabled man whose exemplary performance inspired the rest of the work force into shaping up. Today, half the firm's 18 employees have impairments—a track record that helped Carolina Fine Snack Foods earlier this year become the first small business to win accolades from the President's Committee on Employment of People with Disabilities. "Any manager who does not look first for a disabled person," says Kosak, "is leaving gold sitting on the back porch."

When it comes to complying with the ADA, most employers expect to pay a

fortune, not find one. Passed virtually unopposed in 1990 over the protests of small business, the law prohibits discrimination against individuals with infirmities ranging from AIDS and epilepsy to paraplegia and schizophrenia. It also compels companies with 25 or more employees to make "reasonable accommodations" for qualified workers and job applicants with impairments. (Firms with 15 to 24 employees have until 1994 to comply.) Another set of provisions, which took effect in January, requires any enterprise that serves the public to improve the accessibility of such areas as store aisles, health clubs, even doctors' waiting rooms.

ADA experts argue that employers actually have great flexibility because of the statute's ambiguities. "I tell businesses they've got to use common sense," says Liz Savage, a sight-impaired attorney and training director for the Disability Rights Education and Defense Fund in Washington, D.C. "If I sued every hotel that didn't have a large-print phone list in the room, I'd be spending all my time in litigation. Life is tough enough."



In the pink. Hiring disabled workers allowed

Contrary to their worst fears, business owners find that compliance can prove cheap and easy. For Sally Tholl, owner of the Step Five Design beauty salon in Ballston Spa, N.Y., it means sending someone out to assist cancer patients into the shop. Instead of splurging on Braille menus, which fewer than 20 percent of all sight-impaired



KEVIN HOFAN FOR USNEWS



KEVIN HORAN FOR USA TODAY



Phil Kosak (left), co-owner of Carolina Fine Snack Foods, to improve service.

Americans can read, restaurants can have a waiter read the menu aloud. Cup dispensers provide an inexpensive alternative to lowering drinking fountains for wheelchair-bound employees, while simply insulating exposed hot-water pipes under bathroom sinks allows paraplegics to wash up without scalding their legs. Indeed, according to a survey

by the Job Accommodation Network, one of several federally funded ADA clearinghouses, 31 percent of all modifications cost nothing and two thirds can be done for under \$500.

Of course, many businesses spend more—a lot more. Alan Armstrong, owner of the Tiffany Dining Place restaurant in Blue Bell, Pa., has hired architects to devise ways of improving accessibility. Modifications include widened doors in the newly renovated, \$13,000 powder room, plus a grab bar in the men's toilet. But because the corridors are too short and the ceilings too low, building a ramp into the dining room seems infeasible. For now, customers are wheeled through the kitchen. "We've tried to do everything as environmentally and as politically correct as we can," says Armstrong. "But in this market, you can't afford everything."

Nor does the law demand it. The ADA explicitly makes exceptions for "undue hardship," for instance, while tax credits and deductions are available to help defray costs. Employers need

not compromise safety standards either—or even give preference to a job candidate with a disability. "This is not a quota statute or an affirmative-action statute," assures Jonathan Mook, a law partner at Ogletree, Deakins, Nash, Smoak & Stewart in Washington, D.C., and author of a new ADA litigation guide. "It's a totally interactive process between people with disabilities, employers and employees."

Carolina Fine Snack Foods' experience demonstrates just how profitable that dialogue can prove. Before owner Kosak hired David Bruton, a sight-impaired man with severe learning disabilities who showed up at a local job fair, personnel problems were sapping the bottom line. Employees sometimes showed up drunk—if at all. Kosak found himself replacing warehouse hands every three weeks. Productivity was dismal, with miscounts and sloppy shipments the norm. "We were at our wits' end just trying to maintain a basic, semi-skilled work force," recalls Kosak.

David Bruton changed all that. Armed

Common-sense changes

The Americans with Disabilities Act asks firms to treat the disabled fairly. That doesn't mean spending a bundle, as these examples show:

■ **Water fountains.** *Conventional wisdom:* Lower the fountains so they are accessible to people in wheelchairs. *Simple solution:* Put cup dispensers at waist level.

■ **Want ads.** *Conventional wisdom:* Help-wanted ads that list only phone numbers discriminate against the hearing impaired, so companies should buy special telecommunications devices for the deaf (TDD). *Simple solution:* Rephrase the ad to tell applicants they can also write to request an interview.

■ **Manuals and menus.** *Conventional wisdom:* Publish Braille editions of, say, menus or company handbooks. *Simple solution:* Ask a staffer to read to blind customers or colleagues, or put information on audio cassettes.

■ **Doors.** *Conventional wisdom:* Make employment offices accessible by installing automatic doors. *Simple solution:* Install a doorbell and make a staffer responsible for answering it.

KEVIN HORAN FOR USA TODAY



Shape counts. *Workers with learning impairments have a hard time keeping track of numbers. Rather than count packs, disabled loaders at Carolina Fine Snack Foods learn to recognize what 12 packs of "Weight Watchers" look like in a carton.*

NEWS YOU CAN USE

with a large-number calculator, which he brought himself, he kept track of outbound freight more accurately than had any previous able-bodied monitor. He greeted customers, established rapport and improved the customers' view of the company. Such diligence prompted other employees to spruce up their performance. Efficiency zoomed. Absenteeism plunged to almost zero as morale soared; the personnel director even taught herself sign language.

Creativity counts. The bottom-line lesson was not lost on Kosak, who subsequently hired eight other disabled individuals. "There are still problems, but they are trivial compared with what I had before," he says.

As Carolina Fine Snack Foods learned, adjustments need not prove burdensome. Most simply entailed a little ingenuity and some extra training time. For instance, Kosak's learning-impaired employees have difficulty counting. To enable such workers to load the proper number of snack packs into a carton, Kosak simply shows them how a carton full of bags looks, and they are able to learn by imitation. Forms are simplified so that mentally disabled workers can keep track of inventory. "Employers are just afraid of taking the time to be a little bit creative," says Kosak.

CHARLIE APONAKMALETT / USAFAR



Fine fit. Pizza Hut tailors its jobs to suit disabled workers like Heidi Surface of Iowa.

Several recent surveys bear that out. A study conducted last month by the labor-law firm Jackson, Lewis, Schnitzler & Krupman found that 71 percent of the companies polled had set aside no funds for compliance. Of firms with more than 500 employees contacted in April by Buck Consultants, the New York-based benefits experts, just slight-

ly more than half had reviewed or modified such personnel-selection criteria as employment tests.

To assuage corporate concerns and ease compliance, the government has earmarked more than \$8 million to establish training programs, hot lines and information clearinghouses (box, Page 63). Response time may be slow, how-

CORPORATE CULTURE

The next challenge: Adjusting to a diverse work force

The Americans with Disabilities Act has been likened to a Declaration of Independence for individuals long barred from the workaday world. But for businesses, the law merely underscores the urgency of learning how to manage a labor force that is growing ever more diverse.

Today, 1 in 4 Americans belongs to a minority or is foreign-born. Women, who currently make up less than half the work force, are expected to fill 65 percent of the jobs created during this decade. Society is aging, even as a "baby bust" pares the pool of available recruits. "Whether you are a business

owner, executive, salesperson or customer-service professional, your success will increasingly depend on your ability to function in a culturally diverse marketplace," observes San Diego consultant Sondra Thiederman in her new book, "Profiting in America's Multicultural Marketplace" (Lexington Books, \$24.95).

Fun and games. A whole diversity industry has sprung up to teach firms how to do just that. Annual diversity conferences now attract hundreds of personnel managers from government and industry. (This year's hit lecture was "White Male Reactions and Work

Force Diversity.") There's a *Managing Diversity* newsletter, published monthly in Jamestown, N.Y., videotape lessons in getting around a prickly boss, even a \$695 "Diversity Game" that, much like Trivial Pursuit, quizzes managerial teams on demographics and culture. The game, developed by Quality Educational Development Inc., of New York, draws on 1990 census data.

It may take awhile for the message to hit home. Almost two thirds of some 1,405 companies polled in January by the Hay Group of Philadelphia said that adapting to work-force diversity is either "not a priority" or "not very important" for the next two years.

A few firms have seen the light, however. Pacific Gas & Electric, a California utility that serves one of the most ethnically mixed regions of the country, is putting all 27,000 employees through diversity-awareness sessions.



ever. The Equal Employment Opportunity Commission, the lead enforcer of the ADA workplace provisions, currently fields more than 1,000 requests a day for publications (compared with 55 each day last year), and is struggling to whittle down its response time to four days.

Community groups that represent the disabled and trade associations also can provide a wealth of ideas on modifications. The Building Owners and Managers Association International in Washington, D.C., for example, has boiled 315 pages of regulations into a 325-item checklist of physical alterations. The Council of Better Business Bureaus in Arlington, Va., in addition to tracking down scammers who charge high fees for phony ADA certification, recently developed inexpensive compliance tip sheets for six industries, including retail outlets and fitness clubs. The Council also plans to offer mediation services to give employers and disabled employees an alternative means of settling discrimination complaints.

Though the law does not require them to go out and recruit, business owners can tap local agencies for talent as well. Many of the 6,000 disabled individuals hired by Pizza Hut over the last seven years were aggressively recruited at vocational and rehabilitation centers.

For all the brouhaha over physical modifications, it is the psychological adjustments required under the ADA—from application procedures to employment practices—that could prove the bigger legal challenge. For instance, simply giving a telephone number to call in a want ad may discriminate against individuals with hearing or speech impairments; ADA experts advise giving applicants the option to write for interviews. Du Pont, considered one of the country's most sensitive employers, changed its rules to allow new hires to use any photo identification instead of a driver's license, since that would exclude people with sight impairments, cerebral palsy or a host of other disabilities.

Snack breaks. Many adjustments are less obvious. Under the ADA, a boss who tries to fire a diabetic for eating on the job risks trouble; if food poses a health or safety problem, the company can allow for breaks and offer a separate room for snacking. Employers cannot inquire into an applicant's past treatment for alcohol abuse—although drug testing remains permissible. Even

the legal profession has had its fingers rapped; recently, a lawyer with learning disabilities recently won the right to take the New York bar examination in a separate room and over four days instead of two.

Business owners may have a thorny time trying to determine whether a job applicant's health can keep him from performing essential tasks. The ADA forbids employers from asking about a job applicant's disabilities—even if they are germane to the job. Thus, a warehouse operator would be on safer legal ground to inquire if a prospective stevedore can lift 100 pounds rather than quizzing him on back problems. Companies also cannot refuse to hire an individual for fear his disability, or a family member's, will boost the cost of the firm's health insurance. However, an employer need not bolster that individual's benefits package or make special allowances for someone caring for a sick spouse.

Ultimately, the courts will have to settle many of the compliance questions now troubling employers. But if Carolina Fine Snack Foods' experience is any indication, lawyers don't have to be the only group to profit. ■

BY MARY LORD

Where to go for help

Business owners seeking information on the Americans with Disabilities Act can check these free resources:

■ **Department of Justice.** Fields questions on compliance, 11 a.m. to 5 p.m. weekdays. PO Box 66118, Washington, DC 20035; (202) 514-0301; (202) 514-0383 (TDD)

■ **Equal Employment Opportunity Commission.** Provides hot-line assistance, employer manuals and posters. 1801 L Street N.W., Washington, DC 20507; (800) 669-3362; (800) 800-3302 (TDD)

■ **Job Accommodation Network.** Experts on call 8 a.m. to 8 p.m. Monday-Thursday (to 5 p.m. Fridays) for advice on workplace modifications. West Virginia University, Morgantown, WV 26506; (800) 232-9675

■ **Council of Better Business Bureaus.** Easy ideas for auto dealers, retailers and other enterprises. Write to 4200 Wilson Boulevard, Suite 800, Arlington, VA 22203, or call local chapter

■ **Disability Rights Education and Defense Fund.** Advice on training programs. 1633 Q Street N.W., Washington, DC 20009; (800) 466-4232

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A DIAMOND IS FOREVER

Accommodating disabled isn't always costly

By Rhonda Richards
USA TODAY

Construction company owner Gary Harkins has always relied on a health questionnaire to screen job applicants for physically demanding work.

Applicants would answer 18 questions to reveal problems from blindness and deafness to diabetes and back injuries.

"If they have epilepsy, I don't want them to fall 10 stories off a building," says the owner of Southern Pan Services, a 100-employee company based in Atlanta.

But when new provisions of the Americans with Disabilities Act become law Sunday, Har-

Cover story, 1A

kins will toss the questionnaire. The act makes it illegal to ask about disabilities during job interviews.

The new requirements worry many businesses. But small-business owners such as Harkins are particularly concerned. They believe the law will open them to lawsuits and million-dollar judgments that could wipe them out.

But, experts say, employers can comply by using common sense and a few inexpensive

workplace changes to accommodate the disabled.

The chief concern among small-business owners is hiring, says Wendy Lechner of the National Federation of Independent Business.

"They can understand the need to install a ramp or change the level of a desk, but they are having a difficult time getting a handle on the nuances of what they should and should not be saying," she says.

"Rather than saying 'Have you ever been treated for a bad back?', you have to say, 'This business requires you to lift 40-pound boxes everyday. Can you do it?'" Lechner says. Business owners also can ask

an applicant to demonstrate an ability to perform duties.

Small-business owners needn't worry about high costs. Making changes at the workplace to accommodate handicapped workers and customers can be inexpensive.

Some changes don't cost anything, such as moving a desk to create more aisle space for the wheelchair-bound or adjusting a lamp for the visually impaired.

A General Accounting Office survey of 350 businesses in 1990 found businesses spent an average of \$1,200 to \$1,500 on modifications such as installing a ramp or widening a door. The study found 51% of the ac-

commodations cost nothing; 30% cost less than \$500, and only 8% of changes cost more than \$2,000.

Making the workplace accessible to the disabled makes good sense, says David Cooney, president and CEO of Goodwill Industries.

Cooney suggests talking to a personnel expert or groups that work with the disabled such as Goodwill or independent living programs for advice on interviewing and adapting the workplace.

"Common sense does wonders in most of these cases. But the main thing is don't be afraid of a person with a disability," he says.

USA TODAY • WEDNESDAY, JULY 22, 1992 • 7B

How to work with disabled people

Some tips for accommodating disabled workers:

▶ If your office isn't accessible to the handicapped, include a phone number in help-wanted ads. Help job seekers fill out the applications by phone.

▶ Review job application forms for discriminatory language. Applications should stress a person's ability to perform tasks, not his or her disabilities.

▶ Make sure aptitude tests don't discriminate. For example, don't give a reading test to the visually impaired.

▶ Make sure job descriptions reflect employees' duties. Specific functions such as lifting, answering the phone and driving a vehicle should be included.

▶ Don't assume a person can't perform a particular job just because he or she appears to have a disability. Without referring to the disability, ask: "How would you perform this task?"

▶ Ask disabled employees what accommodations they need to accomplish a task.

▶ Contact the Internal Revenue Service about tax credits and deductions available to businesses that make accommodations.

At Work

As Seen From a Wheelchair

1/26/92
Businesses learn how
to serve the disabled
customer — and
comply with the law.

By BARBARA PRESLEY NOBLE

LIKE a lot of people, George Biechler takes his physical confidence pretty much for granted. So when the vice president of the Meridien Bank sat down in a wheelchair recently to get a sense of how it would feel to maneuver through the world from a sitting position, he looked a little tight around the mouth. Mr. Biechler pushed clumsily through a swinging door and made it past one orange traffic cone before banking off a wall and onto the rim of a second cone. Freeing himself, he wheeled with furious inefficiency for the swinging door.

"I haven't felt that uncomfortable since I got my learner's permit when I was 16," he said later, watching another Meridien employee carom between wall and traffic cone.

Like hundreds of other commercial enterprises across the country, Meridien, the

Reading, Pa.-based unit of the Meridien Bancorp., is preparing for the Americans With Disabilities Act, legislation passed by Congress in July 1990 that guarantees accessibility and employment rights to the 43 million Americans with physical and mental impairments. The first phase, requiring businesses to provide services and access to people with disabilities goes into effect today. Starting in July, the employment and workplace rights sections of the law will be phased in. Depending on who is speaking, A.D.A. has either plopped the unfair burden of retrofitting American society on the back of business or started a revolution in consciousness.

"We have been terribly concerned from the day we saw this bill," said Wendy Lechner, manager for research and policy development at the National Federation of Independent Business, a trade group in Washington that represents half a million small businesses. "A lot of legislation is carrot and stick. This is all stick. Everything in the bill means trouble for business owners." She added: "I'm getting a lot of panic-stricken calls asking, 'What do I do?'"

Ms. Lechner said small businesses do not object to the law's admirable goals but to the potential cost and vagueness of its guidelines.

"People all over the country have some high expectations that they now have a right to be full consumers and participants," said Elaine Ostroff, a co-founder of the National

Center for Access Unlimited, a disability issues consulting group with offices in Chicago, Boston and Washington. "The big change is attitudinal. It means people have to pay attention and look at issues." A.D.A. will be enforced by the Equal Employment Opportunity Commission, the Justice Department and by private lawsuit.

For many larger businesses, the legislative and regulatory controversies are moot. When the enthusiasm in Washington for the measure became apparent two years ago — "It was politically unpopular to oppose this bill," Ms. Lechner said wryly — many companies bit the bullet. A report by Blank, Rome, Comiskey & McCauley, a labor and employment law firm in Philadelphia, said 75 percent of the businesses surveyed have taken some action to comply with A.D.A. Many followed a popular managerial approach and formed A.D.A. task forces.

WHICH is why one morning last week, the normal sedate décor of Meridien's Independence Mall branch in Philadelphia, just down the block from Independence Hall, yielded to the artifacts of sensitivity. At the first of a series of workshops for 2,200 employees in Meridien's 215 branches, trainers took employees through exercises intended to build an empathic bridge between people with and people without — "temporarily without" as disability activists like to say — disabilities.

"This focuses on things that are less obvious than wheelchairs," said Linda Sopko, a Meridien trainer, as she handed two earplugs to Gary Reinert, a banker who was about to experience briefly the aggravation of being hearing-impaired. Ms. Sopko looked down and, while shuffling some deposit slips, asked him to write the date. He leaned forward, tilted his head and looked alarmed. She asked again, looking at him this time, and he complied. He had, he said, read her lips.

Ms. Sopko advises tellers to look for cues in body language, then to project their voices and look busy until the transaction is over, so the customer does not feel rushed.

As Meridien's Mr. Biechler surveyed the sensitivity free-for-all before him, he dispelled the notion that his bank, or any business, regards its efforts merely as a chance to flaunt its altruism: "Forty-three million people is a major market segment."

Solving Problems Out of Court

RARELY has writing on a wall been clearer than in the months before July 1990, when Congress passed the Americans With Disabilities Act. Despite lobbying that made the wars of Gog and Magog look like a fortnight of cricket, support from a Bush Administration making good on campaign promises and a network of determined activists made A.D.A. all but inevitable.

The month the law was passed, Safeway Inc., the supermarket chain, formed a task force. "We had meeting after meeting," said Brian Dowling, a company spokesman. Store managers were asked to assess their stores and to help remove barriers. New stores are

being built to A.D.A. specifications.

The Norwest Bank Corporation in Minneapolis has assigned a person in each region to coordinate compliance. James A. Gossen, a bank vice president, said Norwest is retrofitting ATM's that are not accessible now and looking into machines that will incorporate Braille and voice synthesizers.

Rights advocates say the fear of litigation among some small-business owners isn't irrational but has been overplayed. "You need a problem-solving attitude," said Elaine Ostroff, of the National Center for Access Unlimited. "No one wants to be the bad guy in this economy. Good faith goes a long way."

At Work

When Businesses Need Not Fret

Complying with the Disabilities Act isn't as fearsome — or costly — as many thought.

By BARBARA PRESLEY NOBLE

FEW pieces of legislation have had as malignant an effect — with less reason, proponents would say — on the collective blood pressure of business owners as the Americans With Disabilities Act of 1990. But by the time the legislation's first phase, mandating accessibility to banks, hotels, restaurants and the like for the 43 million Americans with disabilities, went into effect in January, most businesses had accepted the inevitable, if grouchy, and some actually began to calculate the potential return from 43 million new consumers.

The next phase, which implements the law in workplaces of 25 or more employees, begins late next month, and once again compliance hypertension is rampant. It is abetted

this time by a new cottage industry of self-taught consultants offering high-priced advice on how to fulfill A.D.A. obligations — advice typically available at little or no cost from government or private agencies. Thus much of the energy of disability rights groups is spent soothing nerves.

"Our first words are 'Don't panic,'" said D. J. Hendricks, assistant project manager at the Job Accommodation Network, a group that provides technical assistance to business and services to people with disabilities.

Experts say the A.D.A.'s basic guideline is that there are no immutable rules. Barrier removal, for example, should be "readily achievable" and "cheap and easy," according to the A.D.A. rules. But a company's accountant, who has the best idea of what the business can afford, and its lawyer, who is responsible for interpreting the law, will often be the arbiters of the compliance timetable. "Macy's could have done more last year than it can do now" because of its current financial problems, said Al Eisenberg, a lobbyist for the American Institute of Architects who was involved in developing the legislation.

The first step is to think about the work environment from the perspective of a person who is disabled. "If you were blind or in a wheelchair, what are the immediate prob-

lems?" said Barbara Bode, executive director of the Council of Better Business Bureaus Foundation, which is part of a coalition of groups established to ease the act's progress to reality. She advises contacting a group that can provide an assessment and technical assistance — preferably a disability issues group like the Disability Rights Education and Defense Fund. "Go to the people who have spent their lives trying to accommodate the barriers," Ms. Bode said.

The efforts necessary to make a workplace accessible will vary by its nature and its employees. One place to assess is the area used for accepting applications and interviewing prospective employees; it should be wheelchair-accessible and someone should be available to read forms for people with visual impairments. "Employers must make allowances for people with disabilities to have the same opportunities to fill out an application," said Ms. Hendricks of the Job Accommodation Network.

Above all, A.D.A. proponents emphasize that the reality of the legislation is less complex than business owners imagine. "This isn't rocket science. There's a lot of common sense," said the A.I.A.'s Mr. Eisenberg. Or, as Ms. Bode said: "The law simply codifies courtesy."

Some sources for help with the A.D.A.:

A.D.A. Office
U.S. Dept. of Justice
P.O. Box 66118
Washington, D.C. 20035-6118
(202) 514-0301
(202) 514-0381 (TDD)

U.S. Equal Employment Opportunity Commission
1801 L St. N.W.
800-669-EEOC (voice)
800-800-3302 (TDD)

National Council of Better Business Bureaus
703-247-3655

Job Accommodation Network
800-ADA-WORK
Disability Rights Education and Defense Fund
800-466-4232

The Phony Disability Experts

BARBARA BODE of the Council of Better Business Bureaus minces few words when she talks about consultants who sell bogus expertise in the A.D.A. to nervous small businesses: "They can be seduced by these entrepreneurial vultures."

Most of the information companies need to comply with the A.D.A. is available free or for little cost. The Justice Department and the Equal Employment Opportunity Commission publish technical assistance manuals, for example, and Ms. Bode's organization is preparing pamphlets for several industries that will be available soon.

Based on a collection of A.D.A.-consultant marketing materials that began to flow

across her desk last summer, Ms. Bode offers several clues that should inspire skepticism in a potential client:

- Anyone who claims to be "A.D.A. certified." There is as yet no certification process.
- Basic terms misspelled or mangled. "One brochure misspelled 'accommodation' and kept referring to the Judicial Department," Ms. Bode said.

- Using the threat of litigation as a prod, or referring to a crisis. "Take a deep breath and call the Better Business Bureau," she said.

There are several reputable consultants, who tend to be oriented to larger businesses with expansive needs. Before engaging one, try calling former clients.

NEW YORK TIMES, SUNDAY, JUNE 7, 1992

F 25



Ten Commandments for Communicating With People With Disabilities

1 Speak directly rather than through a companion or sign language interpreter who may be present.

2 Offer to shake hands when introduced. People with limited hand use or an artificial limb can usually shake hands and offering the left hand is an acceptable greeting.

3 Always identify yourself and others who may be with you when meeting someone with a visual impairment. When conversing in a group, remember to identify the person to whom you are speaking.

4 If you offer assistance, wait until the offer is accepted. Then listen or ask for instructions.

5 Treat adults as adults. Address people who have disabilities by their first names only when extending that same familiarity to all others. Never patronize people in wheelchairs by patting them on the head or shoulder.

6 Do not lean against or hang on someone's wheelchair. Bear in mind that disabled people treat their chairs as extensions of their bodies.

7 Listen attentively when talking with people who have difficulty speaking and wait for them to finish. If necessary, ask short questions that require short answers, a nod or shake of the head. Never pretend to understand if you are having difficulty doing so. Instead repeat what you have understood and allow the person to respond.

8 Place yourself at eye level when speaking with someone in a wheelchair or on crutches.

9 Tap a hearing-impaired person on the shoulder or wave your hand to get his or her attention. Look directly at the person and speak clearly, slowly and expressively to establish if the person can read your lips. If so, try to face the light source and keep hands, cigarettes and food away from your mouth when speaking.

10 Relax. Don't be embarrassed if you happen to use common expressions such as "See you later," or "Did you hear about this?" that seem to relate to a person's disability.

Source: National Center for Access Unlimited/Chicago

The New York Times

We're architectura

Despite law,
full access
for disabled
is easier said
than granted

By Celeste McCall
THE WASHINGTON TIMES

When Hugh V. Kelly drove to the District's Department of Motor Vehicles to obtain special handicapped license tags, he was in for a pleasant surprise.

"They were very considerate," he says. "The department has handicapped parking spaces out front, a ramp and designated seating for the disabled. We didn't have to stand in line. Employees handled our paperwork."

The oft-maligned DMV was simply complying with Title III of the Americans with Disabilities Act.

The Americans with Disabilities Act prohibits public accommodations from denying individuals with disabilities "the full and equal enjoyment of goods and services."

Signed into law in 1990, ADA affects establishments ranging from restaurants to movie theaters to department stores and museums. In the Washington area, such facilities have shown a range of enthusiasm for both the letter and intent of the law, offering a mixed bag of construction, renovation and services for the disabled.

Title III of ADA is concerned with making future and existing buildings "readily accessible and usable" by disabled people. It became effective in January.

Existing buildings must have barriers removed "when easy to accomplish without unnecessary difficulty and expense," according to Title III.

For example, a restaurant in a three-story town house does not

see ABLE, page E3



ABLE

From page E1

need an elevator even if the bathroom is on the second floor. Those in charge, however, should install ramps, rearrange furniture, lower telephones and widen doorways.

Buildings slated for occupancy after Jan. 26, 1993, must be readily accessible and usable by the disabled. This includes extra-wide doorways, ramps, lowered drinking fountains and pay phones, specially equipped bathrooms, a certain number of handicapped parking spaces and other amenities.

"The law is designed to accept handicapped citizens as American citizens," says George B. Lewis, an architect with HTB Inc. of Oklahoma City.

"Disabled people should use the front door like everyone else," Mr. Lewis says. "We're not trying to create special things. We're trying to make things accessible to everyone. Most of ADA is common sense, things we should have been doing all along."

Mr. Lewis, 66, has specialized in architectural accessibility issues for 22 years.

"I think most people don't realize that 43 million people — the estimated number of disabled persons in the United States, a whole work force — have been denied access," he says.

"Some of these people can leave welfare rolls to become contributing citizens. They want to work, but if they can't get into buildings or use restrooms, they can't work."

The 43 million figure seems high, but according to the Department of Justice Civil Rights Division, disabilities covered by ADA legislation include "physical or mental impairment, mobility impairment [such as arthritis], visual impairment [blind and low vision], hearing impairment [deaf and hard of hearing] ... that substantially limits one or more major life activities."

The government's lengthy definition also encompasses cerebral palsy, epilepsy, muscular dystrophy, cancer, heart disease, diabetes, mental retardation, emotional illness, learning disabilities, HIV infection, tuberculosis, drug addiction and alcoholism.

"How far does a business need to go to accommodate individuals with those maladies?" asks John Galles,

executive vice president of National Small Business United, an Washington-based organization representing 65,000 small businesses that has been critical of the new law.

"Certainly, requiring wheelchair access is specific," Mr. Galles says. "But how do we accommodate an HIV-positive person? An epileptic? The lack of clear definitions and clear responses for accommodations and procedures leaves a lot of unanswered questions. I'm afraid a lot of them will be solved in court instead of with individuals sitting down and discussing correct responses."

Architect Ron Mace, who has been involved in barrier-free design for 20 years, says the ADA "will change the way we practice architecture."

"We're moving away from adding special [handicapped] features to designing buildings for everyone — universal design," Mr. Mace says. "That's what architects are trained to do — design for everyone."

Mr. Mace, 50, who uses a wheelchair, received his architecture degree at the School of Design at North Carolina State University in Raleigh, where he now teaches. He is also president of his own architectural firm, Barrier Free Environment.

Critics worry about ADA's price tag. But most experts estimate making new buildings barrier-free will raise their cost by only 1.5 percent.

"We were terribly concerned about the financial impact of redoing buildings," Mr. Galles says.

"People obviously want to comply, and in some cases are being forced to comply, but [barrier free modification] is not something a business can automatically get financed. It's unfortunate that this law comes when there's a credit crunch. Just because there is a law doesn't mean that banks will finance you," Mr. Galles adds.

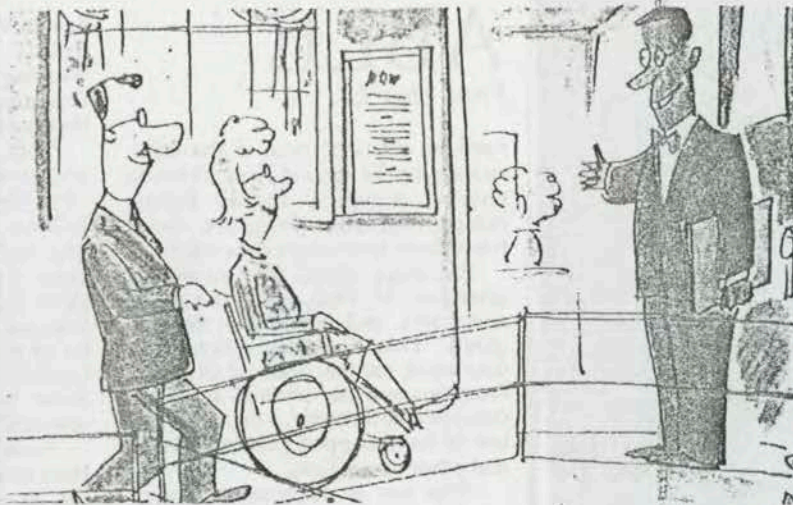
Here is a snapshot of how managers of some public facilities in the Washington area are dealing with the issue:

Restaurants

Mr. Kelly, 47, has a personal interest in barrier-free design. Besides owning two restaurants — one under construction — he is classified as disabled. He suffers from degenerative arthritis that requires him to use a cane.

One of his restaurants, the Irish Times, is ensconced in an older

Y CHALLENGING: MAKING CHANGES



building near Union Station. "We inherited our bathrooms from the previous tenant, the Luau Hut," he says, adding that he widened the pub's entrance to accommodate wheelchairs.

"We get quite a few disabled patrons," Mr. Kelly says. "And they keep coming back. That's a good sign."

Mr. Kelly's future place, called Ellis Island, will open in the fall near Catholic University. According to blueprints, doorways will be extra wide and a wheelchair path will separate the bar area from a row of booths. Each restroom will have a wide stall fitted with grab bars.

The law, as it pertains to restaurants, is being phased in. As of Jan. 26, restaurants with 25 or more employees or gross receipts of \$1 million must be readily accessible. In July, the law will be extended to places grossing \$500,000 or with 10 or more employees.

"Some restaurants feel put upon, overtaxed, over-regulated," Wendy Webster of the National Restaurant Association says. "But people should look at the new regs as a business opportunity rather than a burden. For example, a pizza operator in Tulsa [Okla.] installed a TDD [telephone device for the deaf] and business increased dramatically. Restaurant owners should think of ADA regs as opening the doors to 43 million potential customers."

Movie theaters

"We didn't wait for the law to be enacted," says Howard Lichtman, executive vice president of marketing for Toronto-based Cineplex/Odeon, which operates 118 movie

screens in 26 locations in the Washington area.

"For years, we've been installing amenities for the disabled," Mr. Lichtman says. "We went beyond wheelchair accessibility. About 20 percent of our screens in Washington have sound systems for the hearing impaired. Maryland has about 30 percent, and a fourth of Virginia theaters are equipped."

Costing \$600 to \$900 per auditorium, the systems can be moved from one theater to another. Cineplex/Odeon movie ads include symbols indicating handicapped accessibility.

Metro rail

Now 15 years old, Washington's state-of-the-art subway system is readily accessible. Flashing lights signal hearing-impaired riders of oncoming trains. A granite-edged strip with a different texture from the tiled floors warns blind persons that they are nearing the platform edge.

An elevator at each of Metro's 70 stations accommodates wheelchairs. If an elevator is out of service, passengers may request special van service to the next available station.

Metro spokeswoman Marilyn Dicus says a Regional Paratransit system providing lift-equipped vans to transport people unable to use regular public transit is planned for operation by March of 1994.

Museums

Mention museums, and most Washingtonians think of the Smithsonian.

"Since we're federally funded, regulations like ADA are not new for us," says Janice Majewski, Smithsonian accessibility coordinator.

"The passage of ADA has only strengthened the institution's commitment to serving a diverse public, including those with disabilities. ... We've gotten a lot done, but we have a lot to do," she adds.

Since 1978, the Smithsonian has published a free guide to accommodations for the handicapped. Available at all museum information desks or by mail, the booklet describes wheelchair ramps, sign language interpreting services, restrooms, TDD telephones, tours and nearby Metro stops.

The Phillips Collection, housed in a 100-year-old building near Dupont Circle, has also complied with ADA.

Spokeswoman Kristin Krathwohl points out that disabled visitors enter the Phillips from a ramp between the main building and the recently expanded, readily accessible Goh Annex. The main building has a wheelchair lift, and the museum's two elevators can hold several wheelchairs. Button pads are equipped with Braille.

Department stores

"When some Woodies stores were recently renovated, we added modifications," says Judith Pickering, general counsel for Woodward & Lothrop.

"Downtown, we installed a wheelchair lift and lowered control panels and buttons on two elevator banks. ... In all 19 stores, we've lowered pay phones and added paper cup dispensers to water fountains. Only problem — we can't keep the dispensers filled.

"We've remodeled fitting rooms by making them larger, widening the doors and adding handrails and benches."

Woodies' restaurants now provide Braille menus.

"We want to make shopping a pleasure rather than a challenge," she adds. "We've produced a video to teach personnel to serve customers with disabilities.

"For the video, we interviewed Marc Fiedler, the disabled lawyer who filed four lawsuits — one against Woodies — regarding ADA compliance. Mr. Fiedler did a superb job in communicating his needs," Ms. Pickering says.

Business Day

35

SATURDAY, JULY 25, 1992

The New York Times

Companies Prepare for New Law on Disabled

By ALLEN R. MYERSON

A law banning discrimination against disabled people that takes effect tomorrow finds corporations sharply at odds over what they must do to comply.

Some, like Pioneer Hi-Bred International Inc., a seed company in Des Moines, say that holding management training sessions, reviewing the duties of jobs that become open and issuing some explanations over the computer system will just about do it. Others, like Nike Inc., are developing new recruiting programs and rewriting all their job descriptions — often changing hours, responsibilities and pay — to accommodate disabled people.

And at some companies, like the Tanenbaum-Harber insurance brokerage firm in Manhattan, managers

Concerns are at odds over how to comply.

say have hardly begun to think about how to comply.

The confusion among corporations contrasts with the certainty among government officials and experts that the Americans With Disabilities Act of 1990 requires vast changes in employment practices as extensive as those made for women and blacks.

Linda Laarman, a lawyer in Washington with the William M. Mercer consulting firm, said that while most companies understood the law's general principles, few had adequately

put them into practice. "Most companies haven't thought through the implications in detail," she said.

The provisions forbid companies with more than 25 employees to discriminate against the disabled in hiring, compensation or advancement, and require reasonable accommodations for them at work.

Only about 30 percent of the 14 million working-age Americans with disabilities are employed. Labor specialists say that millions more could be brought into the workplace with only limited adjustments.

Some larger companies are already in the forefront of compliance. Telephone companies, whose jobs often require no heavy labor or travel outside the office, have long sought to expand their hiring pool by recruiting the disabled.

The American Telephone and Telegraph Company, in fact, helped shape

the new law. It has been holding sensitivity sessions for managers for more than 25 years. Several hundred "job accommodation specialists" help disabled employees, including long-distance operators and telephone repairmen, get specially designed chairs, braille keypads or other equipment and adjustments needed to perform their jobs.

For its customers, Cobi A.T. & T. has designed "text telephones" that allow the deaf to type messages to each other, and computer systems for the blind that read aloud what appears on a screen.

Such computerized devices to overcome impairments are now in widespread use. T.W.A. has installed special computers, some of them voice-activated, so that several reservation

Continued on Page 38

Companies Prepare for Law On Bias Against Disabled

Continued From First Business Page

agents with multiple sclerosis can work from their homes. The airline's reservation office in New York has special computers designed for agents who have vision difficulties.

Smaller companies say they lack the time and manpower to turn their attention to the disabilities law. "We're only vaguely aware that it's out there," said Walter L. Harris, president of the Tanenbaum-Harber Company, an insurance broker with about 100 employees. "I suspect that's true of most small businesses. Given the pressures of the economy and the New York marketplace, an act like that is the least of my worries."

Few Jobs Anyway

In the current economy, Mr. Harris and some other employers say, job openings are so few that hiring practices are almost moot.

Many companies, like Pioneer Hi-Bred, say their longstanding practices toward disabled employees leave them with little more to do. "We think we're in good shape," said Gary Walljasper, the planning and development administrator.

Some companies, however, have underestimated what they need to do, said Henry von Wodtke, a Buck Consultants specialist in employee benefits in New York. "Most employers, when asked if they are nice to disabled people, would say, at first blush, 'Of course. We're in compliance.' Those who thought a little more about it were less sure."

To check compliance, Buck Consultants sent surveys to 2,800 employ-

ers around the nation in January. Only 385 responded. Of these — evidently the ones most aware of the law, Mr. von Wodtke said — only 47 percent said they had reviewed their hiring standards.

He took some encouragement from the number of companies that had at least taken some steps, including the 68 percent that had provided training or written guidance for managers.

Details of Law

Consultants say that many companies may not recognize the need for such tasks as seeing whether their health insurance plans discriminate against specific categories of the disabled. Companies should also define in writing the essential duties of each job so that disabled applicants are not turned away merely because they cannot perform marginal duties. Employers also must avoid asking for medical histories or examinations before they make job offers. But the law does not require companies to set hiring or promotion goals.

Those that have not met the law's requirements are unlikely to hear from the Equal Employment Opportunity Commission right away. As in matters of racial and sexual discrimination, the commission will act once it receives complaints. But it may not have the money to hire new officers meant to investigate complaints from the disabled, according to commission officials.

Still, Mr. von Wodtke advises slack companies not to wait for any nudging. "They are well advised to look at their situations right up front and make sure nothing is going to be embarrassing," he said yesterday. "We've got two days left."

Steps to Treat Disabled More Fairly

Examples of actions companies have taken or are taking.

ALFAC

- Employs several hundred specialists to help disabled employees get necessary equipment and working conditions.

NIKE

- Is rewriting all its job descriptions, changing work hours, pay and responsibilities as necessary.

- Trains supervisors to combat stereotypes and comply with the law.

- Has adopted hiring policies and strategies that highlight contributions of the handicapped.

PIONEER HI-BRED

- Circulates compliance information on its computer system.

- Reviews job descriptions as positions become open or duties change.

INTERMAGNETICS GENERAL

- Schedules meetings on ground floors.

- Provides an automatic door opener and tiled floor to help a quadriplegic employee move into and around his office.

US WEST

- Maintains recruiting links with campus and community organizations for the disabled.

- Provides special headsets for blind customer service representatives.

MYCOGEN

- Has eliminated a job application question about disabilities.

- Has dropped requirement for laboratory workers to be able to stand for several hours a day.

- Alerts receptionists to help handicapped applicants fill out job forms.

PACIFIC TELESCOPE

- Provides job opening information on a "text telephone" service for the deaf.

- Trains staff in job interview techniques.

- Provides devices to adapt tools for a nearly blind machinist and earth-moving equipment for a one-legged employee.

TENNECO

- Has appointed compliance supervisors in its six divisions.

- Trains corporate and Tenneco Gas human resources staff to interview disabled job applicants.

- Issues compliance guidelines to supervisors at Packaging Corporation of America and Newport News Shipbuilding, two Tenneco divisions.

FORD

- Instructs managers to avoid segregating the disabled or preventing them from exercising their rights.

- Tests managers' knowledge of the law.

SWEEPING U.S. LAW TO HELP DISABLED GOES INTO EFFECT

GAINS SEEN FOR MILLIONS

Statute May Force Businesses to Alter Buildings and Offer Specialized Services

By STEVEN A. HOLMES

The first major phase of what has been called the most sweeping anti-discrimination law since the Civil Rights Act of 1964 began yesterday, requiring businesses to give equal access to millions of disabled Americans.

The public accommodations provisions of the law, the Americans with Disabilities Act, mean more than merely providing adequate parking spaces or ramps for the handicapped.

Restaurants may have to provide Braille or large-type menus for the blind or visually impaired people, or require waiters to read the menus aloud; banks may have to lower some automatic teller machines so they can be reached by people in wheelchairs; movie theaters may have to provide space for customers in wheelchairs and insure that their friends and family may sit with them.

More Changes Set

Because the law is written broadly, it is unclear precisely what businesses must do to comply. And advocates for the disabled and business representatives are unsure how aware businesses are of the law.

For businesses like the I.G.A. supermarket on the north side of Oklahoma City that have already gone far to accommodate the disabled, the law may bring even more changes.

The supermarket is "like a dream" for Mary Westphal, who has used a wheelchair since she had polio as a child. She said its six-foot-wide check-out lanes and the electrically powered cart with a large shopping basket that the store provides make shopping far easier than at any other grocery store she has been in.

But sitting in her wheelchair, Ms. Westphal cannot reach the roll of plastic bags over the meat counter. She cannot see some of the items in the frozen juice bin and she cannot stretch far enough to get to the large plastic cups on the top shelves.

"We like to have picnics," she said in exasperation, "and I always end up using the small styrofoam cups because I can't reach any of the others."

The law, passed on July 13, 1990, and signed by President Bush



Scott Anderson for The New York Times

A new law requiring businesses to give equal access to disabled Americans began its first major phase yesterday. The I.G.A. supermarket in Oklahoma City, which has already gone far to accommodate

the disabled, will have to make additional changes. Even with the store's shortcomings, it's "like a dream" to Mary Westphal, who has used a wheelchair since she was stricken by polio as a child.

Wide-Ranging Changes to Improve

Continued From Page A1

13 days later, bans discrimination on the basis of physical or mental handicap in employment, public accommodations, transportation or telecommunications services. And because the public accommodations section of the law will eventually apply to all businesses regardless of size, legal experts say it may have the most impact of any of the statute's provisions.

"Public accommodation is so broadly defined," said Gary Marx, a Washington lawyer who has conducted seminars for businesses to acquaint them with the law. "It includes lawyers' offices, doctors, accountants, cleaners, stores, restaurants, movie theaters, any place that people go to buy goods and services."

Under the law, newly constructed businesses and those undergoing major renovations must be completely accessible to those with physical handicaps. All existing commercial establishments must do what is "readily achievable" including making physical alterations, to accommodate the disabled. The law left to the courts to decide what is "readily achievable."

chain might be required to place in new or renovated stores signs that will show pictures of items that are in a given aisle. Using such signs would accommodate shoppers with dyslexia or mental retardation who might not be able to read.

Exemptions for small companies will be phased out in a year.

In New York many retailers, including J.C. Penney, Tiffany & Company and Sears have installed widened doors, Braille signs in elevators and restrooms and have lowered their counters to comply with the act.

Confusion for Businesses

But many other businesses are having trouble interpreting the law, said Ronald J. H. Napal, a director of United Cerebral Palsy of New York City. Officials of his organization, armed with a checklist of items that included proper parking spaces, sloped curbs, and restroom and elevator accessibility, recently inspected a variety of local businesses to determine whether the disabled could use public accommodations as easily as any other person.

The team inspected a movie theater, hotel, video store, restaurant and supermarket and found some oversights, even at those establishments that had

Burdens for business and opportunities for millions.

facilities in restrooms.

At the Loew's 19th Street Theater Manhattan, for example, the restroom was easily accessible but had no soap or paper towel dispensers next to a lowered sink designed for people in wheelchairs. Inside the theater, an open concrete area was provided for wheelchairs, but part of the area was being used to store trash cans.

At the Associated Supermarket Park Avenue and 21st Street, Susan Krause, 40 years old, who has cerebral palsy, maneuvered her electric wheelchair down the aisles to test whether a disabled person could shop alone successfully.

"I can shop here, but my arms don't reach the top shelves," she said.

Though the aisles were wide, a section of the supermarket that had ta

DNAL MONDAY, JANUARY 27, 1992

Adaptations for the Handicapped: A Timetable

Major provisions of the Americans with Disabilities Act.

PUBLIC ACCOMMODATIONS

Properties open to the public must be made accessible to disabled people.

Jan. 26, 1992: Existing buildings and businesses with more than 25 employees must make good-faith efforts to remove barriers to the disabled.

July 26, 1992: Businesses with 25 or fewer employees and annual revenue of \$1 million must comply.

Jan. 26, 1993: New buildings constructed for occupancy after this date must be accessible.



EMPLOYMENT

Employers may not discriminate against qualified disabled individuals in hiring, advancement, compensation or training and must adapt the workplace if necessary. Those with fewer than 15 workers are exempt.

July 26, 1992: Companies with 25 or more employees

July 26, 1994: Companies with 15 to 24 employees.



PUBLIC TRANSPORTATION

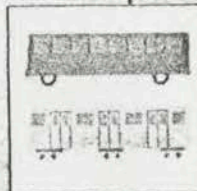
New buses, trains and subway cars have to be accessible to those in wheelchairs.

Jan. 26, 1992: New vehicles for public bus and rail systems must be accessible.

July 26, 1993: Commuter rail stations must be made accessible. (Possible extensions of up to 30 years)

July 26, 1995: One car per train must be accessible.

July 26, 1996: Privately owned transportation companies must buy accessible vehicles. Small operators have until July 26, 1997. New buses, trains and subway cars have to be accessible to those in wheelchairs.



TELEPHONES

Telephone companies must provide, to the extent possible, relay services allowing hearing- or voice-impaired people to place and receive calls from ordinary telephones.

July 26, 1993: Companies should have telecommunications services available 24 hours a day.



Access for the Disabled Go Into Effect

Artie Rosenblatt, the store's manager, said an employee would take an order for any disabled person.

Since the law does not spell out exactly how businesses must comply, some critics predict a flurry of lawsuits that will require the courts to interpret the guidelines case by case. These critics say the fear of litigation may drive businesses to adopt costly alterations when they do not have to.

"They will do everything that the act might possibly require rather than risk going to court," said Robert O'Quinn, who wrote a report critical of the statute while a fellow at the Cato Institute, a public policy foundation in Washington. "It's not going to break Holiday Inn or Hilton hotels to do these kinds of thing. But with a mom and pop motel, it might make a real difference."

Despite the significance of the legislation, supporters and critics doubt whether companies or the public at large are aware of it. In a telephone poll conducted last May and June by Louis Harris and Associates Inc., only 18 percent of the 1,257 adults asked knew about the law. Half of those people said incorrectly that it required businesses to make whatever changes necessary to accommodate a disabled person, "regardless of the cost."

out effectively through business associations," said John D. Kemp, executive director of United Cerebral Palsy Associations.

Representatives of business organizations say their members remain confused or unaware of the law and are concerned about the potential costs.

The Federal Government, business groups and advocates for the disabled have stepped up their efforts to inform companies and the disabled of their rights and responsibilities under the statute.

The Justice Department has mailed notices to six million employers with tax information sent out by the Internal Revenue Service. Small companies can get a \$5,000 tax credit and large ones can qualify for a \$15,000 tax deduction to help defray the costs of bringing their businesses into compliance. The tax break can be applied to the costs of structural changes, consultant's fees, staff training or changes in business practices.

The National Restaurant Association, the U.S. Chamber of Commerce and the National Federation of Independent Business have included articles on the law in publications sent to their members. The Department of Justice has awarded \$3.4 million in

and advocacy groups on the law. Congress has passed a bill to spend \$5 million on 10 regional centers to inform businesses and the disabled of their obligations and rights under the law.

Advocates for the disabled, and some business groups say they fear the lack of knowledge will make some companies fair game for lawyers and consultants seeking to drum up business.

But some legal experts say those fears are overblown. They note that while cases can be brought by the Department of Justice and fines start at \$50,000 for the first offense and go up to \$100,000 for subsequent offenses, the section within the department's civil rights division created to enforce the law has only 15 lawyers and is projected to grow to only 40. Justice Department officials say they will prosecute only the most egregious offenders.

Lawsuits can also be brought by individuals, but because the law does not allow for compensatory and punitive damages, some legal experts say it will be difficult to find many lawyers to take on these cases.

Some of the experts say companies can avoid litigation by getting local groups representing the disabled to help them draw up what is needed to make their business and

SUNDAY, JULY 26, 1992

The Wash

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By Elizabeth Lesly
THE WASHINGTON TIMES

The provisions of the Americans with Disabilities Act that guarantee employment rights for the disabled take effect today, and Robert Beach is woefully unprepared.

The president and owner of S.A.I.D. Inc., a 30-year-old information processing business in Falls Church with 100 employees, knows that the new law is effective today, but as a small businessman, he has little time to comb through the new rules and regulations that will govern how he interviews, hires and treats his employees.

The ADA requires businesses employing 25 or more people to revamp the way disabled job applicants or employees are regarded in the workplace. Questions about a job applicant's handicap are now taboo in interviews, and businesses must make "reasonable accommodations" for qualified disabled people seeking a job or a promotion. Businesses with 15 or more employees must comply with the law by 1994. Public access requirements in the law went into effect in January.

More than 14.6 million Americans have disabilities that affect their employment possibilities, and polls show that two-thirds of them want to work but cannot find jobs. "That's the highest unemployment number for any minority group," observed Dale Brown of the President's Committee on Employment of People with Disabilities.

The act covers anyone with a mental or physical impairment that limits a major life activity, such as walking, seeing, hearing, sitting, speaking, breathing, learning, working, caring for oneself, performing manual tasks, reasoning and remembering.

Job descriptions need to be elaborate because, under the ADA, job applicants cannot be screened for vague assumptions that a disabled person cannot perform the essential

Open dc

DISABILITIES LAW TO

pounds, then a person with a disability that makes that impossible would not have to be considered for the job.

A company still has the right to hire the most qualified applicant who fits the job description, and the act does not impose hiring quotas.

Still, there is apprehension about the act.

"Everything's getting more and more restrictive, to the point that if they're breathing and they knock on the door, you have to hire them," lamented Mr. Beach, who at present has no disabled employees. "I just see big dollars, [a] lot of dollars" spent to comply with the ADA, he added. "As a small businessman, I work 70 hours a week just trying to keep my business together, and to pile this type of requirement on top of that workload — it's impossible for me to have a speedy response to this."

Most accommodations for disabled employees are quite inexpensive; a recent federal study reported that more than half cost less than \$50.

Susan Steele, an associate producer for CNN, needed only an extra handicapped parking space when she was transferred to Washington from Atlanta last year. The only special assist she needed earlier this month at the Democratic National Convention was a ramp leading to the CNN trailer for her wheelchair.

When an employee at Endependence Living Center of Northern

Virginia couldn't hold up his hands to type new financial records into the nonprofit group's computer system, management combed through catalogs of expensive equipment. But the employee nixed such elaborate remedies and suggested a \$2 piece of wood to prop up his hands. "If I had gone to a specialist, I could have paid thousands," said Sharon Mistler, the center's director.

Other accommodations can be as simple as placing \$15 worth of cinderblocks under a desk, raising it

high enough to fit a wheelchair comfortably.

At the Nordstrom department store in Pentagon City, a deaf saleswoman communicates with customers with a pencil and paper.

At the Sporting Club at Tyson Corner, Director Sandy Kabernage provides the health club's severely disabled workers with flexible hours to fit their transportation schedules.

"It's not effortless," Mr. Kabernage said. "There's some accommodation in the early stages, but it

Holding job difficult for man brain

By Elizabeth Lesly
THE WASHINGTON TIMES

David M. Barber is bright and clean-cut, but he has not been able to land a permanent, full-time job for almost five years.

All was going well for the electrical apprentice until 1987, when the car he was riding in was hit by a truck. The District man, then 19 years old, suffered severe head injuries. Wiped out was his attention span and ability to remember things.

He has fought to regain his mental acuity, but so far he has been unable to find a job, except for brief, unsuccessful stints as a file clerk and a repairman.

Two out of three disabled Americans want to work, polls show, but, as a group, their unemployment rate is nearly 70 percent.

When the employment provisions of the Americans with Disabilities Act take effect today, it should become easier for Mr. Barber to land the retail sales job he has been training for at Goodwill Industries.

"A lot of times, I don't do things as quickly as I used to, and my memory is shot," he said. "I'm trying to get my intellect back. I'm trying my best to get back my life."

In the past, employers might have



Harriet Rosenbaum (left) leads the Goodwill headquarters in secretarial job. David Barber (right) is in a maintenance

been reluctant to hire someone like Mr. Barber, who suffers from a disability that is not immediately apparent, although he has a telltale scar on his forehead.

A lot of employers have not known how to accommodate disabled job

applicants and employees, and disabled were oftentimes unable to get past an initial screening process, said Iris Wilson, who runs the employment training program at Goodwill in the District. "A great deal of education needs to be done among

or policy

EASE ENTRY TO JOBS

AMERICANS WITH DISABILITIES ACT

Who Is covered by ADA

- Anyone with a physical or mental impairment that substantially limits one or more major life activities — caring for oneself, performing manual tasks, walking, seeing, hearing, sitting, speaking, breathing, learning, working, reasoning and remembering.
- Anyone with such conditions as cerebral palsy, muscular dystrophy, emotional illness, cancer, diabetes, HIV disease (the precursor to AIDS), epilepsy, heart disease, specific learning disabilities, multiple sclerosis, mental retardation and hearing and speech disorders.
- Anyone with a history of impairment, such as people with cancer in remission, recovered drug addicts, or people improperly characterized as mentally retarded.
- Anyone who is regarded as having an impairment, such as a person with a facial deformity, even though the condition does not actually interfere with job duties.

Who Is not covered

- Current drug abusers, compulsive gamblers, kleptomaniacs and pyromaniacs.
- Those with temporary disabilities, such as normal pregnancy or a broken limb.
- Homosexuals and bisexuals
- Transvestites, transsexuals, pedophiliacs, exhibitionists, voyeurists, those with gender identity disorders not resulting from physical impairments, or other behavioral traits.

of Marriott's 187,000-member work force in this country is disabled, Mr. Sampson said. The company launched a management-education and training program nine months ago that "raises awareness and sensitivities and eliminates any negative assumptions managers may have about" hiring and working with disabled people, he said.

Paul Kenneson, a product manager at insurance company ITT Hartford, said that aversions businesses have to hiring the disabled are generally unfounded.

"I think a lot of the confusion is primarily because of a lack of understanding or misapprehension," he said, adding that studies show that disabled workers are more reliable and less prone to on-the-job accidents than their nondisabled colleagues.

In a pamphlet Mr. Kenneson prepared for ITT Hartford's 7,500 clients who are affected by the ADA, he stresses "that the employer, for new hires, needs to concentrate on job descriptions."

"There are many employers [having] job descriptions includ-



Illustration by Renata Roberts / Special to The Washington Times

been relatively painless — you just have to get used to" being flexible.

At the National Medical Enterprises Inc. office in Georgetown, management provided Joshua Herman, who has cerebral palsy, with an oversized, \$2,000 computer screen to reduce eye strain.

Large companies are generally well-prepared for the act and have been running new programs to educate managers and supervisors about the new law for months. Such firms have been busily implement-

ing new interviewing guidelines and equipment to help the disabled do their jobs.

Some companies are cheerful about complying with the ADA.

"We really believe that it's the right thing to do and that it makes sense," Dave Sampson, Marriott's vice president for equal employment opportunity, said of the ADA. "We have tried to approach this in terms of the spirit of the law. We see it as good business sense."

Between 5 percent and 6 percent

hires, needs to concentrate on job descriptions."

"There are very, very few employers [having] job descriptions including pertinent physical and mental demands. That becomes a lot more critical now with ADA," he said.

"From our perspective, the ADA is a very positive act, because it focuses on people's abilities and not their disabilities," Mr. Kenneson said.

Small businesses have complained bitterly about the ADA, which applies to the 264,000 companies that employ 77 million Americans.

"Small-business owners have an excellent track record of hiring disabled workers, but they fear this vague, new law," John Motley, vice president of the National Federation of Independent Business (NFIB), said in a recent statement. "Small firms cannot afford to retain legal counsel or hire human relations and civil rights specialists just to help

see RIGHTS, page A14

h-damaged in crash



Photos by Sharon Naloli/The Washington Times
to use WordPerfect software at
theast in preparation for a
(boye) participates in a 12-week
and customer relations. Charles
e-training program.



the hiring population, to make them aware of the [skills and talents] disabled people have.

"The disabled population is extremely motivated," she added. "They want to work, if given the opportunity and some latitude of un-

derstanding. Disabled people are absolutely capable of doing the work — and they do try harder."

Much blame is heaped on employers who don't understand the nature

see INJURY, page A14

NEW RULES FOR JOB INTERVIEWS

The general rule of the ADA is that employment decisions must be based on the abilities of individual applicants or employees, and not on the basis of presumptions or generalizations about what individuals with disabilities can or cannot do.

In general:

- Ask questions about how the job applicant would perform the duties of the job, but don't ask the applicant about his or her disabilities.
- Don't restrict the duties of an employee with a disability based on the employer's view of what is best for that person.
- Don't adopt a separate track for promotion or progression in the company for employees with disabilities.
- Don't have a department or job classification for individuals with disabilities.
- Don't have limitations on health insurance coverage for people with disabilities, unless the restrictions are part of pre-existing conditions clauses.
- Don't segregate employees with disabilities in a particular office or area.
- Remember the "reasonable accommodation" standard, which means that an employee with a disability cannot be denied some accommodation just because it has never been done before.
- Don't ask about prior work history that would indicate a possible disability. Don't ask about histories of absenteeism, hospital stays, workers' compensation claims or past medical conditions.

INJURY

From page A13

of certain disabilities and are reluctant to hire qualified disabled employees.

All that is supposed to change with the Americans with Disabilities Act.

The ADA has been called both the Emancipation Proclamation and the Bill of Rights for the nation's 43 million disabled people.

Other, less romantic observers point to the projected labor shortage in coming years and predict that the influx of millions of bright, capable or responsible disabled workers into the work force will bolster the na-

tion's economy.

Harriet Rosenbaum, another trainee at Goodwill, has not been able to find work since she was let go from her job as a lab technician at the University of the District of Columbia in 1985.

She has considerable computer skills but has had trouble because medication to treat her obsessive-compulsive disorder and depression leaves her with speaking and punctuality problems.

Still, neither Ms. Rosenbaum nor Mr. Barber expects the ADA to be a quick fix.

"You can't always expect everything to be easy," Mr. Barber said. "If you have an attitude, you're not going anywhere."

RIGHTS

From page A13

them understand new regulations."

Mr. Beach, the Falls Church businessman who professed confusion about the ADA and what was now required of him as an employer, said: "I'm unclear at this point of exactly everything we have to do to meet the requirements of the act. We have not made any changes yet."

A Harris poll conducted late last year showed that 42 percent of businesses employing 25 or more people were unfamiliar with the ADA. Many small businesses are slow to realize that their new responsibilities are under the ADA, experts say, and Mr. Beach and Mr. Motley heap blame on the federal government, which has failed, they say, to brief small businesses adequately.

In its defense, the Equal Employment Opportunity Commission, which is charged with enforcing the ADA, said it has been working with

trade groups to disseminate information.

Howard Moses, an EEOC spokesman, said the agency included a short ADA notice in the June Internal Revenue Service mailing to 5.6 million businesses. The agency also produced an informational poster for employers to display in the workplace. About 600,000 copies of the poster were requested since February, Mr. Moses said.

But a large percentage of the country's small businesses are not prepared for the employment requirements of the ADA, said Wendy Lechner, manager for research and policy development at the NFIB.

"If a small business doesn't belong to a trade association that's involved in ADA, they probably know nothing about the bill," she said.

And those business owners who have yet to tailor their workplace and employment practices are extremely vulnerable to a lawsuit, Ms. Lechner said. "There's quite a lot of [potential] liability," she said.

ADA OFFICE ETIQUETTE

Experts advise the following when working with:

Someone who is blind

- Introduce yourself. Identify who you are and what your job or role is. Give the person verbal information about what is visually obvious to those who can see.
- Be descriptive when giving directions.
- Lead someone who is blind only after they have accepted your offer to do so. Allow them to hold your arm, rather than you holding theirs.
- Tell them when you have brought new items into their environment, describing what they are and where they are situated.
- Do not pet or interact with a guide dog when it is working.

Someone who is deaf or hearing-impaired

- Find out how the person prefers to communicate — in writing, by signing or by lip reading.
- If an interpreter is used to sign, address the person, not the interpreter.
- If the person reads lips, speak normally and use short sentences.
- Gain a person's attention before starting a conversation.
- If the person is using a hearing aid, avoid conversations in open, noisy areas.

Someone in a wheelchair

- If you are asked to fold, carry or store a wheelchair, treat it with the same care as you would someone's eyeglasses. Wheelchairs can break and they are expensive and inconvenient to repair.
- When speaking to someone who uses a wheelchair, stand back a bit to ease the viewing angle.
- Do not push someone's wheelchair without first asking.

Source: Milt Wright & Associates Inc., Jackson, La.
Schnitzler & Krupman

An Act of Transformation

Law for Disabled to Change Workplace

By Liz Spayd
Washington Post Staff Writer

The most far-reaching civil rights law since the 1960s takes effect Sunday, promising to force the kind of wholesale changes that would make the American workplace far more hospitable to workers with physical and mental disabilities.

The new law, the second phase of the Americans With Disabilities Act, outlines changes that companies must make to nearly every facet of employment, from job applications and interviews, to health insurance plans, compensation and work schedules—all designed to extend to the disabled the same rights that women and minorities won nearly three decades ago.

At many companies in the Washington area and across the country, managers already are bending and flexing to meet the needs of disabled workers.

Marriott Corp. uses interpreters to help a hearing-impaired employee at its Bethesda headquarters understand what is being said at staff meetings. A blind manager at Nordstrom's Pentagon City store has a scanner attached to his computer that reproduces ordinary documents in Braille.

In Atlantic City, owners of the Trump Castle casino altered a blackjack table to help a dealer who uses a wheelchair. And Continental Insurance, a New York-based prop-

See DISABILITIES, A9, Col. 1

Disabilities Act Will Change Workplace

DISABILITIES, From A1

erty and casualty company, has an enlarging device attached to a computer so that a clerical worker with poor vision can see her keyboard more clearly.

Since it affects all industries, and ultimately touches millions of businesses, the act has a scope matched by few other laws. Generally, it is being praised by businesses as an effort to reach out to a disenfranchised segment of society. But it also has drawn criticism from industry groups that fear it may open the floodgates to litigation and subject businesses to large financial judgments by juries.

"This is one of the most damaging bills to business in a long time," said Wendy Lechner, who directs research and policy for the National Federation of Independent Business. "So much about the law is vague that business owners won't know until they've been sued whether they're in compliance."

The law does not state precisely what a company must do or spend



BY RICH LIPSKI—THE WASHINGTON POST

Mary Beth Chambers, left, says the disabled "are capable of doing anything."

To prepare themselves for the July 26 deadline, companies in recent weeks have been doing everything from scrutinizing the wording of job applications to reviewing hiring and promotion practices to ensure nothing they do could be considered discriminatory.

Under the new law, for example, applicants cannot be asked whether they have a disability, only whether they are able to perform specific functions that are considered essential to a job. For employers, that often means determining just ex-

because of a disability. But there also are likely to be many claims filed by people already in the work force who were denied a promotion or a raise or just somehow feel they were treated differently from their able-bodied co-workers.

"I don't expect the heavens to fall, but there is a new class of people who haven't been protected before who in some instances may feel their rights have been denied," said Gary Marx, a Washington labor lawyer. "They will include people already in the work force who file suit

to ensure that it does not discriminate, since what is appropriate for a commercial giant like IBM might not be for a small retailer. What the law does require is that employers make "reasonable accommodations" to assure that qualified applicants with physical or mental disabilities are not discriminated against, unless the employer can show that the accommodation would put an "undue hardship" on its operations.

For a large law firm, that could mean providing a reader for a lawyer who is blind; for a computer company, it could mean widening doorways or adjusting a desk's height to accommodate a systems analyst in a wheelchair.

The law goes well beyond traditional notions of disability by including any person with an impairment that substantially limits a major life activity. It protects people with AIDS, with cosmetic disfigurements, with dyslexia, even those who suffer from stress or depression if their condition is so severe as to be considered disabling by a psychiatrist.

"Companies have a hard time accepting that they have to pay for the hearing amplification device or adjust the work schedules of people to accommodate a person who goes to physical therapy," said Paul Tufano, a lawyer with the Philadelphia law firm of Blank, Rorer, Komisky & McCauley who has advised thousands of corporate clients on the new law. "You don't have to give them the Cadillac accommodation, but you'd better do what is reasonable."

actly what are the essential functions of each job.

"Is it essential for a painter in a wheelchair to be able to reach the ceiling? Probably not, if we have a crew of 30 other painters who can do it," said Roger Wagner, president of Trump Castle, which is reviewing some 600 distinct jobs to determine their essential functions.

Employer reaction to the act has run the gamut, from doing nothing at all to a company that paid for a physical therapist to accompany a tugboat crew to measure how much weight the laborers lifted, and with which muscle groups, according to Tufano.

The tugboat case is the exception. "Most companies are just going to seminars and training sessions on ADA," Tufano said. A recent survey of 100 companies conducted by his law firm showed that 70 percent of employers had done little more than take steps to educate themselves on the law.

Many legal experts warn that if corporations are not diligent about compliance, they could find themselves fending off discrimination charges with potentially stiff penalties.

The Equal Employment Opportunity Commission, through which all charges of discrimination under the act must be filed, is bracing for some 12,000 new claims in the first year, of a full 20 percent increase in its case load.

In some cases, charges will come from new job applicants who feel they were discriminated against

against their current employer.

In some cases, Marx predicted, a complaint could arise out of such a basic issue as an employee who works on the sixth floor of a building and has to use a first-floor bathroom because it is the only one accessible by wheelchair.

Even with the force of the act on their side, many advocates for the disabled say it will be some time before the fortunes of that community improve significantly. The unemployment rate among those with disabilities is estimated to run as high as 60 percent and, as a result, many lack the skills necessary to compete for jobs.

"It is a Catch-22," said Peter Blanck, a University of Iowa law professor who is involved in a study of persons with disabilities. "If you haven't been in the work force, you won't have the skills needed for a lot of jobs."

The act does not mandate job quotas; it only requires that employers hire and promote qualified candidates, whether they have a disability or not.

To Mary Beth Chambers, a deaf employee who works the cosmetics counter at Nordstrom's Pentagon City store, the struggle for equality in the work place is well worth it.

"It's not people's fault that they're hearing-impaired," said Chambers, who reads customers' tips.

"Companies don't know what they're missing," she said. "These people are capable of doing anything, and if they keep trying, their dreams will come true."

... SATURDAY, JULY 25, 1992 A9

WASH. POST

Broad Effort Set to Implement Act

By Liz Spayd
Washington Post Staff Writer

Like a huge whale in a sea of goldfish, the Americans with Disabilities Act has landed amid thousands of other federal laws governing the country, making a splash rarely matched by any single piece of legislation.

No fewer than 35 federal agencies will have a hand in assuring that the latest phase of the law is properly enforced, or that accurate information is distributed, or that violators get their just due.

"It's mammoth," said John Wodatch, who oversees a new office in the Justice Department established solely to deal with the act.

Mindful that failure to comply could land them in court, hundreds of thousands of businesses and other interested parties have been bombarding federal agencies with requests for more information about what the law says and to whom it applies.

During the last year, the Justice Department—once in conjunction with the Internal Revenue Service—has sent out more than 7 million documents explaining what the act is. Some 3,000 callers a week jam phone lines at the Equal Employment Opportunity Commission, and millions of dollars have been spent, by government agencies or by organizations that have received federal grants, merely to get the word out about the new law.

As the latest deadline draws near, supply isn't always keeping pace with demand.

"Less than a week from now I'm supposed to be in compliance with the law, and I can't get anyone to mail me information on it," said a frustrated Frank Meeks, owner of 44 Washington area Domino's Pizza franchises.

Pressures on the EEOC could grow worse when the employment provisions of the act are implemented beginning next week, since

all complaints of discrimination must go through that agency. The EEOC is expecting an increase of about 20 percent in its caseload during the first year, and so far no additional staffing has been allocated to help take on the work.

President Bush has asked that enough money be put in the fiscal 1993 budget to allow both the EEOC and the Justice Department to hire new employees, and to supply grant money to get more groups involved in distributing information.

Although the EEOC and Justice have the two largest roles, the list of agencies involved reads like a U.S. government directory, covering everything from the Federal Communications Commission to the Department of Transportation and the Centers for Disease Control.

Given the scope of the new law, all is moving fairly smoothly, according to the National Council on Disability, the group charged with helping to oversee the latest phase of the act.

BIG CHANGE LIKELY AS LAW BANS BIAS TOWARD DISABLED

14 MILLION TO BE COVERED

As 1990 Act Goes Into Effect,
Employers Are Required to
Provide Aid to Workers

By PETER T. KILBORN

Special to The New York Times

WASHINGTON, July 18 — A law to ban job discrimination against disabled people takes effect in a week and is widely expected to force changes in employment practices as far-reaching as those that followed the laws that opened jobs to women and blacks.

Organizations representing people with disabilities call the law, part of the Americans With Disabilities Act of 1990, their own emancipation proclamation. An heir of the Civil Rights Act of 1964, the new law challenges the myths, attitudes and working conditions that its bipartisan authors blame for keeping many disabled adults housebound and impoverished.

Applying to Many Businesses

The provisions that take effect July 26 apply to half a million businesses — all those with 25 or more employees — and are intended to outlaw discrimination against the 14 million working-age Americans with physical or mental impairments. In two years, the provisions will be extended to three-quarters of a million other businesses with 15 to 25 workers. Though it does not require employers to set goals for hiring or promoting the disabled, it could have much the same effect.

It tells employers that in hiring, promotion and compensation they cannot discriminate against an otherwise competent worker who has a "physical or mental impairment" that "substantially limits" a major life activity, like seeing, walking, thinking or breathing.

Except where it causes "undue hardship," they must promptly provide a "reasonable accommodation" to help the workers cope with their disabilities — scheduling their hours to permit visits to doctors, for example, widening bathroom stalls to help people in wheelchairs or providing special tools.

Rejections Are Limited

The law does not ask employers to hire people who lack vital faculties for a particular job — blind people to drive trucks, for example. But a disability alone, said Christopher Bell, a senior lawyer for the Equal Employment Opportunity Commission, cannot be grounds for rejection. "It's not enough" just to have something wrong," said Mr. Bell, who is blind.

With the law still to take effect and the hiring slow everywhere because of the sluggish economy, no one ventures to guess yet how many people with disabilities will get jobs because of the law or what business will spend to accommodate them.

"It means that Government and the private sector must take steps to as-

Continued on Page 24, Column 3

THE NEW YORK TIMES NATIONAL SUNDAY, JULY 19, 1992

Change Likely as Law on Bias to Disabled Takes

Continued From Page 1

sure that people with disabilities have access to the mainstream of American life," said Robert A. Katzmann, a specialist in legal and disability issues at the Brookings Institution.

Agencies specializing in placing the people in jobs report more contacts with employers. Steve Weiner, placement director at Gallaudet University, a school in Washington for deaf students, reports a surge in companies visiting the campus to interview. "The act is generating a lot of possible hires," he said.

The law is an unabashed venture into social engineering and Government intervention into the private economy, normally anathema to many conservatives and business associations. But although many employers say they fear the cost of complying others say the law will expand the pool of workers available to industry at a time when there is a shortage of workers with essential skills.

Adding a New Sector

"We'll have a new sector of the work force that we can take advantage of," said Edward Potter, president of the Employment Policy Foundation, a research group financed by 200 major companies.

An example of how the law is intended to work is James Holland, 28 years old, who has been completely blind since he was 12 and works for United Parcel Service, which like some other major companies has established programs for people with disabilities. Mr. Holland has been with the company for four years and is a computer programming instructor at an office in Paramus, N.J.

He has a voice synthesizer and a headset attached to his computer. The synthesizer reads words on his computer screen and converts the words to speech. It also reads back to him anything he types into the computer. He has another device that scans memorandums and other written documents and feeds them to the computer. U.P.S., he said, has been open to providing the tools he needs to work.

The cost of the equipment was about \$11,000. "Their attitude is, 'Except for adaptive equipment, we're going to treat you like anyone else,'" he said. "I've always been thankful for that. I'm a firm believer that people's abilities come from within. You have limitations. Everyone has. You have to overcome your limitations and work with your abilities."

Satisfied Employer

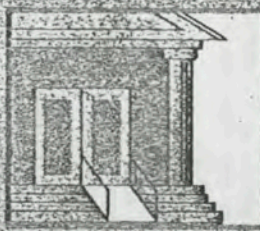
For what they consider a very small investment, U.P.S. officials say they have found an unusually competent programming instructor. "For us, the disabilities act does not present itself as some horrific new regulatory problem," said Fred Fernandez, the official in charge of the company's equal em-



James Holland, who is blind and works as a computer programming instructor for United Parcel Service in Paramus, N.J., exemplifies how Congress wants the Americans With Disabilities Act to work.

Adaptations for the Handicapped: A Timetable

Major provisions of the Americans with Disabilities Act



ACCOMMODATIONS

Properties open to the public must be made accessible to disabled people.

Jan. 26, 1992: Buildings and businesses with more than 25 workers must make good-faith efforts to remove barriers to the disabled.

July 26, 1992: Businesses with 25 or fewer employees and annual revenue of \$1 million must comply.

Jan. 26, 1993: New buildings constructed for occupancy after this date must be accessible.

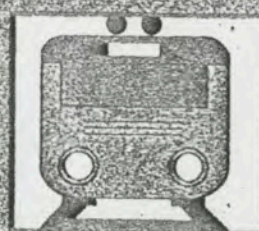


JOBS

Employers may not discriminate against qualified disabled individuals in hiring, advancement, compensation or training and must adapt the workplace if necessary. Those with fewer than 15 workers are exempt.

July 26, 1992: Companies with 25 or more employees.

July 26, 1993: Companies with 15 to 24 employees.



TRANSPORTATION

New buses, trains and subway cars have to be accessible to those in wheelchairs.

Jan. 26, 1992: New vehicles for public bus and rail systems must be accessible.

July 26, 1993: Rail stations must be made accessible.

July 26, 1993: One car per train must be accessible.

July 26, 1996: Private transportation companies must buy accessible vehicles. Small operators have until Jan. 26, 2000.



TELEPHONES

Telephone must provide extent possible services at hearing- or impaired persons and receive ordinary telephone services at least 24 hours a day.

Satisfied Employer

For what they consider a very small investment, U.P.S. officials say they have found an unusually competent programming instructor. "For us, the disabilities act does not present itself as some horrific new regulatory problem," said Fred Fernandez, the official in charge of the company's equal employment opportunity programs.

We're looking at it as an opportunity.

Various studies show that workers with disabilities are at least as effective as others. The Du Pont Company does periodic polls of its disabled workers. The latest survey, of the supervisors of 811 disabled workers in 1990, rated the workers on a par with others in attention to safety, marginally below them in job performance and well above them in attendance. Other surveys show much less turnover among the workers, no doubt in part because it is harder for them to find other jobs.

More broadly, experts say, discrimination against people with disabilities is costly to society as a whole. Of the 14.2 million disabled people 16 to 64 years old, Mitchell P. LaPlante, director of the Disability Statistics Program at the University of California in San Francisco, says only 30 percent worked in 1989, mostly at part-time and irregular jobs, while 76 percent of people without disabilities worked, most of them in regular, full-time jobs.

Mr. LaPlante says that many of 7.9 million he classifies as severely limited

fewer employees and annual revenue of \$1 million must comply.

Jan. 26, 1993: New buildings constructed for occupancy after this date must be accessible.

July 26, 1994: Companies with 15 to 24 employees.

per train must be accessible.
July 26, 1996: Private transportation companies must buy accessible vehicles.
Small operators have until July 26, 1997.

would need a lot of help to take jobs, like people to dress them and feed them, but that 6.3 million are more easily employable. Of that group, 58 percent had jobs, and most of the rest could have worked, he said.

He said 23 percent of the disabled adults were poor, almost three times the rate for the rest of the population.

Many survive on largely on food stamps, Medicaid and Social Security checks. Phil Gambino, a spokesman for the Social Security Administration, said 3.2 million former workers who have become totally disabled receive an average of \$7,125 a year from Social Security Disability Insurance.

He said three million other adults were ineligible for the insurance because they had not worked enough to qualify. They receive an average of \$4,114 in Supplemental Security Income, a form of welfare. The cost of both programs is \$3.1 billion a year.

With the law still to take effect, no one knows if the Equal Employment

Opportunity Commission, the principal enforcement agency, will be deluged with complaints from aggrieved job seekers. But Evan J. Kemp Jr., chairman of the commission, predicts a 20 percent increase in the complaints of civil rights violations workers bring to the commission over the next year, or 15,000 new cases.

Joanne Frankfort, a lawyer at the Employment Law Center in San Francisco, which represents workers in occupational disputes, said: "I think we will see significant amounts of litigation. Any action taken against a qualified individual because of his disability could be a violation. And there are teeth in the law."

But advocacy groups and the commission expect many complaints to be summarily rejected because the workers will be found unqualified for the jobs they are denied and than many others will be resolved through negotiation and arbitration. Only the most extreme cases are expected to bring

New York has passed a law making it easier for quadriplegics to hunt. Page 27

monetary penalties, which can be as high as \$300,000.

Even then, enforcement is likely to be slow. The commission says that because of budgetary constraints, it may not be able to hire the 250 new compliance officers to investigate complaints under the act.

Some advocates of disabled people want to avoid litigation. Paul Marchand, chairman of the Consortium for Citizens with Disabilities, a lobbying group in Washington, said: "We are not out to clobber anybody. We hope it would be the last resort. It makes no sense to put business out of business."

Vagueness Invites Lawsuits

But some lawsuits seem inevitable because Congress deliberately left central provisions of the law vague. What is a "reasonable accommodation" and

Job Agency Turns Disabilities into Assets

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

Last year, after at least a dozen unsuccessful job interviews, Kathleen Roche, a self-described "little person" who is 4 feet tall, snapped at an interviewer who had just told her that she was unqualified for a receptionist's position. "Look at me for what I am," she told him, "Not for the way my feet dangle off the chair."

When Michael Lopez, a college graduate who had been a counselor for an organization of disabled people, was looking for work last year, he made a flurry of phone calls to job-placement agencies. Many were promising, often reaching discussions of salary. But after he asked whether his electric wheelchair would be able to get through their doors, no agency invited him for an interview.

Brenda Whigham was taken aback when an officer at a job-placement company advised against mentioning her visual impairment. He told her that once she got the job, she then could discuss the magnifying equipment she needed to read a page of text.

One of a Kind

All three said recently that their disabilities had been a setback when they began their job searches. But when they turned to Just One Break, a not-for-profit agency in New York that places the disabled in jobs, they learned that their disabilities could be assets. Within a few months, they each had a job they liked: Mrs. Roche, 44 years old, a receptionist at the office of the Federal Comptroller of the Currency; Mr. Lopez, 27, an administrative manager at RJR Nabisco, and Ms. Whigham, 30, a customer service representative at UTAC America, a watch company.

The agency, known as JOB, says it is the only employment service devoted exclusively to placing disabled people. Other groups serving the disabled offer job referrals, but they do not operate as professional employment services, concentrating solely on providing and developing placements.

There is still much reluctance about hiring people with disabilities, says Mikki Lam, executive director of the agency. But in the last few years, she has observed a marked change in the attitudes of companies, now on a mission to diversify their work force.

For 45 years, as JOB paired disabled people and employers, it has been sending out a constant message: people with disabilities

Overcoming employers' curbs for the disabled.

should be considered for many of the same jobs that able-bodied people do. To this end, it maintains a referral list of 1,200 qualified employees, makes job placements with companies and government agencies and offers consulting services to companies interested in bringing disabled people into their work force.

As of July 26, businesses that employ more than 25 people will be forbidden by the Americans with Disabilities Act of 1990 to discriminate against employees or applicants because of disabilities, and will be required make reasonable accommodations to allow a disabled employee to perform the job.

To Mrs. Lam, who uses an electric wheelchair because of a case of childhood polio, the law is "a springboard with which we can throw qualified disabled people into the corporate world."

Although the law has yet to go into effect, she said, it is already having an effect on employers. When her agency calls a company to offer its services, the executives know something about the issue: companies have been deluged with mail about the law from the Government, disability-rights organizations, newly established consulting companies specializing in the new disability rules and others.

JOB, a privately financed organization with a budget of about \$600,000, was established by Orin Lehman, Eleanor Roosevelt and others to assist disabled World War II veterans. Over the years it expanded to include other people with disabilities and has placed thousands of employees. Most of its contributions come from foundations and corporations.

On July 27 the agency will hold its annual job rally at the New York Hilton in Manhattan, with some 110 job candidates carefully chosen from its lists and at least 23 companies that have registered so far. While the agency provides its job-matching services free of charge, the businesses attending the event have agreed to contribute \$2,500 each for the opportunity to interview the applicants and attend talks on the new laws.

Despite a tight job market, Mrs. Lam expects to place about 40 percent of those attending the rally. "You no longer have to persuade a lot of companies to hire the disabled," she said. "You simply need to show them how to do it."

University of Kansas, rely on its resources.

Smaller businesses, especially, say they fear the cost of compliance. The \$11,000 that U.P.S. has spent to accommodate Mr. Holland might be judged an undue hardship for a very small company. But Rick Douglas, executive director of the President's Committee on Employment of People With Disabilities, says the average disabled worker's accommodation costs less than \$500. Some adjustments, like scheduling work around doctors' appointments or raising the desk of a worker in a wheelchair, cost nothing.

A large company might be expected to be able to employ a full-time interpreter for deaf workers, but a small company might comply by teaching a deaf worker's supervisor sign language. But many other questions are murkier. Some people are confined to their homes but can do the essential functions of a job. Will a company be required to let the employee work at home? As yet, no one knows.

Here and there, even a very small employer finds that hiring people with disabilities so desirable that Government goading is unnecessary. Two years ago, James W. Snow was opening a business, a commercial laundry in Russellville, Ark. "It was hard to find people who would start at the minimum wage," Mr. Snow said.

"So this friend of mine said, 'You know what might work? These people from the Russell Skills Center.' There, as at hundreds of other centers in other communities, people who are retarded and have other mental disabilities learn to work and to live independently. "They can do the folding, the sorting and the processing of your laundry."

Mr. Snow said 5 of his 16 employees come from the center, which provides coaches for the workers until they learn their routines. The workers are paid the same as others without disabilities. "It all works well for me," Mr. Snow said. "I'm ecstatic. If I could do more, I would do more."

Do you have The Times delivered?

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 for the Deaf, Berkeley, and
 et University.
 rke was the first deaf person
 rwrite captioning for an entire
 on program. In 1983, he founded
 established to support the ef-
 the National Captioning Insti-

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 ANDREAS ANDREASSEN
 MAY 92



Terrence J. O'Rourke

tute to provide captioned television programming.

O'Rourke authored the best-selling sign language text, *A Basic Course in Manual Communication*, as well as *A*
Continued on page 9

Marilyn Quayle says President may adapt his re-election campaign for deaf

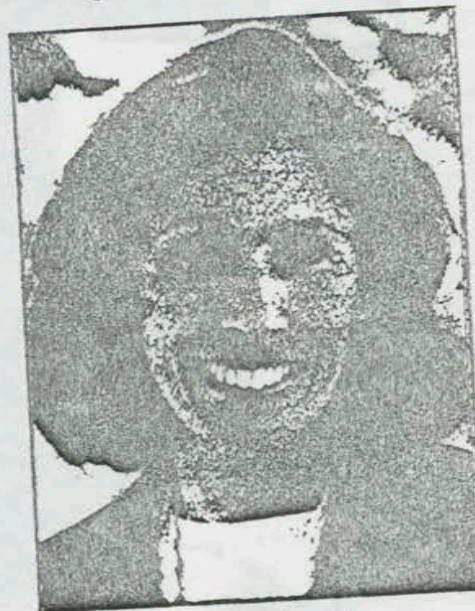
By M. Kathleen Wagner

Marilyn Tucker Quayle would be surprised if President Bush didn't adapt his re-election campaign for the deaf.

The vice president's wife, who toured the National Technical Institute for the Deaf on January 15, said that Bush television ads probably will be captioned and his speeches likely will be interpreted into sign language.

"I'm absolutely not involved in the planning but it would surprise me if they were not," Quayle said. "One of his pieces of legislation that he's very proud of that he signed into law is the Americans with Disabilities Act, which has done a great deal for the hearing impaired."

Quayle, who has a hearing-impaired sister, toured NTID, on the campus of Rochester Institute of Technology, and addressed a Republican luncheon during her one-day swing through



Marilyn Quayle

Rochester. An estimated 55,000 deaf and hard-of-hearing people live in the metropolitan area — the largest per-

Continued on page 7

This document is from the collections of the Dole Archives, University of Kansas
<http://dolearchives.ku.edu>
 Sundlun wants a fresh commission, made up of new and some old members, says Peter Dennehy, a Sundlun policy aide for human services.

"Our greatest concern right now is services for the deaf community at large," Dennehy says. "A commission that can't even approve its own minutes is not able to carry out its mission."

The forced resignations were applauded by most commission members, who have already submitted their resignations, says Panarace.

And more than 50 members of the
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JHS 47 and PS 35 share the same E. 23rd St. building but now occupy separate parts of it and have different administrators. Those divisions hurt the educational process, protesters said. Joan O'Shea, who has been principal

"The move was made to meet the expanding needs for these kids," said Terte.

— Daily News, New York, NY
January 10, 1992

son, 8, in mobile

By Chris Frink

An early morning fire that consumed most of a mobile home south of Denham Springs, Louisiana killed an 8-year-old boy and left four members of his family hospitalized on January 4.

The body of Willie Morgan was discovered in the home after the fire was put out, said Chief Chris Barnes of Fire Protection District No. 5.

Wesley Morgan escaped the fire with his wife, Sue, 12-year-old daughter Sally and 11-year-old son Chad. The Morgans are all deaf; the parents also are legally blind.

The four remained hospitalized Saturday at the Medical Center of Baton Rouge, but may be released Sunday, said Cindy Mann, a family friend.

Linda Johnson, who lives near the Morgans in Eastover Estates off La. 16, said, "The flames were humongous; (they) scorched the pine trees way up high." Johnson said she began videotaping the fire even before fire trucks arrived.

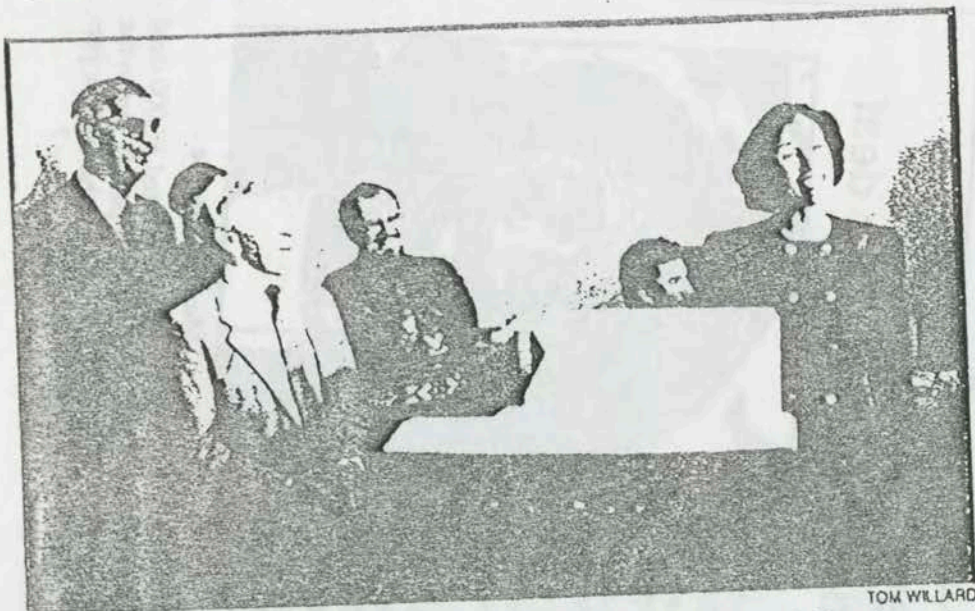
"The whole front part of the house was on fire," said Lloyd Landry, another neighbor. "People were trying to break in the back to help them get out."

Barnes said the front part of the trailer was engulfed in flames when the first unit arrived.

The volunteers initially focused on trying to find the 8-year-old before trying to extinguish the fire. "We put in four search and rescue teams to try and find the boy," he said.

There was some confusion over where in the trailer the boy was. "We had some indications he was in the back part of the trailer," Barnes said.

"There was no way we could have



Marilyn Quayle talks with the media in the computer-assisted laboratory at NTID. Looking on are (L to R) Thomas Plough, RIT provost, William Castle, NTID director, and James DeCaro, NTID dean.

Quayle says Bush may adapt campaign

Continued from page 1
capita concentration in the country.

Sally Tucker, Quayle's younger sister, works in Indianapolis as payroll supervisor for the state of Indiana, Quayle said. Tucker communicates by reading lips and speaking, she said.

An advocate for the deaf and hard of hearing, Quayle serves as an honorary member of the board of directors of the Deafness Research Foundation and has visited other facilities for the deaf.

"I am not a professional by any means but just by coming to institutions like this that are doing so many wonderful

things and also showing that hearing impaired are just like the rest of us and can be very valuable employees—that helps too," Quayle said.

She said she also stresses "the fact that parents should really pay attention to their children's hearing ability and get them tested early on because early intervention will help them deal more with the hearing world on a more equal basis."

— Times Union
Rochester, NY
January 16, 1992

ABILITY

CRIPPLING IMAGES: EDUCATING THE VICE PRESIDENT

BY GEORGE A. COVINGTON

As Special Assistant to the Vice President, I spend a great deal of my time fighting myths, negative images, and stereotypes. Not his, but ours. "Ours" refers to myself and the 43 million other Americans with disabilities.

Two weeks after the 1988 Presidential election, I called David Beckwith, who had just been appointed Press Secretary for Vice President-Elect Quayle. Dave and I met in law school and had remained friends over the years.

"Dave," I said, "It has taken the American media 200 years to create the negative images and stereotypes they use to describe Americans with disabilities. It took them two months to do the same job on your boss. Do you think Dan Quayle would like to help us change our image if we help him change his?"

Quayle thought it was a great idea. The Monday after the inauguration I became the first White House staffer to work full time on disability issues.

For most of my adult life, I've explained disability issues in a style that has often been called "brisk or blunt". Education is a never-ending task, but Dan Quayle proved to be the quickest learning student I've ever had.

The first thing I told the Vice President was that disabled people were tired of hearing politicians talk. We were more interested in finding a politician who would listen.

"Mr. Vice President," I explained, "we're tired of being treated like a charity. We want to be treated like any other constituency."

Long before I wrote his first speech, we discussed the two principles that I have used for more than a decade to explain disability issues to groups of able-bodied people.

The first principle is: People with disabilities can lie, cheat, and steal just like able-bodied people. Disabled people can be fools, fakes, and frauds just like able-bodied people. If you cannot accept these statements, you cannot truly accept the concept that disabled people are just like everyone else, except they have a disability. A disability becomes a handicap only when structural or attitudinal barriers make it so.

Some of us with disabilities are charming, witty, and highly intelligent; some of us are not. The disability didn't determine which of us would be sexy and which of us would be sexist. A disability gave us a different perspective, not a different personality.

Some of us get married, have children, live happily ever after, or some of us get divorced (not necessarily in that order). Some of us never leave home; most of us do.

Some of us have reached a comfort level that allows us to debate semantics and determine that "cripple" and

"handicapped" are no longer acceptable. Others are still debating whether "disabled people" should be replaced with "people with disabilities". This later debate is generally restricted to the disabled gurus living inside the Washington, DC beltway. Yes, some of us are disabled gurus, or gurus with disabilities, if you choose. Many of us feel that we are not "visually challenged", "physically challenged", or, if you're short, "vertically challenged". When the obstacles are removed so are the "challenges".

We are as different and diverse as everyone else in the world. We simply have a disability.

The second principle is: The road to Hell is paved with good intentions. The media has always approached disability issues with the best of intentions, but good intentions are not enough. The power of the media is such that its descriptions of disabled people and our issues can be devastating.

Dan Quayle is more acutely aware of the effects of media than any Vice President in history. He easily understood the media's power to create and shape images.

When I introduced the Vice President during the swearing in ceremony of Justice Dart as Chairman of the President's Committee on Employment of People with Disabilities, I told the 125 disabled

continued.

people present, "Few able-bodied people can better understand the problems we disabled people face by a negative portrayal in the media."

Although the news articles and feature stories about disabled people and our issues are well-intentioned, in many cases they have served to perpetuate stereotypes and negative attitudes held by the general public.

Recent news articles and features have tended to divide disabled individuals into two categories: the poor, pitiable, pathetic creature of charity or the heroic, undefeated "super cripp." It is not uncommon to find stories that begin with the first image and culminate in the second.

The disabled individual as an object of charity is an image as old as recorded history. Until recently, the news media often wrote of disabled individuals as though they were characters from a Gothic horror novel. Disabled individuals were "struck down in their prime", "afflicted with...", "a victim of...", "confined or bound to a wheelchair...", or "doomed to a life of..."

Part of the modern image of the disabled person as an object of charity was created by organizations attempting to raise money for their causes. These organizations, with the assistance of the news media, have caused generations of Americans to see the disabled as poor, defenseless children in need of pity and charity. Most of these organizations were directed and managed by able-bodied individuals. While they raised hundreds of millions of dollars over the past decade, they did little to improve the image of people with disabilities. Recently a number of these organizations have begun to bring disabled people into decision making positions.

"Super cripp" has been around since the penny newspaper, but in recent years this image has been the favorite of the

mass media. "Super cripp" is a character, usually "struck down in the prime of life" who fights to overcome insurmountable odds to succeed as a meaningful member of society. Through strength of will, perseverance and hard work, the disabled individual achieves a "normal" life. Depending on the news organization, this scenario might also include mother, God, country and the active intervention of UFO's or Bigfoot.

Perhaps the most troubling aspect of the "super cripp" character is that the news media herald as "super human" the achievement in a disabled person's life that would be considered normal, routine and completely unnewsworthy in the life of an able-bodied person. Too often, the news media treat a disabled individual who has attained success in his field of profession as though he were one of a kind. While this one-of-a-kind aspect might make for a better story angle, it perpetuates in the mind of the general public how rare it is for the disabled citizen to succeed.

Another problem we have with the media is the "I have a handicapped friend" syndrome. It sometimes appears that every member of the media has one disabled acquaintance who, by virtue of their disability, is the sole authority on all matters of disability. This "friend" is quoted as an authority on any matter that involves a disability issue. A person with a mobility impairment may not, however, be an expert on mobility and access problems. One blind person may be an expert on technology, while another blind person may have no interest in the subject, and thus no knowledge of the issue.

The problem is a circular one. It is as young members of the general public that men and women of the news media derive their attitudes about people with disabilities. As a former journalism professor, I know the images and stereotypes of disabled people are not left at

the front door of the journalism school but remain to become a part of the psyche of the working reporter. With the appearance of these reporters' news stories, the cycle begins again.

Good intentions with bad results are not restricted to the press. Too often in the past, able-bodied individuals and groups came up with projects and products that they knew "would be great for handicapped people." They never bothered to ask disabled people for input. Their enthusiasm was great, but their idea or product was a disaster. They were more interested in a "warm and fuzzy" concept than they were in a substantive idea. Often their feelings were hurt when disabled people threw the cold water of reality on what had been the warm glow of poorly directed good intentions. It is too late to ask for our input after the concrete has been poured and the last nail driven. Tens of millions of dollars have been wasted on projects for disabled people that had little or no input from disabled people. Able-bodied people must learn to ask us if we need it, want it, or can afford it. Ask us, then listen.

In his first two years in office, the Vice President met one-on-one and listened to more disabled people than all the previous Vice Presidents in history. Through his speeches, meetings, and visits he has raised the disability issue to a level of national interest never before achieved by an elected official.

In the past three-and-a-half years Dan Quayle has become familiar with disabled people and their issues. He knows that a middle class, white male in a wheelchair is not the "average" disabled person. He knows we are male and female, that we come in all sizes and ages, and that our skin has many hues. Although Dan Quayle has known disabled individuals and their issues all of his public and private life, he continues to listen and to learn about us.

□ JULY, 1992

GOP opens arms, Dome to disabled

By DAVID PLESA
OF THE HOUSTON POST STAFF

The GOP is putting its money where its mouth is.

While preaching the politics of inclusion on the campaign trail, the Republicans are being extra careful to make sure no one gets left out of next month's national convention.

To that end, convention officials are spending \$40,000 to make the Astrodome more accessible to the disabled during the Aug. 17-20 event.



"For years these people have had accessibility trouble, and we don't want to see that here," said Blake Williams, director of disability issues for the convention.

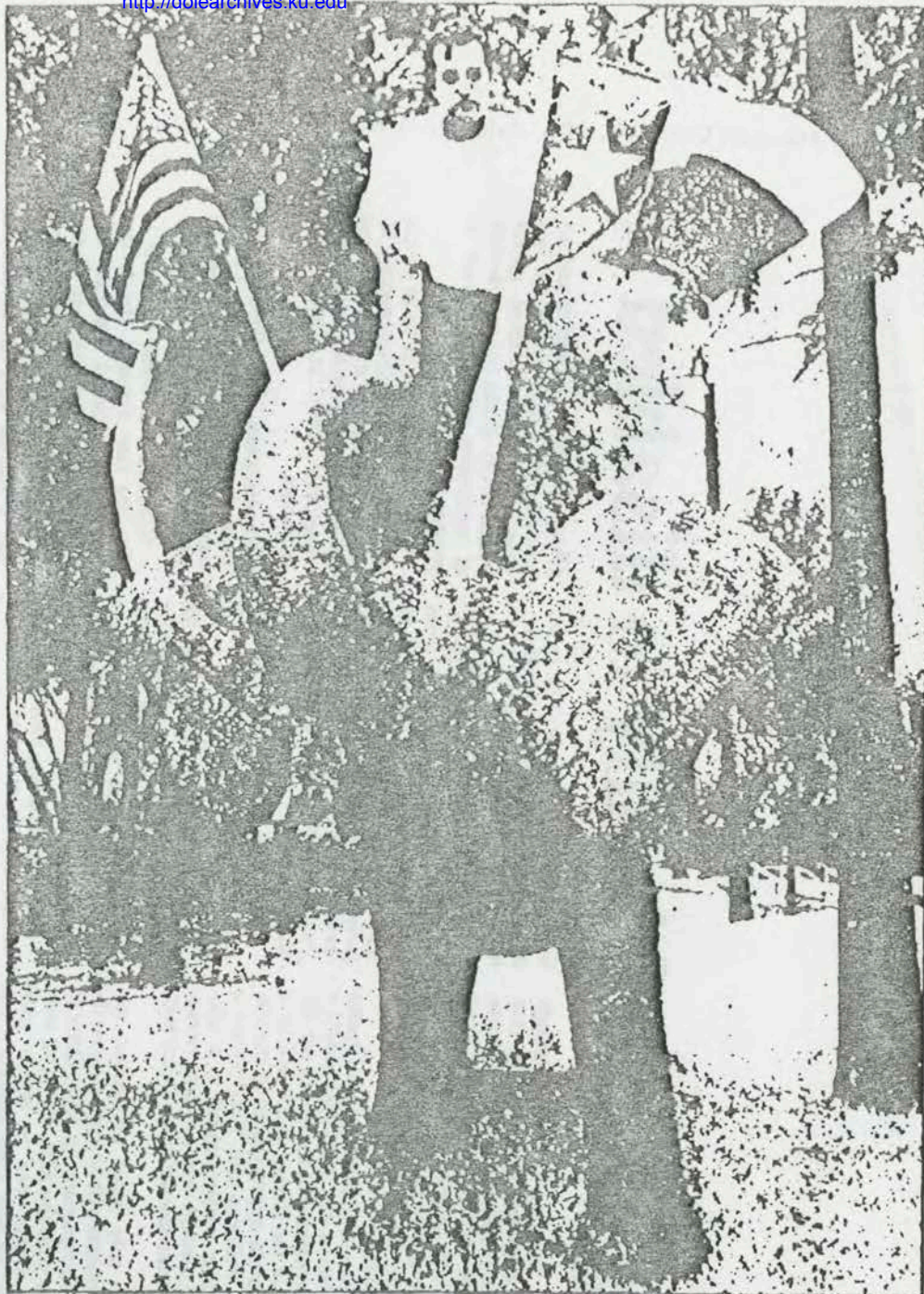
Williams said the convention's program for the disabled goes beyond the requirements of the Americans with Disabilities Act, which President Bush signed into law two years ago.

The act is designed to protect the nation's estimated 43 million disabled people from discrimination in employment, public accommodations, transportation and telecommunications.

While the Astrodome already has special elevators for wheelchair-bound patrons, convention crews will build four ramps at different stadium locations for the physically disabled.

Extra space on the convention floor and

Please see GOP, A-15



Ira Strickstein/The Houston Post

Daniel Saporzede places a Texas flag on a 9-foot loptary elephant outside the Houstonian hotel, President Bush's home during the convention.

The Houston Post, A-1, July 29, 1992

GOP: Aiming to open doors at Astrodome

From A-13

in the stands will be cleared for delegates and guests in wheelchairs. And a special motorized lift will enable the physically disabled access to the 9-foot-high stage on the speakers podium.

Also, conventioners in wheelchairs will be lodged in hotels accessible to the disabled. And a special shuttle system with buses and vans equipped with wheelchair lifts will provide transportation to the Dome.

For the hearing impaired, one of the Astrodome's two huge overhead screens and television monitors in the seating areas will provide captioning of all convention speeches. Closed-captioning will be transmitted over the RNC Network, the gavel-to-gavel satellite feed provided by the convention.

Sign interpreters have been recruited to volunteer their services if needed. Hearstets with a direct feed from the podium microphone will be issued to those with problem hearing.

To accommodate conventioners with visual impairments, many convention documents, programs, schedules and other printed materials will be available in Braille and large-print type.

GOP making Dome friendly to disabled

481

By CHRIS PAYNE
Houston Chronicle

The Republicans are pulling out all the stops to accommodate disabled delegates and other guests attending the upcoming GOP convention.

Convention officials are pollishing off an ornate bus program to improve the Astrodome's facilities for disabled participants, ranging from wheelchair lift-equipped buses on all routes to and from the Astrodome to closed-captioning on all podium activity for the hearing-impaired and Braille-printed literature for the blind.

The plan's impetus comes from the Americans with Disabilities Act that President Bush signed into law in 1990. And some of the improvements are ultra high-tech.

For instance, hearing-impaired visitors upon request can use sophisticated headsets called "infrared as-

sistive listening devices," through which they can tune directly into podium speeches. The devices are for those who are not deaf but have a significant hearing loss, said Blake Williams, director of disability issues for the Republican National Committee.

In concert with the Houston Sports Association, the RNC will install a "telecommunications device for the deaf" in the Dome, which will be a permanent improvement to the stadium, Williams said. The device is a computer screen hooked to a telephone through which a deaf person can communicate using typed messages.

The only other permanent improvements will be work done on the Dome's restrooms to bring them up to par with the ADA, Williams said. "The Dome was in pretty good shape," he said, when asked if it was accessible for the disabled before the RNC began improvements.

An open-captioned service will enable the hearing-impaired to look at monitors positioned over the seated areas in the stands or the massive Diamond Vision screen looming high over the floor for a simultaneous script of podium activity. Below the speakers' images on the screen, the

text of their speeches will be typed out by three lightning-fingered stenographers, Williams said.

For those hearing-impaired conventioners who may find themselves watching the festivities from their hotel room TVs, they will be able to read the podium text similarly through a free close-captioned service pulled down by satellite from the RNC Network broadcasts, Williams said.

There also will be a crew of sign interpreters to fill in any gaps, Williams said.

The RNC will spend about \$40,000 on the disability improvements for the Dome, he said. About 25 volunteers with special "sensitivity training" will be on duty during the four-day confab.

For blind visitors, Braille editions of the Republican platform document, podium speeches and a slew of other convention literature will be available upon request, Williams said. And, special large-type editions of the same material will be ready for those who are not blind but have difficulty seeing, he said.

Williams said each of the state delegations converging on the Dome Aug. 17-20 were sent questionnaires

asking how many delegates and alternates would require disabled services. For other disabled guests seated in the stands, he said the staff of volunteers will be on hand to provide them with services.

Williams said that 20 to 30 people will need wheelchair-accessible facilities during the convention, and the RNC is installing four temporary wheelchair ramps at major Dome entrances.

Republicans and Metro have worked out an agreement for the transit system to provide plenty of wheelchair lift-equipped bus routes.

Williams is a former assistant to the late Lee Atwater, the former Republican national chairman and bare-knuckled architect of Bush's 1988 presidential campaign who died of cancer last year at 40. He said he has a special interest in disabled issues since, before his death, Atwater was in a wheelchair.

"It was something I hadn't dealt with at that point, and it became very real to me real fast," Williams said. "So I asked (convention manager) William D. Harris if he would let me do this, and he was kind enough to let me."

Handicapped

The Disabled Find a Voice, And Make Sure It Is Heard

MAR 18 1990

By STEVEN A. HOLMES

WASHINGTON
THE pictures were striking, just as they were intended to be: Children paralyzed from the waist down crawling up the steps of the Capitol, and more than 100 protesters, most in wheelchairs, being arrested by police officers in riot gear after a raucous demonstration in the Rotunda.

The aim of the demonstration was to press for enactment of the Americans with Disabilities Act, a comprehensive civil rights bill that extends to physically and mentally disabled individuals the same protections against biased treatment in employment, transportation and public accommodations now accorded women and minorities.

"You can view disability rights as one of the latest chapters in the overall civil rights movement," said Wayne Sailor, a professor of special education at San Francisco State University.

It was not always so. For years, the agenda for the disabled was set by organizations like the March of Dimes and the Easter Seals Foundation, which focused on providing services for the disabled and prying money loose from government and individuals to find cures for such illnesses as cerebral palsy.

In the last two decades, however, the attitude of those with disabilities has shifted from being passive recipients of institutional largess and paternalism to demanding a full role in society. "We're not Tiny Tims, or Jerry's kids," said Bob Kafka, a quadriplegic from Austin, Tex., as he demonstrated outside the White House last week.

The disability rights movement was shaped by a number of scientific, cultural and political forces. In many ways, it is a by-product of the technological revolution. Breakthroughs in medicine, the development of computers that allow the hearing and

speech impaired to use telephones, and advancements in motorized wheelchairs have meant more people with severe handicaps live longer, can do more for themselves and have the potential for enjoying fuller lives.

"There are people with serious spinal cord injuries who used to die within two weeks that now live 30 or 40 years," said Dr. Frank Bowe, a deaf scholar whose 1978 book "Handicapping America" is to the disability rights movement what Betty Friedan's "The Feminist Mystique" was to the women's movement. "It's one thing to say we have this marvelous technology, but if nobody's going to hire you, what's the point?"

As the most efficient means of creating disabled people, wars have always been a factor in advancing the disability rights movement, and Vietnam was a main force. The war added a large number of disabled veterans, already angry over America's indifference to their sacrifice in Southeast Asia, to an army of people with disabilities demanding fairer treatment. The Library of Congress, for example, estimates there are 43 million Americans with some form of disability.

In 1973, after two vetoes by President Richard M. Nixon, Congress passed Section 504 of the Rehabilitation Act, which barred discrimination against the disabled by any entity receiving Federal funds. But no regulations were written to put it into effect until 1978, after advocates staged a 28-day sit-in.

Entrenched Barriers

But barriers remained entrenched in the private sector, where the bulk of the new jobs were created in the last decade. "We had no rights at all there," Dr. Bowe said.

During the 1980's, the disability rights movement struck an alliance with traditional civil rights and feminist groups. As a result, for the first time, discrimination against the disabled was barred in the sale or rental of housing. "Standing alone, we could not have

Doing whatever it takes to fulfill the promise of a landmark Federal law.

done that," said Pat Wright, director of the Disability Rights Education and Defense Fund, who is legally blind. "But wrapped in the arms of the civil rights community we had a lot more power."

The movement has also gained sympathetic ears both on Capitol Hill and in the Bush Administration. Officials and lawmakers who have relatives with various afflictions are more responsive, as are politicians who are increasingly aware that the votes of the disabled are up for grabs.

That point became clear after the Republican National Convention in 1988, when, in his acceptance speech, Mr. Bush became the first Presidential candidate to address the problems of the disabled directly. A poll by Louis Harris and Associates taken after Mr. Bush's speech showed that the lead Michael S. Dukakis held over Mr. Bush among disabled voters fell to 10 points, from 33.

But advocates say they have just begun. Just as the Government can pass laws that end racial discrimination, but not racism, it can outlaw biased treatment of the disabled but not mandate acceptance of them.

"You can't legislate attitudes," said Ms. Wright. "But the attitudinal barriers will drop the more disabled people are employed, the more they can be seen on the street and when we become not just a silent minority, but full participating members of society."

Voters

1/18/1992

HARKIN COURTING DISABLED VOTERS

Iowan Is Emphasizing Role in '90 Disability Rights Law

By STEVEN A. HOLMES

Don Anderson has never worked for a Presidential candidate before. But this year, Mr. Anderson, who is paralyzed from the chest down and has only partial use of his arms, is enthusiastically supporting Senator Tom Harkin's drive for the Presidency.

For Mr. Anderson, a 38-year-old resident of Lansing, Mich., what makes the Iowa Democrat stand out from the pack is his stand on the disabled.

"He is someone who is carrying our issues forward and who can call attention to our issues," said Mr. Anderson, who lost full use of his arms and legs in a diving accident when he was a teenager. "Most people in the country are just not aware of the issues of importance to us."

Getting Politically Involved

In the past, the closest Mr. Anderson came to getting politically involved was in lobbying the Michigan Legislature for programs for people with mental or physical disabilities. Now he is busy organizing disabled residents of Michigan to help get Mr. Harkin into the White House.

In 1968, hordes of "Clean for Gene" students canvassed New Hampshire for Eugene McCarthy. In 1976, the Georgia-based "Peanut Brigade" stumped for Jimmy Carter. Four years ago, many people believed that Pat Robertson had an "invisible army" of Christian fundamentalists to aid his campaign.

This year, Mr. Harkin hopes to be carried to the Democratic nomination partly on the strength of support from people like Mr. Anderson who use wheelchairs or who carry red-tipped white canes or who communicate with sign language.

While his rivals say they are committed to expanding the rights of the disabled, and one, Senator Bob Kerrey of Nebraska, who lost part of a leg in Vietnam, can serve as a role model, no other Democrat has courted the disabled as vigorously as Mr. Harkin.

He has hired a campaign staff member whose sole job is to organize disabled voters. He has insisted that all his main campaign offices be accessible to those with physical impairments. In addition, he has had special tele-



George Tames for The New York Times

While his rivals say they are committed to expanding the rights of the disabled, no other Democrat has courted the disabled as assiduously as Tom Harkin. Jennifer Rigger, shown in a campaign office in Bethesda, Md., is national disability constituency coordinator for Mr. Harkin.

phones installed in his offices so that people with speech or hearing difficulties may contact the campaign. On the stump he has a sign language interpreter close by, and he reminds audiences that he was the prime Senate sponsor of the Americans with Disabilities Act, a civil rights statute that became law in 1990. He peppers his stump speech with politically correct metaphors, referring to "ramps" as well as "ladders" of opportunity.

"There is a tremendous amount of excitement about this candidate," said Paul Steven Miller, director of litigation for the Western Law Center for the Handicapped, a Los Angeles public interest law firm.

Yet Mr. Harkin's effort to organize the disabled has been slow getting started. So far, there is only a small number of disabled volunteers in New Hampshire, which will hold the first primary election next month. Advocates for the disabled have been contacted in 40 states, but state committees have been established in only 19.

Mary Johnson, editor of The Disability Rag, a newspaper published every two months, said she was "a little

startled by the lack of attention to disability issues" in Mr. Harkin's campaign literature. But Jennifer Rigger, the campaign staff member responsible for organizing the disabled, said a new direct mail brochure was being prepared that would focus on disability issues.

Mr. Harkin has often talked about the potential political power of the disabled, a group estimated by a 198 Library of Congress study to number 43 million Americans.

"The issue of accessibility and mainstreaming is the single most important issue in their lives," Mr. Harkin said. "Now, every disabled person has a spouse, brothers and sisters; they have family members. That's why it's more than 43 million people."

The civil rights law that Mr. Harkin fought for bars discrimination on the basis of physical and mental disability in employment, transportation, public accommodations and telecommunications services. Among its requirements are that lifts be installed in all new public and private buses and that businesses install wheelchair ramps and widen doors and aisles when feasible.

COMMUNICATION TIPS FOR WORKING WITH HEARING-IMPAIRED INDIVIDUALS

- Be sure you have the individual's attention—a gentle tap will do.
- Announce your topic before jumping into a discussion.
- Some individuals are skilled lip-readers; many are not. It is important to remember that only 30% of spoken English is visible on the lips. Speak a bit slower, but don't exaggerate.
- Use open-ended questions that require more than "yes or no" to ensure that you have been understood. A nod and a smile are not proof.
- Don't limit your communication because you feel awkward. Paper and pen are cheaper than misunderstandings. Use your facial expressions and body language to clarify your message. Rephrase difficult or technical vocabulary.
- Be aware that even a small hearing impairment can hinder comprehension. Don't assume that a hearing aid corrects a hearing loss.
- Make sure all important information is written down . . . and understood.
- Include "small talk." As you keep up with small events of your team, include *all* the staff. Frequent face-to-face conversations show interest.
- The telephone is a major road hazard. A TDD (Teletypewriter Device for the Deaf) is *the* link to the outside world.
- Sign language can be encouraged in your office. Even if coworkers never become fluent, it eases the feeling of isolation and facilitates communication—"Somebody cared enough to try."
- Don't underestimate an individual's abilities—allow them the opportunity to succeed—the real handicap isn't the deafness, it's the prejudice and stereotyping.
- When using a sign language interpreter, look directly at the deaf person—talk *to* the individual—the interpreter is only there to facilitate, not to participate.
- Hearing loss does not affect the mind, only the ears.
- *Remember—the hearing impaired individual is first a person. A person whose needs are the same as yours: to be understood, respected, and accepted.*

ON THE FASTRACK BILL HOLBROOK



KAL LAZARIUS

ON THE FASTRACK BILL HOLBROOK



QUOTES BY BUSH AND OTHERS IN THE ADMINISTRATION REGARDING

THE AMERICANS WITH DISABILITIES ACT

STATEMENT BY VICE PRESIDENT GEORGE BUSH ON DISABLED AMERICANS 3/31/88

I understand what disabled people strive for - independence, control of their own lives and integration into the society...

These handicapped individuals made it very clear that those in the disability rights movement have two critical goals: the right of people with disabilities to control their own lives and make meaningful choices; and the right to be integrated into all aspects of society...

Our society cannot ignore the needs of this excluded population. We must develop programs and policies that promote independence, freedom of choice and productive involvement in the social and economic mainstream. This does not merely mean employment. It also means access to the mainstream educational system, to public accommodations, to public transportation - in other words, meaningful access to all aspects of society...

Excluding the millions of disabled who want to work from the employment ranks costs society literally billions of dollars annually in support payments and lost income tax revenues...

In order to assure that every American who wants a productive job in the private sector has a job, I will continue to support initiatives to... improve transportation and work place accessibility for existing facilities and insist on accessibility for all new construction...

NATIONAL ORGANIZATION ON DISABILITY REPORT, WINTER 1989

GEORGE BUSH

"Although handicapped children and adults have made many gains in the last decade, the stark fact remains that unnecessary segregation and exclusion of handicapped people continues. As a result, disabled adults and families with disabled children suffer from stress, dependency and isolation." June, 1988

"Disabled people do not have the same civil rights protections as women and minorities. However, an enactment of the Americans With Disabilities Act of 1988 or similar legislation would remedy this situation." August 10, 1988.

"I am going to do whatever it takes to make sure the disabled are included in the mainstream. For too long they've been left out. But they're not going to be left out anymore." August 18, 1988, Acceptance Speech, New Orleans, Republican National Convention.

"I want to help those with disabilities fit into the mainstream."
October 13, 1988, television debate.

GOVERNOR JOHN H. SUNUNU, OFFICE OF THE PRESIDENT-ELECT,
DECEMBER 30, 1988

Dear Mr. Dart:

Many thanks for your kind letter of December 11. I appreciate you taking the time to get in touch, and let me know of your involvement with the Congressional Task Force on Americans with Disabilities, and the National Council on the Handicapped.

Rest assured that George Bush and I are strongly committed to help disabled Americans achieve independence, control over their own lives, and integration into our mainstream of American life. This commitment stems from our firm belief in the ideals of human freedom and human dignity.

Once again, thanks for writing, and please do keep in touch. Best wishes to you and your family throughout the new year.

Sincerely,

Governor John H. Sununu

PRESIDENT GEORGE BUSH, INAUGURAL '89 (1/18/89)

"Barbara and I just wanted to pop in on what is the first day of this inaugural marathon to pay our respects and to wish you well, to have a chance to come by this particular celebration of renewed opportunity for people with disabilities.

"I said during the campaign that disabled people had been excluded for far too long from the mainstream of American life. And I still believe that this is an accurate statement. And I want to do what I can, working with those of you in this room that care too, I want to do what I can to correct all of that.

"One step that I've discussed will be action on the Americans With Disabilities Act in order, in simple fairness, to provide the disabled with the same rights afforded others, afforded other minorities. And I share your dreams for full participation, not only because it's the right thing to do, but because we need your talent and energy to meet the global economic challenges ahead."

VICE PRESIDENT DAN QUAYLE, INAUGURAL '89 (1/18/89)

"In his acceptance speech on August 18, George Bush promised, 'I'm going to do whatever it takes to make sure the disabled are included in the mainstream.' I can tell you that this commitment is deep and it is wide. We know, and you know, that without aggressive public and private support, disabled people cannot achieve their dreams of independence, gain full control over their lives, and integrate into the mainstream of American life.

"We will support efforts to make transportation and the workplace more accessible to you, for now and for new construction in the future. We will support initiatives involving independent living centers in order to help disabled persons with the transition to independence. And we will urge private insurers to find ways to include, not exclude, disabled workers in their programs."

MRS. VIRGINIA THORNBURGH, INAUGURAL '89

"Let us not forget this ticket and this team's consistent commitment to the issues of civil rights. Let us not forget their early endorsement of the Americans With Disabilities Act. We're going to need their help in the months ahead getting it passed. And let us never forget their recognition in August in New Orleans of our need, of our right to benefit fully from the blessings of this great nation.

"We, the disability community here assembled, pledge to work with you to create not just a kinder, gentler nation, but a more inclusive nation."

TEXT OF THE PRESIDENT'S SPEECH TO CONGRESS, 2/9/89

To those 37 million Americans with some form of disability: you belong in the economic mainstream. We need your talents in America's workforce. Disabled Americans must become full partners in America's opportunity society."

"I believe in a society that is free from discrimination and bigotry of any kind. I will work to knock down the barriers left by past discrimination and to build a more tolerant society that will stop such barriers from ever being built again."

AMERICANS WITH DISABILITIES ACT

A newsletter for Kansas law enforcement

Vol. 1, No. 2

January, 1993

We are happy to inform you that the Kansas Law Enforcement Committee on the Americans With Disabilities Act has developed a generic job description and application form to aid Kansas law enforcement agencies in complying with the requirements of the ADA. You will find copies of these documents in the enclosed packet of material. If you decide to use these forms, please have them reviewed by your legal counsel, human resources representative and your ADA coordinator prior to implementation. A detailed cover letter is attached to each form to make implementation as easy as possible.

In addition to the development of the generic forms, the Committee has agreed to provide ADA training at a number of sites across the state. This training will be provided by the four attorney members of the committee. The training will be comprehensive and will include instruction on how to use the generic forms developed by the committee. As you can tell from the attached registration information, the training will be given at Garden City, Wichita, Lawrence and Salina. The Committee has also agreed to train at Hays and Chanute if a minimum of twenty register for each of those locations. If twenty do not register, those individuals who registered for these sites will be informed in time to attend one of the other locations.

Notwithstanding the work of the Committee thus far, we urge you and your agency to not delay in insuring you are in compliance with all aspects of the ADA. The forms and training are intended to aid you in your ongoing and continuing efforts to comply with the ADA.

The remainder of the Newsletter will be a continuation of our discussion concerning ADA legal issues.

Reasonable Accommodations and the Impact of the ADA on Current Employees

by Anne Brunt

Anne is an attorney and works for the Kansas Bureau of Investigation as director of personnel.

DOES THE ADA IMPACT CURRENT EMPLOYEES?

Yes... If a current employee becomes disabled, under the definitions of the ADA, current employees are protected by the Act, just as are new hires.

It is particularly important that your job descriptions are accurate and complete prior to dealing with a disability incurred by a present employee. In general, it is too late to identify essential functions after an employee says he/she

can no longer perform the essential functions of the job. Identifying essential functions after the fact opens you as an employer to the perception that you will identify the essential functions in your favor and against the employee. Therefore, make certain you identify the essential job functions as soon as possible, while there are no problems.

If an employee cannot perform a "marginal" function of the job, then reassignment of that task is necessary. If, however, the employee cannot perform an essential job function, then you as the employer must discuss reasonable accommodations with the employee.

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WHAT ARE REASONABLE ACCOMMODATIONS?

YOU, as an employer, are required to provide "reasonable" accommodations to an employee if that reasonable accommodation will enable the employee with a disability to perform the essential functions of the job, or to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities. Failure to provide reasonable accommodations is a violation of the ADA.

Reasonable accommodations may include, but are not limited to:

- acquiring or modifying equipment or devices;
- job restructuring;
- part-time or modified work schedules; and
- reassignment to a vacant position.

Example: If an officer is allergic to the latex gloves you have provided to comply with OSHA requirements for bloodborne pathogens, you should look for gloves that the officer can use, such as vinyl gloves, despite additional costs that are not prohibitive.

Employers are not required to lower quality or quantity standards set for essential job functions. Changing standards is not reasonable if the standards are valid and all employees are required to meet them. However, if they are just paper standards that are not, in fact, implemented, you may have to change them to

reasonably accommodate an employee. **NOTE:** An accommodation allows the employee to perform the essential functions of a position; essential functions are not defined by what the disabled employee can do.

WHAT IF AN EMPLOYER CANNOT PROVIDE A REASONABLE ACCOMMODATION?

An employer does not have to provide a reasonable accommodation if to do so would impose an undue hardship on the operation of the department. **NOTE: Undue hardship means that the accommodation would be unduly costly, extensive, substantial or disruptive, or would fundamentally alter the nature of operation of the business.** Factors to be considered in determining whether an accommodation is an undue hardship include the cost of the accommodation, the employer's size and financial resources and the nature and structure of the employer's operation.

HOW DOES AN EMPLOYER KNOW WHAT ACCOMMODATIONS TO MAKE?

If a reasonable accommodation is not obvious, one of the best ways to determine possible accommodations is to ask the employee what he/she thinks would be reasonable in enabling them to perform the essential functions of the position. In addition, you should consider consulting the EEOC, state and local rehabilitation agencies, disability agencies and the Job Accommodations Network (JAN). JAN provides its services for free and is very helpful in identifying physical accommodations for employees who become disabled. The JAN telephone number is 1-800-527-7234.

The ADA and Pre-Employment Testing

by Melanie Jack

Melanie is the legal advisor for the Kansas Bureau of Investigation.

The American's With Disabilities Act (ADA) does allow the administration of certain tests including, but not limited to, drug testing, aptitude testing, testing of knowledge and skills, intelligence testing, physical agility testing and job demonstration testing. These tests must be job-related and consistent with business necessity. Medical tests or examinations are not permitted prior to a conditional job offer being given.

The intent of permitting certain tests pre-job offer is to prevent individuals with disabilities from being excluded from jobs which they can actually perform even though the disability prevents them from taking the test. The ADA requires that tests be given to people who have impaired sensory, speaking or manual skills in a format and manner that does not require use of the impaired skill unless the test is designed to measure that skill.

The employer has an obligation to provide a reasonable accommodation to the applicants to assist them in completing the test. This requirement protects applicants with disabilities from being excluded from jobs they can perform but a disability prevents them from taking the test or negatively influences the test result. Generally, an employer is only required to provide an accommodation if he/she knows prior to administering the test that an accommodation will be needed. It is the responsibility of the individual with a disability to request an accommodation.

The following are examples of reasonable accommodations in testing:

1. Substituting a written test for an oral test for people with impaired speaking or hearing skills.
2. Administering a test in large print, in Braille, or by a reader for people with visual or other reading disabilities.
3. Providing extra time to complete a test for people with learning disabilities or impaired writing skills.
4. Scheduling rest breaks for people with mental or other disabilities that require such relief.
5. Assuring that a test is accessible to a person with a mobility impairment.

If a department requires police applicants to complete a physical fitness test and an applicant is physically incapable of participating in the test, the law enforcement agency is required to consider whether a reasonable accommodation can be made. If the physical agility test is job-related and a business necessity in determining whether the applicant can perform the essential functions of the job, the agency may not be required to make a reasonable accommodation.

Drugs and the ADA

by Michael C. Gillespie

Mike is an instructor and legal advisor with the Kansas Law Enforcement Training Center in Hutchinson.

Police executives remain confused about the ADA's impact on drug testing and their ability to avoid employing drug users. Some believe the ADA bans drug testing and requires agencies to hire current and past drug users. Executives should not jump to conclusions; consult local counsel on each of these issues.

THE ADA DOES NOT PROHIBIT DRUG TESTING.

Employers may drug test applicants and employees. The ADA does not expressly prohibit drug testing, and does not encourage or authorize it, 42 U.S. § 12114(d)(2). Moreover, while the Act prohibits medical examination of applicants before a conditional offer of employment is made, 42 U.S. § 12114(d)(1) states that *"...a test to determine the illegal use of drugs shall not be considered a medical examination."* Employers are cautioned, however, that drug testing implicates constitutional and other legal concerns, and are urged to seek the advice of competent counsel when considering or developing drug testing programs.

THE ADA DOES NOT PROHIBIT RESTRICTIONS ON DRUG AND ALCOHOL USAGE BY EMPLOYEES.

Fortunately for police executives, the ADA does not prohibit workplace bans on drug and alcohol usage. The Act, at 42 U.S.C. § 12114(c), states that covered entities may prohibit the workplace use of illegal drugs and alcohol; may require that employees not be under the influence of alcohol or be engaging in the illegal use of drugs in the workplace; may require that employees comply with requirements established under the Drug-Free Workplace Act of 1988; and *"may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification*

standards for employment or job performance and behavior that such entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee..."

MUST AN AGENCY HIRE A REHABILITATED ADDICT?

The answer to this question *may* be "NO," notwithstanding ADA provisions banning discrimination against drug addicts who have successfully completed, or who are currently undergoing, drug rehabilitation/treatment programs. Of course, an agency must be able to show that the refusal to hire is based on a standard that is job-related and consistent with business necessity. The EEOC Guidelines state:

Employers are entitled to seek reasonable assurances that no illegal use of drugs is occurring or has occurred recently enough so that continuing use is a real and ongoing problem. The reasonable assurances that employers may ask applicants or employees to provide include evidence that the individual is participating in a drug treatment program and/or evidence, such as drug test results, to show that the individual is not currently engaging in the illegal use of drugs. An employer, such as a law enforcement agency, may also be able to impose a standard that excludes individuals with a history of illegal use of drugs if it can show that the standard is job-related and consistent with business necessity.

Of course, in Kansas a felony drug conviction disqualifies a person from obtaining, or keeping, permanent appointment as a law enforcement officer. K.S.A. 74-5606, 74-5616.

Post Job Offer Selection Components

by Michael R. Santos

Mike is a Senior Assistant City Attorney for the City of Overland Park, Kansas.

In the law enforcement community, the issue of what components of the hiring process can or must be given post-job offer has become one of the most controversial issues to come out of the ADA. It is my opinion that all non-medical components of the hiring process must be given prior to an agency making a conditional offer of employment. Please consider the following:

1. Medical components must be given post job offer. The ADA mandates that medical examinations and medical testing are prohibited prior to a conditional job offer being made.

Why? While the language of the ADA does not specifically articulate the reason, the legislative history clearly shows that the Congress felt that employers could not be trusted with the prior knowledge that an applicant was medically or mentally disabled. To insure that as little medical information as possible was available to the employer, the Act prohibits purposeful inquiry into medical history prior to a conditional job offer being made. This keeps the employer from knowing of the applicant's prior disabilities, and tells the applicant that, but for the medical testing, he/she is qualified to perform the essential job functions of the job. Once the conditional job offer has been made, the applicant knows that he/she has been offered the job conditioned on his/her passing the medical examination.

2. Administering non-medical components of the selection process post-job offer taints the integrity of the medical examination. If the purpose (as the legislative history indicates) of requiring medical examinations to be given post-job offer is to insure the applicant knows he/she has been offered the job conditioned on his/her passing the required medical examinations, it seems a direct undermining of this purpose to administer non-medical components during the

post-job offer period. If the background, polygraph and the medical examinations are given post-job offer, how does the applicant know that the reason he/she has been denied employment is a legitimate medical reason? For example, if the background reveals a history of a bad back that would not otherwise disqualify the applicant, how does the applicant know when told he/she is being disqualified due to poor judgment, that it was not really the employer's bias toward applicants with histories of bad backs?

3. Making a job offer conditioned on the applicant passing all of the components of the employment process clearly violates the requirements of the ADA. I have heard agencies suggest that they are simply going to make conditional job offers to each applicant as the applicant enters the selection process. The condition of these job offers is that the applicant must successfully complete each component of the process to include the psychological test, background, oral examination, polygraph test and medical examinations. For the reasons previously stated, this approach is simply asking for trouble and, in my opinion, will eventually result in allegations that the agency is violating the requirements of the ADA.

4. Can an agency move any component of the selection process to the post-job offer phase? The answer is that "it depends." It depends on what components are moved to the post-job offer phase. During recent discussions with colleagues across the country, I have seen legal advisors permit the administering of any selection process component that was medical in nature in the post-job offer phase. More specifically, some agencies have split their background to provide for a separate medical background to be conducted post-job offer.

JOB DESCRIPTION ACTION PLAN

The following procedures should be helpful in using the generic job description form to identify the duties of a patrol officer or any other employment position.

As you can tell from the form, the committee gathered data from a number of agencies across the state to identify 31 possible duties that entry level police officers perform. There may, in fact, be duties in your agency that are not included in the 31 listed. There may be duties listed that are not duties in your department. Thus, the first step is for you and your staff to identify which of the 31 or additional duties are performed by your agency.

An excellent approach to identifying the duties in your agency is to schedule a meeting with your staff to discuss the purpose of a job task analysis. The staff members participating in this meeting should include those individuals handling personnel and training and those senior members of the staff familiar with the daily duties of the patrol officers.

Your staff should collect all written memoranda, standard operating procedures, general orders, rules and regulations and employee handbook provisions that in any way describe the duties for the patrol division officer. It would also be helpful to complete a computer-assisted analysis of past patrol activities to determine what the officers spend the majority of their time doing. Make certain that all of this data is reviewed to insure that, in fact, the officers are required to do the things set forth in the documents.

Each staff member participating in the project should review the generic form and identify the duties that a patrol officer in your agency performs. For each duty listed there are one or two subtasks listed to aid you in identifying those tasks for each duty. Make certain that you include cognitive tasks such as "understanding the law of search and seizure" in each list. From the list of duties generated by your staff, you should consolidate these documents to produce a master list of job duties and tasks.

Once each duty has been accurately identified with the necessary subtasks, the duty and tasks must be validated by use of the two standards listed on the form. Those two standards are rating each for frequency and criticality. This rating should be accomplished by both incumbent officers and supervising staff. From this data you should generate an average rating for each duty and subtask. A task should be considered essential if it rates high in either frequency or criticality. If the task is rated low in both frequency and criticality, it should be carefully scrutinized to determine if it is only a marginal task that is not essential to the duties of a police officer.

Upon completion and validation, the document should be used to develop the formal job description for the department. This job description should be made available to all applicants and incumbents. It is an open record subject to review by the public. Finally, the document should be reviewed periodically to insure it continues to accurately reflect the essential job functions of the position.

AMERICANS WITH DISABILITIES ACT TRAINING REGISTRATION FORM

Please complete this form for each member of your agency that intends to participate in the Kansas Law Enforcement Committee On ADA training sessions.

The training sessions will be approximately six hours, beginning at 0900 AM and ending at 0400 PM. Registration will begin at 0830 each day. In an effort to disseminate this valuable training to as many law enforcement agencies as possible, there will be no registration fee charged for the training.

The training will be conducted at the following locations on the dates indicated:

- Garden City on January 26, 1993, at the Garden City Community College
- Salina on January 27, 1993, at the Red Coach Inn, I-35 and Crawford
- Wichita on February 9, 1993, at the Wichita/Sedgwick County Law Enforcement Training Academy, 2235 West 37th Street North
- Lawrence on February 11, 1993, at the University of Kansas campus (west campus, Nichols Hall (NASA building), Apollo Room)

If a minimum of twenty persons register, the training will also be given at the following location:

- Parsons on February 10, 1993, at LeBette County Community College, 14th and Broadway.

Please indicate the training site you will be attending. If you select Parsons, also indicate one of the four primary sites in the event fewer than twenty persons register for Parsons.

Name _____ Agency _____

Agency Address _____

City _____ Agency Phone _____

Training Location _____

If you select Parsons, indicate alternative primary location _____

Mail or FAX registration to: Michael Gillespie
KLETC
P. O. Box 647
Hutchinson, Kansas 67504-0647
FAX# 316-662-4720

JOB DESCRIPTION

Position: _____

Frequency 5-1	Critical 5-1	TASKS
_____	_____	1. Use and tactical operation of a patrol vehicle
_____	_____	A. Operate a patrol car
_____	_____	1. Independently enter and exit the patrol car
_____	_____	2. Adjust seat position
_____	_____	3. visually locate the following equipment and turn on/off:
_____	_____	a. turn signal
_____	_____	b. light switch
_____	_____	c. alley lights
_____	_____	d. windshield wipers
_____	_____	e. radio controls
_____	_____	4. Turn ignition switch on/off
_____	_____	5. Operate shift lever from park/reverse/drive
_____	_____	6. Depress brakes as necessary
_____	_____	7. Change a flat tire, to include removal of bolts, adjust jacks, remove tire from trunk, place on vehicle and tighten bolts
_____	_____	8. Turn steering wheel with one hand while operating other equipment
_____	_____	9. Maneuver vehicle safely on street
_____	_____	10. Operate radios
_____	_____	11.
_____	_____	12.

Frequency 5-1	Critical 5-1	TASK
_____	_____	2. Maintenance of patrol and other department vehicles and equipment
_____	_____	A. Patrol vehicle
_____	_____	a. <u>Fluid levels</u> must be monitored through visual inspection and containers may be opened and closed.
_____	_____	b. <u>Exterior</u> of patrol car is examined visually and by walking around the car to identify any signs of new damage.
_____	_____	c. Equipment belt - 15 lbs. - check to see all items are clean and working properly: weapon, 2 speed loaders - correct ammunition, handcuffs, leather case and key, portable radio - charged, asp and case.
_____	_____	B. Other
_____	_____	3. Transports prisoners, victims, witnesses and others
_____	_____	A. The officer must use independent judgement to select handcuffs and/or other appropriate restraints to transport an unruly or belligerent subject.
_____	_____	B. Other
_____	_____	4. Participates in high-speed emergency and pursuit driving
_____	_____	A. Exercising due care and caution in congested traffic and unsafe road conditions and environmental conditions such as fog, smoke, rain, wind, ice and snow.
_____	_____	B. After vehicle being pursued is stopped, position patrol car behind stopped car to protect officer(s) from injury.
_____	_____	C. Other

Frequency 5-1	Critical 5-1	TASK
_____	_____	5. Performs radio communication skills
_____	_____	A. Operate vehicle safely while using car radios to communicate effectively with dispatch and other officers.
_____	_____	B. Use radio telephone procedure, phonetic alphabet, J codes, and 10-codes correctly without use of reference.
_____	_____	C. Other
_____	_____	6. Performs non-radio verbal communications
_____	_____	A. Speak to subject using external speaker to order subject from car.
_____	_____	B. Gather information by asking questions and obtaining and recording the statements of other victims, witnesses, suspects and confidential informers.
_____	_____	C. Increase public relations with school children by talking with children and listening to their comments.
_____	_____	D. Other
_____	_____	7. Performs general patrol duties
_____	_____	A. Drive through alleys and visually identify open doors and signs of forced entry.
_____	_____	B. Identify, recognize and use independent judgement to respond appropriately to suspicious behavior of subjects and to determine if the subject(s) are where they should be.
_____	_____	C. Other

Frequency 5-1	Critical 5-1	TASK
_____	_____	8. Apprehension, arrest and charging of suspect
_____	_____	A. Use independent judgement to establish course of action.
_____	_____	B. Arrest individuals where there is probable cause to believe that a crime has been committed.
_____	_____	C. Other
_____	_____	9. Traffic enforcement and stops
_____	_____	A. Operate speed radar in school, business, residential, highway, and interstate zones.
_____	_____	B. Visually identify expired license tags and stop sign violations.
_____	_____	C. Determine when a violation has been committed and issue and write routine traffic citations.
_____	_____	D. Other
_____	_____	10. Performs accident investigations duties
_____	_____	A. Position patrol vehicle to control traffic.
_____	_____	B. Contact dispatch for emergency vehicles/services.
_____	_____	C. Other

Frequency 5-1	Critical 5-1	TASK
_____	_____	11. Detects and apprehends DUI suspects
_____	_____	A. Arrest individual when there is probable cause to believe that alcohol has been consumed.
_____	_____	B. Administer preliminary breath test. Assure that suspect exerts sufficient volume of air to activate unit.
_____	_____	C. Other
_____	_____	12. Handles domestic and other disturbances
_____	_____	A. Enter the premises using independent judgement to determine necessary force.
_____	_____	B. Other
_____	_____	13. Performs criminal investigations duties
_____	_____	A. Investigate and detect law violation under various conditions of criminal activity in which a standard offense report would be completed.
_____	_____	B. Other

Frequency 5-1	Critical 5-1	TASK
_____	_____	14. Displays proper search and seizure skills
_____	_____	A. Search and identify for items listed on warrant.
_____	_____	B. Evidence properly photographed, logged and secured.
_____	_____	C. Other
_____	_____	15. Performs necessary duties at crime scene
_____	_____	A. Identify and secure an area around a business or residence.
_____	_____	B. Identify and detect objects while performing a search of people, vehicles, buildings and large outdoor areas.
_____	_____	C. Other
_____	_____	16. Exhibits safe and appropriate care and use of firearms
_____	_____	A. Load, unload, arm and fire handguns, shotguns, and other agency firearms accurately from a variety of body positions that justify the use of deadly force.
_____	_____	B. Other

Frequency 5-1	Critical 5-1	TASK
_____	_____	17. Use of defensive and restraining equipment
_____	_____	A. Use independent judgement to interpret the amount of resistance used by the subject to evade arrest and
_____	_____	B. The amount of control necessary to stop potentially dangerous and unlawful behavior.
_____	_____	C. Other
_____	_____	18. Performs report writing duties
_____	_____	A. Identify when a report should be completed, comprehend and provide requested information on form and forward to correct agencies and/or personnel.
_____	_____	B. Other
_____	_____	19. Performs oral interrogations and interviewing duties
_____	_____	A. Recognize inconsistencies in suspects' behavior and verbal statements.
_____	_____	B. Prepare investigative and other reports using appropriate grammar, symbols, mathematical computations. Draw sketches when necessary.
_____	_____	C. Other

Frequency 5-1	Critical 5-1	TASK
_____	_____	20. Court preparation and testimony
_____	_____	A. Be thorough and identify component elements and facts.
_____	_____	B. complete appropriate reports.
_____	_____	C. Other
_____	_____	21. Exhibits acceptable non-report written expression
_____	_____	A. Communicate effectively in the English language.
_____	_____	B. Advise involved parties of city or social service agencies available to assist with a problem.
_____	_____	C. Other
_____	_____	22. Citizen interaction
_____	_____	A. Drive patrol car while functioning as an escort. Use independent judgement to ensure the safety of citizens.
_____	_____	B. Assist motorist with mechanical problems.
_____	_____	C. Perform bar checks executing good communication skills to identify possible violations of city/state laws.
_____	_____	D. Other

Frequency 5-1	Critical 5-1	TASK
_____	_____	23. Performs non-criminal public relations duties
_____	_____	A. Visually monitor that street signs are in place and street lights and stop lights are functional.
_____	_____	B. Visually observe condition of streets, damage to roadway, intersection and driveways. Remove obstructions and/or notify appropriate persons to accomplish task.
_____	_____	C. Other
_____	_____	24. Performs crime prevention and public relations duties
_____	_____	A. Operate speed radar in school zones. Activate instrument and interpret reading.
_____	_____	B. Visually identify and recognize any unusual behaviors in school areas and prevent possible abductions of children.
_____	_____	C. Other
_____	_____	25. Performs patrol activities requiring operation of motor vehicle
_____	_____	A. Visual drive-by checks of residences and businesses using judgement to identify signs of breaking and entry.
_____	_____	B. Other

Frequency 5-1	Critical 5-1	TASK
_____	_____	26. Training
_____	_____	A. Complete a first-aid and CPR training course.
_____	_____	B. Demonstrate proficiency in handcuff techniques.
_____	_____	C. Other
_____	_____	27. Maintains personal issue equipment
_____	_____	A. Uniform - clean, proper repair, fit properly
_____	_____	B. <u>Handbooks, ticketbooks and report forms</u> are identified visually and it is confirmed that they are accessible to the officer while in the vehicle.
_____	_____	C. Other
_____	_____	28. Conducts vehicle inspections
_____	_____	A. Identify abandoned vehicle(s) through checks of license plate, car registration and reports of stolen cars. Attempt to locate the owner to move the vehicle.
_____	_____	B. Other

Frequency 5-1	Critical 5-1	TASK
_____	_____	29. Renders first aid
_____	_____	A. If first person at scene, administer emergency medical aid, which may include lifting, dragging and carrying people away from dangerous situations and securing and evacuating people from particular areas.
_____	_____	B. Other
_____	_____	30. Performs animal control duties
_____	_____	A. Talk with concerned individuals and make an independent decision if the animal(s) should be removed.
_____	_____	B. Notify necessary agencies and personnel.
_____	_____	C. Other
_____	_____	31. Responds to fire calls
_____	_____	A. Position patrol vehicle to control traffic.
_____	_____	B. Contact dispatch for emergency vehicles/service.
_____	_____	C. Other

USE OF GENERIC APPLICATION FORM

As previously mentioned, before your agency decides to use the generic application form, your legal counsel and human resources director should be consulted for their input and approval. Use of the form is self-explanatory, however, you should amend the form to the needs of your agency.

Revised 12/9/92

LAW ENFORCEMENT OFFICER EMPLOYMENT APPLICATION

Your Agency Name
Your Address
Your City, State & Zip
Your Phone
Your FAX Number

INSTRUCTIONS TO THE APPLICANT

To receive a permanent appointment as a police officer with this agency, you must at the time of employment meet the following criteria:

1. You must be at least twenty-one (21) years of age.
2. You must be a United States citizen.
3. You must have no felony conviction(s), including any felony conviction(s) that have been expunged.
4. You must have no felony behavior involving use, production, transportation or sale of illegal drugs or narcotics.
5. You must have a high school diploma or its equivalence.
6. You must currently have, or be able to obtain, a Kansas Driver's License.
7. You must be able to qualify for vehicle insurance in the use of motor vehicles.
8. You may be required to meet certain job related sight and hearing standards required to meet essential job functions.
9. As a condition of employment, you may be required to pass the following job related:

A. Physical Agility Test	D. Polygraph Examination
B. Background Investigation	E. Drug Screen
C. Psychological Examination	F. Medical Examination

The completion of this form is a requirement for consideration for employment with this agency.

All statements are subject to verification.

Inaccuracies or incomplete statements may prevent you from being hired by this agency and may be cause for your removal from the hiring list.

If you need assistance in completing this application or any other accommodations, please contact the personnel office.

In accordance with the Privacy Act of 1974, disclosure of your social security number is voluntary. The social security number will be used for identification purposes to ensure that proper records are obtained.

I have read and understand the above instructions and do agree to the terms and conditions of completing the application.

Name _____

Date _____

Law Enforcement Officer
Application - Page 2

If you have met the aforementioned qualifications and understand the requirements for obtaining employment and wish to continue, answer the following questions.

PERSONAL INFORMATION:

Name _____
Last First Middle
Address _____ City _____ State _____ Zip _____
Residence Telephone () - Other Telephone Number () -
Are you a United States Citizen? ☐ Yes ☐ No Social Security Number _____ - _____

This position requires that the person qualify and obtain a Kansas Driver's License, as well as qualify for automobile insurance. Please answer the following questions:

Current Driver's License Number _____ State _____

Have you been convicted of any criminal offenses other than minor traffic violations? ☐ Yes ☐ No

If yes, explain. _____

Have you been convicted of a felony, including expunged and annulled felony records from this state, any other state or any military jurisdiction that would be considered a Kansas felony? ☐ Yes ☐ No

If yes, explain. _____

Do you have any criminal charges pending? ☐ Yes ☐ No

If yes: Type of Charge _____
Date _____
Location _____

Disclosure of a misdemeanor criminal record will not necessarily disqualify you from employment consideration. Each conviction will be evaluated on its own merit with respect to time, circumstances, and seriousness, in relation to the job for which you are applying. However, failure to disclose such information may result in disqualifying you from employment consideration or termination of employment.

Law Enforcement Officer
Application -- Page 3

EDUCATION:

A position as a Kansas certified law enforcement officer requires you to have a high school education or its equivalence. Please complete the table shown below.

	Name of School	Location	Dates Attended	Major Studies	Hours Obtained	List Diploma or Degree Received
High School or Equivalent						
College						
Graduate School						
Trade or Vocational School						

Please list those skills you have acquired that are relevant to the job(s) for which you are applying. _____

EMPLOYMENT:

List below present and all past employment, beginning with your most recent.

Position Held Name and Address of Company and Type of Business	From		To		Starting Salary (Monthly)	Last Salary (Monthly)	Reason for Leaving	Name of Supervisor
	Mo.	Yr.	Mo.	Yr.				
	Briefly describe the work you did:							
Telephone								

Law Enforcement Officer
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Position Held Name and Address of Company and Type of Business	From		To		Starting Salary (Monthly)	Last Salary (Monthly)	Reason for Leaving	Name of Supervisor
	Mo.	Yr.	Mo.	Yr.				
	Briefly describe the work you did:							
Telephone								

Position Held Name and Address of Company and Type of Business	From		To		Starting Salary (Monthly)	Last Salary (Monthly)	Reason for Leaving	Name of Supervisor
	Mo.	Yr.	Mo.	Yr.				
	Briefly describe the work you did:							
Telephone								

Position Held Name and Address of Company and Type of Business	From		To		Starting Salary (Monthly)	Last Salary (Monthly)	Reason for Leaving	Name of Supervisor
	Mo.	Yr.	Mo.	Yr.				
	Briefly describe the work you did:							
Telephone								

Law Enforcement Officer
Application -- Page 5

Position Held Name and Address of Company and Type of Business	From		To		Starting Salary (Monthly)	Last Salary (Monthly)	Reason for Leaving	Name of Supervisor
	Mo.	Yr.	Mo.	Yr.				
	Briefly describe the work you did:							
Telephone								

Account for any time that you were unemployed by stating the date and nature of your activities: _____

Do you authorize inquiry about you from your present employer? ☐ Yes ☐ No

I certify that I have made no misrepresentation in this application and I have not withheld information in my statements and answers to questions. I hereby give my full permission for any and all information in this application to be investigated. I am aware that any misrepresentations may cause my application to be rejected or may cause dismissal if I am hired before such misrepresentations are discovered. I understand that any material matter contained in this application which is false or misrepresents the true facts with the intent to induce official action is False Writing, a Class D felony, in violation of K.S.A. 21-3711.

Signature of Applicant

Date

1ST CASE of Level 1 printed in FULL format.

ELIZABETH KINNEY; GLENN NIMAN; DANIEL C. SULLIVAN; DIANE FATULA; CASSIE JAMES; ERIK VON SCHMETTERLING; JOHN GLADSTONE; TOM LEVINE; CHARLES HOMILLER; RONA SCHNALL; MARY BARNES; ANN MCLAUGHLIN; DISABLED IN ACTION OF PENNSYLVANIA, individually and on behalf of all others similarly situated. v. HOWARD YERUSALIM, individually, and in his official capacity as Secretary of the Pennsylvania Department of Transportation; ALEXANDER HOSKINS, individually, and in his official capacity as Commissioner of the Philadelphia Streets Department, Alexander Hoskins, Commissioner of the Philadelphia Streets Department, Appellant.

KINNEY v. YERUSALIM

No. 93-1168

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

9 F.3d 1067; 1993 U.S. App. LEXIS 30167

September 22, 1993, Argued

November 23, 1993, Filed

PRIOR HISTORY: **[**1]** On Appeal From the United States District Court For the Eastern District of Pennsylvania. (D.C. Civil Action No. 92-04101).

COUNSEL: Judith E. Harris, City Solicitor, Michael F. Eichert, Esquire (Argued), Office of City Solicitor, 1600 Arch Street, 8th Floor, Philadelphia, PA 19103-1628, Attorneys for Appellant.

George R. Specter, Deputy Solicitor, Gretchen G. Donaldson, Associate Solicitor, Terri J. Imbarlina, Assistant City Solicitor, City of Pittsburgh, Department of Law, 313 City-County Building, Pittsburgh, PA 15219, Attorney for Amicus-Appellant, City of Pittsburgh, Stephen F. Gold, Esquire (Argued), Robin Resnick, Esquire, 125 South Ninth Street, Suite 700, Philadelphia, PA 19107, Attorneys for Appellees.

Thomas K. Gilhool, Esquire, Frank J. Laski, Esquire, Public Interest Law Center of Philadelphia, 125 South Ninth Street, Suite 700, Philadelphia, PA 19107, Attorney for Amicus-Appellees United Cerebral Palsy, Associations, Inc.; Adapt; Eastern Paralyzed Veterans, of America; Tash: The Association for Persons with, Severe Handicaps; Pennsylvania Center for Individual, Living, James P. Turner, Acting Assistant Attorney General, Jessica Dunsay Silver, Esquire, Marie K. McElderry, Esquire **[**2]** (Argued), United States Department of Justice, Civil Rights Division, P.O. Box

66078, Washington, D.C. 20035-6078, Attorney for Amicus-Appellee United States of America.

JUDGES: Before: STAPLETON, ROTH and LEWIS, Circuit Judges.

OPINIONBY: ROTH

OPINION:

[*1069] OPINION OF THE COURT

ROTH, Circuit Judge:

This appeal requires us to determine whether 28 C.F.R. 35.151(e)(1) (1992), issued by the Attorney General pursuant to Section 204 of the Americans with Disabilities Act (the "ADA"), 42 U.S.C. § 12134 (Supp. 1991), requires the City of Philadelphia (the "City") to install curb ramps n1 at intersections when it resurfaces city streets. At issue is whether resurfacing constitutes an "alteration" within the scope of the regulation. The district court held that it does and ordered the City to install curb ramps on those portions of city streets for which resurfacing bids had been taken since January 26, 1992, the effective date of the ADA. On appeal, the City challenges the district court's reading of the term "alteration." Alternatively, it suggests that if resurfacing is, indeed, an alteration, it is entitled to raise an "undue burden" defense under 28 C.F.R. 35.150(a)(3) (1992).

[**3]

n1 The terms "curb ramps" and "curb cuts" are used interchangeably.

We agree with the district court's interpretation of the regulation and, consequently, we will affirm. Moreover, we agree that the applicability of the "undue burden" defense has been carefully limited to existing facilities and programs. Thus, that defense is not available in the context of alterations.

I.

Plaintiffs are Disabled in Action, a non-profit organization, and twelve individuals with ambulatory disabilities who live and work in Philadelphia. In their complaint, plaintiffs sought injunctive relief under 42 U.S.C. § 1983 (1988) for alleged violations of the ADA. These allegations were based on the City's practice of installing curb cuts only when work on the city streets otherwise affected the curb or sidewalk or when a complete reconstruction of the street was required.

The lack of curb cuts is a primary obstacle to the smooth integration of those with disabilities into the commerce of daily life. Without [**4] curb cuts, people with ambulatory disabilities simply cannot navigate the city; activities that are commonplace to those who are fully ambulatory become frustrating and dangerous endeavors. At present, people using wheelchairs must often make the Hobson's choice between travelling in the streets -- with cars and buses and trucks and bicycles -- and travelling over uncut curbs which, even when possible, may result in the wheelchair becoming stuck or overturning, with injury to both passenger and chair.

[*1070] The City of Philadelphia has some 2,400 miles of streets, roads and highways. These streets typically consist of three components: a sub-base of stone, covered by a concrete base, finished with a layer of asphalt. For routine maintenance -- patching, pothole repairs, and limited resurfacing -- the City maintains a crew of roughly 300 people. For more extensive work, including most resurfacing, bids are solicited from outside contractors.

Resurfacing of the streets is done in a variety of ways, affecting different parts of the street structure. Resurfacing at its simplest is "paving," which consists of placing a new layer of asphalt over the old. In other instances, a more complicated [**5] process of "milling" is used to ensure proper drainage or contouring of the road. Milling requires the use of heavy machinery to remove the upper 2 to 3-1/2 inches of asphalt. During

an ordinary milling and resurfacing job, cracks in the concrete base may be discovered, and, if so, repaired. The most extensive form of resurfacing is "reconstruction," which involves removal and replacement of both the asphalt and the concrete or stone layers.

Whatever the extent of work performed under a contract, the City has certain minimum requirements for resurfacing. Thus, by the City's own specifications, resurfacing requires laying at least 1-1/2 inches of new asphalt, sealing open joints and cracks, and patching depressions of more than one inch. At issue in this appeal are those resurfacings which cover, at a minimum, an entire street from intersection to intersection. Thus, we are not called upon to decide whether minor repairs or maintenance trigger the obligations of accessibility for alterations under the ADA.

At present the City does not include the installation of curb cuts in its milling and resurfacing contracts unless the curb is independently intended to be altered by the scope of [**6] the contract. Thus, only those contracts calling for alterations to curbs include curb cuts; contracts for alterations limited to the street surface itself do not.

Plaintiffs brought this class action against Alexander Hoskins, the Commissioner of the Philadelphia Streets Department, and Howard Yerusalim, the Secretary of the Pennsylvania Department of Transportation ("PennDOT"), to compel the installation of curb cuts on all streets resurfaced since the effective date of the ADA. n2 After the parties filed cross-motions for summary judgement, the district court granted plaintiffs' motion, ordering the City to "install curb ramps or slopes on every City street, at any intersection having curbs or other barriers to access, where bids for resurfacing were let after January 26, 1992." *Kinney v. Yerusalim*, 812 F. Supp. 547, 553 (E.D.Pa. 1993). The City brought a timely appeal.

n2 Plaintiffs and defendant Yerusalim entered into a stipulation of settlement, requiring the installation of curb ramps at locations resurfaced by PennDOT since January 26, 1992. The district court approved the agreement. Defendant Yerusalim is not a party to this appeal.

[**7]

II.

The district court had jurisdiction over this action pursuant to 28 U.S.C. § 1331 (1988) and 28 U.S.C. §§ 1343(3) & (4) (1988). Appellate jurisdiction from a final order of the district court is predicated upon 28 U.S.C.

§ 1291 (1988). The standard of review applicable to a grant of summary judgement is plenary. "On review the appellate court is required to apply the same test the district court should have utilized initially." *Goodman v. Mead Johnson & Co.*, 534 F.2d 566, 573 (3d Cir. 1976), cert. denied, 429 U.S. 1038, 50 L. Ed. 2d 748, 97 S. Ct. 732 (1977). This court must decide whether a genuine issue of material fact exists and, if not, whether the moving party is entitled to summary judgement as a matter of law. *Tigg Corp. v. Dow Corning Corp.*, 822 F.2d 358, 361 (3d Cir. 1987).

III.

Title II of the ADA prohibits discrimination in the provision of public services. Section 202 of the Act, 42 U.S.C. § 12132 (Supp. 1991), provides:

No qualified individual with a disability [**8] shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or [*1071] activities of a public entity, or be subjected to discrimination by any such entity.

Congress' concern with physical barriers is apparent in both the history and the text of the legislation. For example, the findings section of the Act recounts:

...

(2) historically, society has tended to isolate and segregate individuals with disabilities ... ;

(3) discrimination against individuals with disabilities persists in such critical areas as ... transportation ... and access to public services;

...

(5) individuals with disabilities continually encounter various forms of discrimination, including ... the discriminatory effects of architectural, transportation and communication barriers....

42 U.S.C. § 12101 (Supp. 1991). These general concerns led to a particular emphasis on the installation of curb cuts. The House Report for the legislation noted that "the employment, transportation, and public accommodation sections of this Act would be meaningless if people who use wheelchairs were [**9] not afforded the opportunity to travel on and between the streets."

H. Rep. No. 485, 101st Cong., 2d Sess., pt.2, at 84 (1990), reprinted in 1990 U.S.C.C.A.N. 267, 367. As such, "under this title, local and state governments are required to provide curb cuts on public streets." *Id.*

The Act itself does not set forth implementing standards, but rather directs the Attorney General to do so. 42 U.S.C. § 12134(a) (Supp. 1991). As guidance, Congress directed that the regulations be consistent both with the ADA and with the coordination regulations issued by the Department of Health, Education, and Welfare under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (1988), concerning nondiscrimination by recipients of federal financial assistance. 42 U.S.C. § 12134(b) (1988 & Supp. 1991). These regulations are now codified at 28 C.F.R. pt. 41 (1992). With regard to program accessibility in existing facilities and communications, Congress directed that the regulations be consistent with the Department of Justice's Section 504 regulations for federally conducted [**10] activities. See 28 C.F.R. pt. 39 (1992).

Following this mandate, the Department of Justice issued regulations maintaining the previously established distinction between existing facilities, which are covered by 28 C.F.R. 35.150 (1992), and new construction and alterations, which are covered by 28 C.F.R. 35.151 (1992). With limited exceptions, the regulations do not require public entities to retrofit existing facilities immediately and completely. Rather, a flexible concept of accessibility is employed, and entities are generally excused from making fundamental alterations to existing programs and bearing undue financial burdens. 28 C.F.R. 35.150(a) & (b) (1992). In contrast, the regulations concerning new construction and alterations are substantially more stringent. When a public entity independently decides to alter a facility, it "shall, to the maximum extent feasible, be altered in such a manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities." 28 C.F.R. 35.151(b) (1992). This obligation of accessibility for alterations does not allow for non-compliance based upon undue burden.

Consistent with the emphasis on [**11] architectural barriers, the installation of curb cuts is specifically given priority in both the "existing facilities" and the "new constructions and alterations" sections of the regulations. Streets are considered existing facilities under the regulations, n3 and, as such, they are subject to the more lenient provisions of § 35.150. However, because of the importance attributed to curb cuts, the regulations direct public entities to fashion a transition plan for existing facilities, containing a "schedule for providing curb ramps or other sloped areas where pedestrian walks cross

curbs, giving priority to walkways serving entities covered by the Act." 28 C.F.R. 35.150(d)(2) (1992). These changes must be **[*1072]** completed by January 26, 1995. 28 C.F.R. 35.150(c) (1992).

n3 The regulations define "facility" to include "all or any portion of ... roads, walks, [or] passage-ways." 28 C.F.R. 35.104 (1992). See also 28 C.F.R. pt. 35, app. A (1992).

The existence of a transition plan for the installation of curb cuts on existing **[**12]** streets does not, however, negate the City's obligations under § 35.151, governing alterations. n4 In addition to the general provision in subpart (b), § 35.151 has a second subpart addressed solely to the installation of curb ramps. This subpart provides that when a public entity undertakes to construct new streets or to alter existing ones, it shall take that opportunity to install curb ramps.

n4 Because a plan for the installation of certain curb cuts is required, the City characterizes this suit as a mere "dispute over timing." Appellant's Reply Brief at 3. The City contends that requiring curb cuts in the course of resurfacing would result in "random, unprioritized and immediate installation" of curb cuts. *Id.* The City would rely on its transition plan, suggesting that it excuses the City from other, independent obligations in the regulations: "in the interim only serious alterations of a street should trigger the curb cut requirement." *Id.* The City also contends that the ADA and the regulations must allow a local government to set its own priorities as to which streets will have curb cuts installed first.

The City may have a transition plan providing for, at a minimum, curb cuts at certain of its intersections. Nevertheless, we cannot rewrite the plain language of the regulations. The applicable section uses unmodified, mandatory language: "altered streets, roads and highways must contain curb cuts." 28 C.F.R. 35.151(e) (1992). Thus, if, as we find below, a resurfacing is an alteration, curb cuts must be installed no matter what other priorities the transition plan may call for. Furthermore, though the City phrases its compliance as a mutually-exclusive choice, there is no inconsistency between a requirement of a transition plan covering priority areas and a requirement that curb cuts be installed whenever a street is altered. The two provisions complement each other in achieving the ultimate ADA goal of full access for people with disabilities.

[13]**

Newly constructed or altered streets, roads, and highways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level pedestrian walkway.

28 C.F.R. 35.151(e) (1992). The City does not dispute the literal requirement that the regulation mandates the installation of curb cuts when the City "alters" a street. The City does, however, protest the notion that the resurfacing of a street constitutes an "alteration."

Subpart (e) does not explicitly define "alteration," either in general or as applied in particular instances. Our focus here is the specific application of the general provision in subpart (b) (alterations to existing facilities) to one subject in subpart (e) (streets). We will look first to subpart (b) for guidance:

Alteration. Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such a manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, **[**14]** if the alteration was commenced after January 26, 1992.

28 C.F.R. 35.151(b) (1992) (emphasis added). In addition, subpart (c) provides that alterations made in conformity with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (the "ADAAG") or with the Uniform Federal Accessibility Standards (the "UFAS") shall be deemed to comply with the requirements of this section. Both guidelines provide technical and engineering specifications. The ADAAG definition of "alteration" is substantially the same as that in the regulation: "a change to a building or facility ... that affects or could affect the usability of the building or facility or part thereof." 28 C.F.R. pt. 36, app. A. It continues: "normal maintenance ... [is] not [an] alteration[] unless [it] affects the usability of the building or facility." *Id.* (emphasis added).

These provisions lead one to the conclusion that an "alteration" within the meaning of the regulations is a change that affects the usability of the facility involved. n5 If we then read the "affects usability" definition **[*1073]** into subpart (e), the regulation serves the substantive purpose of requiring equal treatment: **[**15]** if an alteration renders a street more "usable" to those presently using it, such increased utility must also be made fully accessible to the disabled through the installation of curb ramps.

n5 In its emphasis upon functionality and utility, this definition is consistent with the goals of the ADA -- the elimination of architectural barriers that presently preclude those with disabilities from full and equal participation in society.

Subpart (e) effectively unifies a street and its curbs for treatment as interdependent facilities. If a street is to be altered to make it more usable for the general public, it must also be made more usable for those with ambulatory disabilities. At the time that the City determines that funds will be expended to alter the street, the City is also required to modify the curbs so that they are no longer a barrier to the usability of the streets by the disabled. This interpretation helps to implement the legislative vision, for Congress felt that it was discriminatory to the disabled to enhance [**16] or improve an existing facility without making it fully accessible to those previously excluded.

Although there is limited analysis of the "alterations" sections of Title II, the discussion of the parallel provision in Title III (addressing public accommodations) is helpful in our analysis here. n6 In the context of Title III, Congress' discussion of "affecting usability" focused on the "primary function" of a facility. "Areas containing primary functions refer to those portions of a place of public accommodations where significant goods, services, facilities, privileges, advantages or accommodations are provided." H. Rep. No. 485, 101st Cong., 2d Sess., pt. 2, at 112 (1990), reprinted in 1990 U.S.C.C.A.N. 267, 395. Changes to the defining characteristic of a facility -- to that which makes the facility desirable to the public -- mandate that the facility be made accessible to all. Further, accessibility is generously construed to accommodate a wide range of needs, to ensure that patrons "are able to get to, enter, and use the facility." H. Rep. 485, 101st Cong., 2d Sess., pt. 3, at 63 (1990), reprinted in 1990 U.S.C.C.A.N. 445, 486. For example, "the path of travel[,] ... [**17] bathrooms, telephones, and drinking fountains [must be] ... readily accessible to and usable by individuals with disabilities." *Id.* at 394.

n6 Like Title II, Title III bears the distinction between existing and new or altered facilities. Congress intended that the provisions of both titles be read consistently. The House Report states "The Committee intends ... that the forms of discrimination prohibited by [Title II] be identical to those set out in applicable provisions of Titles I and III of this legislation." H. Rep. No. 485, 101st Cong.,

2d Sess., pt. 2, at 84 (1990), reprinted in 1990 U.S.C.C.A.N. 267, 367. See also H. Rep. No. 485, 101st Cong., 2d Sess., pt. 3, at 51 (1990), reprinted in 1990 U.S.C.C.A.N. 445, 474 ("Title II should be read to incorporate provisions of Titles I and III which are not inconsistent with the regulations implementing Section 504 of the Rehabilitation Act of 1973....").

Thus, while Congress chose not to mandate full accessibility to existing [**18] facilities, it required that subsequent changes to a facility be undertaken in a non-discriminatory manner. The use of such changes must be made available to all. The emphasis on equal treatment is furthered, as well, by an expansive, remedial construction of the term "usability." "Usability should be broadly defined to include renovations which affect the use of a facility, and not simply changes which relate directly to access." H. Rep. No. 485, 101st Cong., 2d Sess., pt. 3, at 64 (1990), reprinted in 1990 U.S.C.C.A.N. 445, 487.

With this directive, we must now determine whether resurfacing a street affects its usability. Both physically and functionally, a street consists of its surface; from a utilitarian perspective, a street is a two-dimensional, one plane facility. As intended, a street facilitates smooth, safe, and efficient travel of vehicles and pedestrians -- in the language above, this is its "primary function."

As such, we can only agree with the district court that resurfacing a street affects it in ways integral to its purpose. As discussed above, "resurfacing" involves more than minor repairs or maintenance. At a minimum, it requires the laying of a new asphalt [**19] bed spanning the length and width of a city block. n7 The work is substantial, with substantial effect. As the district court described in its opinion granting plaintiffs' motion for summary judgment:

n7 The City suggests that disposition on summary judgment was inappropriate because the district court failed to distinguish among the various types of resurfacing (paving, milling, and reconstruction). There is no dispute that some resurfacing jobs are more extensive than others. However, the district court based its decision, as we do here, on that which is common to all, the elements required by the City for any resurfacing. See *supra* p. [type-script at 3].

Resurfacing makes driving on and crossing streets easier and safer. It also helps to prevent damage to vehicles and

injury to people, and generally promotes commerce and travel. The surface of a street is the [*1074] part of the street that is "used" by both pedestrians and vehicular traffic. When that surface is improved, the street becomes more usable in [**20] a fundamental way.

Kinney, 812 F. Supp. 547, at 551.

Finally, we must consider the City's suggestion that interpretation of the ADA is always subject to a requirement of reasonableness. It is true that reasonableness language appears in the text of § 35.151(b): "Each facility or part of a facility altered ... shall, to the maximum extent feasible, be altered in such a manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities" (emphasis added). The City relies on a prior decision of this court, *Disabled in Action of Pennsylvania v. Sykes*, 833 F.2d 1113 (3d Cir. 1987), interpreting a Department of Transportation regulation that is similar to 28 C.F.R. 35.151(b). n8 There we stated that the relevant questions were "to what extent any alterations to a facility provide an opportunity to make the facility more accessible to handicapped persons" and "what degree of accessibility ... becomes 'feasible' within the scope of alterations." *Sykes*, 833 F.2d at 1120-21. Because the *Sykes* regulation referred to "accessibility" rather [**21] than "usability," with resulting limits on scope and effect, the district court found the case to be inapposite. We need not decide that issue. Were we considering alterations only covered by § 35.151(b), the relevance of *Sykes* would be at issue. However, in this case the Attorney General has already determined, in promulgating § 35.151(e), that the installation of curb cuts is feasible during the course of alterations to a street. Subpart (e) is a specific application of the general principle contained in subpart (b). Through its use of mandatory language, the *Sykes* questions have been answered.

n8 The regulation was promulgated to comply with Section 504 of the Rehabilitation Act of 1973, also the predecessor to section 202 of the ADA. The regulation is as follows:

Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient [of Federal financial assistance] ... in a manner that affects or could affect the accessibility of the facility shall, to the maximum extent feasible, be altered in such a manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

49 C.F.R. 27.67(b)(1981).

[**22]

IV.

As a final argument, the City contends that, even if resurfacing is an "alteration" requiring the installation of curb cuts, it is entitled to assert an "undue burden" defense excusing compliance. There is no general undue burden defense in the ADA. Rather, following the Section 504 regulations for program access in existing facilities, as Congress intended, the ADA regulations provide for the defense only in limited circumstances. For example, § 35.150(a)(3), governing "existing facilities," excuses a public entity from taking "any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens."

As discussed above, there are logical reasons for the distinction between existing and new or altered facilities. Allowance of an undue burden defense for existing facilities serves as recognition that modification of such facilities may impose extraordinary costs. New construction and alterations, however, present an immediate opportunity to provide full accessibility. Congress recognized the competing social interests at stake: "While the integration of people with disabilities [**23] will sometimes involve substantial short-term burdens, both financial and administrative, the long-range effects of integration will benefit society as a whole." H. Rep. No. 485, 101st Cong., 2d Sess., pt. 3, at 50 (1990), reprinted in 1990 U.S.C.C.A.N. 445, 473. Balancing these interests, Congress acknowledged the existence of an undue burden defense for existing facilities but clearly warned, "no other limitation should be implied in other areas." *Id.*

The City acknowledges that the defense is not available for alterations. Nonetheless, it makes a last ditch attempt at characterizing a street and its curbs as separate facilities. As such, a curb would remain an existing facility susceptible to the "undue burden" defense even while the street that it abuts is being altered. As with our discussion of *Sykes* above, the express language of § 35.151(e) refutes this reasoning. That section [*1075] requires the installation of curb ramps if a street is altered. When the City decides that funds are available for the alteration of the street, the City must now understand that such a determination is to be made with the awareness that subpart (e) also requires alteration of the curbs. [**24] Thus, once the City undertakes to resurface a street, the accompanying curbs are no longer to be considered as existing facilities, subject to the "undue burden" defense of § 35.150(a)(3). They are now, pursuant to the language of subpart (e), incorporated with

a facility under alteration, pursuant to § 35.151, so that the "undue burden" defense is no longer available.

V.

For the foregoing reasons, we find that resurfacing

of the city streets is an alteration within the meaning of 28 C.F.R. 35.151(b) which must be accompanied by the installation of curb cuts under 28 C.F.R. 35.151(e). We will affirm the decision of the district court.

**THE AMERICANS WITH DISABILITIES ACT:
ENSURING EQUAL ACCESS TO
THE AMERICAN DREAM**



**National Council on Disability
January 26, 1995**

National Council on Disability

**The Americans with Disabilities Act:
Ensuring Equal Access to the American Dream**

Publication date: January 26, 1995

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The views contained in the report do not necessarily represent those of the Administration, as this document has not been subjected to the A-19 Executive Branch review process.

A23

... THE WALL STREET JOURNAL TUESDAY, JANUARY 24, 1995

Letters to the Editor

Backlash Against the Disabled

In response to your Jan. 6 editorial "Disabling Mandate":

Your editorial provides clear evidence of the absolute need for the Americans with Disabilities Act (ADA). It quite clearly demonstrates the prejudice and distortion of truth that has haunted the lives of people with disabilities in this country for decades. History proves that backlash directed at minority groups follows on the heels of major social achievement. I would like to set the record straight.

The ADA is and always will be a civil rights law. As a bipartisan congressional effort, ADA provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, and state and local government services. As such, the 103rd and now the 104th Congress both saw fit to incorporate language in their unfunded mandates legislation that specifically excludes civil rights laws such as ADA.

The ADA provides the proper balance between the rights of people with disabilities and the legitimate concerns of state and local governments. It allows maximum flexibility and it does not place undue burdens on state and local governments to comply.

Unfortunately, there is a lot of fear and misunderstanding by state and local officials about the costs of compliance with the ADA. This fear is fueled by many lawyers and architects and those whose

only interest is to promote profits for themselves. Even more unfortunate is the fact that the Journal and other media buy into these myths about ADA, thus fueling these fears even more.

In your haste to castigate the ADA, let's not forget why the National Council on Disability recommended the ADA and Congress codified it. Remember, ADA is not a building code. It is a well-thought-out, well-written, cost-effective civil rights law that says people with disabilities will no longer be discriminated against in this country. As the agency mandated to monitor the implementation of the ADA, the council's findings clearly indicate that real people with disabilities say that the ADA works and that it has opened many doors.

You fail to mention how 49 million Americans with disabilities are helped every day by this historic civil rights law. We as people with disabilities continue to face discrimination in this country and the ADA is a giant step toward correcting that injustice.

MARCA BRISTO
Chairperson

National Council on Disability
Washington



NATIONAL COUNCIL ON DISABILITY

An independent federal agency working with the President and the Congress to increase the inclusion, independence, and empowerment of all Americans with disabilities.

LETTER OF TRANSMITTAL

January 26, 1995

The President
The White House
Washington, DC 20500

Dear Mr. President:

The National Council on Disability is pleased to submit to you this report entitled, *The Americans with Disabilities Act: Ensuring Equal Access to the American Dream*. Under its Congressional mandate, the National Council on Disability is charged with the responsibility to gather information on the implementation, effectiveness, and impact of the Americans with Disabilities Act. This report measures progress to date in the implementation of this landmark civil rights legislation from the perspectives of people with disabilities, private sector representatives, local, State, and Federal government officials, and national experts in the field of disability policy.

Overall, impressive progress has occurred in the implementation of the Americans with Disabilities Act. However, given the many areas where compliance has not yet been achieved and in recognition of the relatively brief time in which the law has been in effect, it is clear that further efforts are necessary in order to increase public awareness of the Act, provide education and clarification regarding the provisions of the Act to covered entities, and provide resources necessary to both encourage voluntary compliance and to ensure effective enforcement.

Today, as we observe — and celebrate — further progress in the full implementation of the Americans with Disabilities Act, I would once again pledge our unwavering commitment to ensuring that equality of opportunity, full participation, independent living, and economic self-sufficiency become realities in the lives of Americans with disabilities. Under your leadership I remain confident that we can continue to build an America where all citizens have equal access to the American dream.

Sincerely,

Marca Bristo
Chairperson

(This same letter was sent to the President Pro Tempore of the Senate and the Speaker of the House of Representatives.)

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INTRODUCTION

The National Council on Disability is the Federal agency which first proposed what was to later become the Americans with Disabilities Act to the President and Congress of the United States. In 1986, the Council issued a landmark report entitled *Toward Independence: An Assessment of Federal Laws and Programs Affecting Persons with Disabilities -- With Legislative Recommendations*. The first recommendation made in this report was as follows:

Congress should enact a comprehensive law requiring equal opportunity for individuals with disabilities, with broad coverage and setting clear, consistent, and enforceable standards prohibiting discrimination on the basis of handicap. (p.18).¹

Since the passage of the Americans with Disabilities Act, the National Council on Disability has been charged with gathering information regarding the implementation, effectiveness, and impact of the Americans with Disabilities Act (ADA).² In response to this mandate, in April of 1993 the Council provided the Administration, the Congress, and the public with an early assessment of the implementation of the ADA. *ADA Watch --Year One: A Report to the President and the Congress on Progress in Implementing the Americans with Disabilities Act* detailed initial progress in the implementation of the law and provided many recommendations for increasing and improving compliance with the law.

Since the publication of this report, the Council has continued its ADA-related monitoring activities. In February of 1994 the Council sponsored a national meeting of experts regarding progress in ADA implementation at the United States Senate. In August of 1994 the Council sponsored an ADA Roundtable in Seattle, Washington, that provided a local perspective on the law's impact to date. The present report summarizes the findings and recommendations emanating from these two events and is intended to provide the Administration, the Congress, and the public with an updated assessment of the ADA's effectiveness. Over the course of the next year, the Council intends to continue its ADA monitoring activities in order to assist the Nation in creating a society in which every citizen has equal access to the American Dream.

¹ National Council on the Handicapped. (1986). *Toward Independence: An Assessment of Federal Laws and Programs Affecting Citizens with Disabilities -- With Legislative Recommendations*. Washington, DC: Author. Note: The National Council on the Handicapped has since been renamed the National Council on Disability.

² P.L. 102-569 §401(a)(7).

THE AMERICANS WITH DISABILITIES ACT: VALUES WE CAN AGREE ON

Together we've begun to shift disability in America away from exclusion, towards inclusion; away from dependence, towards independence; away from paternalism, towards empowerment...And we have made a commitment — a real commitment — to enforce the Americans with Disabilities Act, until all citizens with disabilities receive equal treatment under the law, whether in the workplace, or school, in government or in the courts.

- President William J. Clinton

On July 12, 1990, the Americans with Disabilities Act passed the U.S. House of Representatives on a vote of 377-28. The next day, it passed the Senate on a vote of 91-6. Shortly thereafter, on July 26, 1994, the Act was signed by President George Bush on the South Lawn of the White House in front of over 3,000 disability advocates, the largest bill-signing ceremony that had ever taken place at the White House. Clearly, the ADA was passed in an atmosphere of great support from the Congress, the Administration, and the community at large.

It's been the work of a true coalition. A strong and inspiring coalition of people who have shared both a dream and a passionate determination to make that dream come true. It's been a coalition in the finest spirit. A joining of Democrats and Republicans. Of the Legislative and the Executive branches. Of public officials and private citizens. Of people with disabilities and without.

-President George Bush

At the time of the Act's passage, other elected officials noted both the importance and the anticipated results of the Act:

The ADA is now the law of the land. From now on, Americans with disabilities will be treated as first-class citizens. Today, we say "no" to ignorance, and "no" to prejudice. Segregation is finished! Today, we say "yes" to dignity and respect for disabled people; "yes" to empowerment; and "yes" to judging people on abilities, not disabilities. The ADA truly is the 20th century emancipation proclamation for people with disabilities.

-Senator Tom Harkin

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For too long Americans with disabilities have had to face subtle and pervasive discrimination. As a nation, discrimination deprives us of our dignity and suppresses our strength. The disability community recognized this striking fact and the President and Congress responded with the enactment of the Americans with Disabilities Act.

- Senator Bob Dole

The Americans with Disabilities Act represents America at its best. Few, if any, pieces of legislation in the two centuries of our history have offered greater promise for so many of our fellow citizens...And America will be better, fairer, and a stronger nation because of it.

- Senator Edward M. Kennedy

The time has come. Congress has sent a loud, clear message across this country-- individuals with disabilities, no less than other Americans, are entitled to an equal opportunity to participate in the American dream. That dream can now become reality.

-Senator Orrin Hatch

Dependency increases the costs of entitlements, lowers our gross national product, and reduces revenue to the Federal government...People with disabilities want to work...to be productive, self-supporting and tax paying participants in society. The Americans with Disabilities Act grants us that dignity and that right.

- Former Congressman Tony Coelho

This is important legislation that will extend to individuals with disabilities full civil rights — in the public and private sector...The final vote in Committee was 35 to 0, a reflection of the true bipartisan spirit for the legislation.

- Congressman Newt Gingrich

ADA will empower people to control their own lives. It will result in a cost savings to the Federal government. As we empower people to be independent, to control their own lives, to gain their own employment, their own income, their own housing, their own transportation, taxpayers will save substantial sums from the alternatives.

- Former Congressman Steve Bartlett

In passing the ADA four years ago, the Congress Stated the following facts concerning the life experiences of people with disabilities in America:

- ◆ 43,000,000 Americans have one or more disabilities;
- ◆ historically, society has tended to isolate and segregate individuals with disabilities;
- ◆ discrimination against individuals with disabilities negatively affected areas such as employment, housing, public accommodations, education, transportation, communication, etc.;
- ◆ individuals with disabilities have no legal recourse to redress such discrimination;
- ◆ individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion as well as the negative effects of discrimination such as relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;
- ◆ national data indicate that individuals with disabilities occupy an inferior status in society and are severely disadvantaged socially, vocationally, economically, and educationally;
- ◆ as a group, individuals with disabilities have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness; and
- ◆ the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue opportunities, costing the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

Given these realities, the Congress determined that *the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals.*³ Thus, the Americans with Disabilities Act (ADA)⁴ was passed in order to:

³ P.L.101-336, §2(a)(1-9).

⁴ For a brief summary of the provisions of the ADA, please see Appendix A.

- ◆ provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;
- ◆ provide clear, strong, consistent, enforceable standards addressing discrimination;
- ◆ ensure that the Federal government plays a central role in enforcing the standards against discrimination; and
- ◆ invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce.⁵

Over the course of the past four years, the Federal government has issued regulations to implement the ADA; provided technical assistance to States, local governments, and the private sector; and has begun to bring other Federal laws regarding disability policy and programs into harmony with the ADA.⁶ In this regard, the Federal government has demonstrated a firm commitment to not only enforcing the law, but in effectively targeting resources to encourage voluntary compliance on the part of all concerned parties.

The values embodied in the Americans with Disabilities Act — equal protection under the law, individual empowerment, freedom of association, economic opportunity, etc. — are important to and for all Americans. Indeed, as Congress has since found that disability is a natural part of the human experience, all citizens have an interest in ensuring that the values that form the basis for the Americans with Disabilities Act pervade our national life. It is for this reason that the Americans with Disabilities Act has enjoyed such broad bipartisan support.

⁵ P.L. 101-336, §2(b)(1-4).

⁶ See, for example, the Rehabilitation Act Amendments of 1992, P.L. 102-569.

THE AMERICANS WITH DISABILITIES ACT: EARLY SIGNS OF SUCCESS

When the National Council on Disability published its first report on the implementation of the ADA⁷, it offered the following findings:

1. The Federal government has, overall, performed well in its ADA implementation responsibilities.
2. The disability community has generally, in these early days of the ADA, taken an ADA implementation strategy of "educate and negotiate, and litigate as a last resort."
3. Many organizations serving covered entities, such as trade associations, have initiated significant efforts to assist their members with ADA implementation.
4. The projections that ADA implementation would not be unduly burdensome to businesses appear to have been well founded.
5. The ADA has opened up new opportunities for disability-related activities in the nonprofit community.
6. Entrepreneurial activities stimulated by the ADA have had very mixed results: some have been helpful, others highly counterproductive.
7. Early efforts by covered entities to implement the ADA's employment provisions have helped to remove formal barriers to employment of people with disabilities, but many barriers still exist.
8. Some of the most productive ADA implementation activities have involved cooperative efforts between and among government agencies, businesses and business organizations, and the disability community.
9. The need for information and technical assistance continues to grow, outstripping Federal and State resources.

⁷ National Council on Disability. (1993). *ADA Watch--Year One: A Report to the President and Congress on Progress in Implementing the Americans with Disabilities Act*. Washington, DC: Author.

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10. While efforts to inform people with disabilities and covered entities about the ADA have been substantial, many large gaps still exist.
11. Covered entities are looking for the greatest degree of certainty of being in compliance with the ADA that the Federal government can offer.
12. Numerous technical issues involving the interpretation and application of the ADA and its regulations have been raised, including the use of edge warning devices on transit platforms and accessibility standards for recreation areas.

Thus, as of April 1993, the National Council on Disability expressed optimism regarding ADA implementation efforts to date and urged further action through a detailed set of recommendations for the President and the Congress. Some of the more pertinent recommendations included the following:

1. To sustain the substantial progress achieved in implementing the ADA during its early stages, no amendments to the law should be made at this time.
2. The Federal government should plan, coordinate, and fund a media campaign to disseminate accurate information about the ADA through public service announcements on radio and television.
3. Systematic outreach and technical assistance efforts should be initiated that focus on small businesses and communities outside major metropolitan areas.
4. The next generation of technical assistance materials should be more industry- and profession-specific.
5. More technical assistance should be provided to State and local government entities.
6. The Federal government should cultivate and coordinate ADA leadership in the private sector and the disability community and thereby become more a catalyst than the provider of technical assistance.
7. The Department of Justice, the Equal Employment Opportunity Commission, the Department of Transportation, the Federal Communications Commission, and the Access Board should prepare

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and disseminate regular technical guidance memoranda regarding ADA policy decisions.

8. Congress should authorize and fund a large-scale longitudinal study to determine how the needs of people with disabilities are being met over time as the ADA is implemented.

In the short space of three years, the Americans with Disabilities Act had earned a positive review. Since the publication of this first report, some progress has been made in implementing the recommendations detailed above. However, the National Council on Disability continues to pursue the full adoption of these recommendations. As will be evident in the next few pages, the need for attention to these recommendations remains to this day.

National Meeting of Experts on the Americans with Disabilities Act

At the national meeting of experts in February, participants asserted that the ADA has been a substantive success. ADA is taken seriously in America and throughout the world. However, throughout the day participants noted that accompanying this initial general success was a growing sense of "nostalgia", similar to that which occurred during the initial implementation of the Civil Rights Act in the 1960s. The principal expression of this nostalgia has been found in the charge of some opponents of the ADA that the Act constitutes an "unfunded mandate." This, of course, reveals a fundamental misunderstanding of the nature of the ADA. The ADA is, at its core, a civil rights law, grounded in the freedoms guaranteed in the Bill of Rights. As such, the rights and freedoms codified in the ADA should not be subject to a debate on their cost, any more than the rights of women, minorities, or religious groups. This fact was recognized in 1954 in the debate regarding "unfunded mandates" in the United States Senate. In the Committee Report accompanying S. 933, The Federal Mandate Accountability and Reform Act of 1994, the Committee on Governmental Affairs stated the following:

The Committee believes that a number of areas should be properly excluded from the requirements of this Act. They include Federal legislation or regulation that enforces individual Constitutional rights; established or enforced statutory rights to prohibit discrimination on the basis of race, religion, gender, national origin, or handicapped or disability status. The Committee recognizes the special circumstances and history surrounding the enactment and enforcement of Federal civil rights (including disability rights) laws. During the middle part of the 20th century, the arguments of those who opposed the national extension of basic equal rights, protection, and opportunity to all individuals were based primarily on States' rights philosophy or constitution. With the passage of the Civil Rights Act of 1957 and 1964 and the Voting Rights Act of 1965, Congress rejected that argument as false reasoning designed to thwart equal opportunity and to protect discriminatory

THE AMERICANS WITH DISABILITIES ACT: WHERE WE ARE TODAY

In the year and one-half since the Council's first report was published, implementation of the ADA has gone forward and new issues have emerged. In order to gain a better understanding of these issues, the Council held two information gathering events during 1994. In February of 1994 the Council sponsored a national meeting of experts regarding progress in ADA implementation at the United States Senate. In August of 1994 the Council sponsored an ADA Roundtable in Seattle, Washington, that provided a wide variety of individuals at the local level with an opportunity to engage in a frank discussion of the law's impact to date.

National Meeting of Experts on the Americans with Disabilities Act

At the national meeting of experts in February, participants asserted that the ADA has been a substantive success. ADA is taken seriously in America and throughout the world. However, throughout the day participants noted that accompanying this initial general success was a growing theme of "backlash", similar to that which occurred during the initial implementation of the Civil Rights Act in the 1960s. The principal expression of this backlash has been found in the charge of some opponents of the ADA that the Act constitutes an "unfunded mandate." This, of course, reveals a fundamental misunderstanding of the nature of the ADA. The ADA is, at its core, a civil rights law, grounded in the freedoms guaranteed in the Bill of Rights. As such, the rights and freedoms codified in the ADA should not be subject to a debate on their cost, any more than the rights of women, minorities, or religious groups. This fact was recognized in 1994 in the debate regarding "unfunded mandates" in the United States Senate. In the Committee Report accompanying S.993, *The Federal Mandate Accountability and Reform Act of 1994*, the Committee on Governmental Affairs Stated the following:

The Committee believes that a number of areas should be properly excluded from the requirements of this Act. They include Federal legislation or regulation that: enforces individual Constitutional rights; establishes or enforces statutory rights to prohibit discrimination on the basis of race, religion, gender, national origin, or handicapped or disability status...The Committee recognizes the special circumstances and history surrounding the enactment and enforcement of Federal civil rights (including disability rights) laws. During the middle part of the 20th century, the arguments of those who opposed the national extension of basic equal rights, protection, and opportunity to all individuals were based primarily on States' rights philosophy or contention. With the passage of the Civil Rights Acts of 1957 and 1964 and the Voting Rights Act of 1965, Congress rejected that argument as false reasoning designed to thwart equal opportunity and to protect discriminatory,

*unjust and unfair practices in certain parts of the country. The Committee therefore exempts Federal civil rights laws from the requirements of this Act.*⁸

While this report language would seem to provide an appropriate analysis of the legal reasoning which would prohibit the consideration of cost as a fundamental determinant of the endowment and expression of civil rights, this legislation was not passed by the 103rd Congress prior to its adjournment. However, this in no way detracts from the validity of the analysis and it is important that this analysis be incorporated into future debate on this issue. Otherwise, it is likely that the future impact of the Americans with Disabilities Act will be dramatically diminished, thereby severely compromising the status of people with disabilities in society.

Throughout the day leaders from the disability rights community offered valuable insights regarding the implementation of the ADA and suggestions for the Council's future effort's in monitoring the ADA. Five major themes emerged from these spirited discussions:

Correct Current Misunderstandings Regarding the Americans with Disabilities Act

There is currently a considerable amount of misunderstanding regarding the ADA. Perhaps the greatest single area of misunderstanding regarding the ADA is in the area of cost. The law itself requires that covered entities incur the costs of "reasonable accommodations" to make their facilities, programs, and services accessible to individuals with disabilities unless such accommodations pose an "undue hardship" on the entity. Given this two-part test, there is obviously room for discussion regarding both what is "reasonable" and what constitutes an "undue hardship". Thus, there is no concrete requirement that covered entities must absolutely make every accommodation requested by every individual with a disability. Furthermore, it has been found that reasonable accommodations often do not require a great deal of expense. For example, the Job Accommodation Network sponsored by the President's Committee on Employment of People with Disabilities reports that based on its national data bank, *using the average (mean) cumulative figures, for every dollar spent to make an accommodation, the company got \$15.34.*⁹ In addition, a recent study based on the experience of Sears, Roebuck, and Company in making reasonable accommodations reported that the average accommodation cost the company \$121.00. The study also

⁸ U.S. Senate Committee on Governmental Affairs. (August 10, 1994). *Report to Accompany S.993, The Federal Mandate Accountability and Reform Act of 1994*. 103rd Congress, 2nd Session. Calendar No. 551 (Report 103-330). Section 4.

⁹ Job Accommodation Network. (1994). *Accommodation Benefit/Cost Data*. Morgantown, WV: Author. (p.4).

reported that 69% of accommodations cost nothing, 28% cost less than \$1,000, and only 3% exceeded \$1,000.¹⁰ These data are in general agreement with the overall data reported by the President's Committee on Employment of People with Disabilities. Thus, the idea that compliance with the ADA will cause great financial burdens to covered entities is not supported by either the provisions of the law itself or by practical experience to date in implementing the law.

Improve Educational Efforts Regarding the Americans with Disabilities Act

There is a need for improved public relations and education regarding the ADA and its actual requirements. During the national meeting of experts, participants noted that there is a lack of information both within the general public and the disability community itself regarding the ADA. A recent Harris poll indicated that only 40% of people with disabilities had any substantial knowledge of the ADA. Given this fact, it is not surprising that the early implementation of the ADA has been somewhat uneven. During the meeting, experts noted several key points in the area of public relations and education:

1. ADA "success stories" need to be widely publicized. Persons with disabilities, covered entities, and the general public need to know how to successfully implement the ADA in their own local communities and industries. Fortunately, there are a great number of success stories to draw upon. Unfortunately, few of these stories are ever communicated to those who could benefit from this knowledge. Many potential fears regarding compliance could be greatly reduced through the communication of this often common-sense information. As Justin Dart, Jr. observed: *An architect might tell a company that they need to tear out their plumbing and install a new drinking fountain to accommodate a worker with a disability. But the person with a disability might respond by asking the company to install a five-dollar cup dispenser instead.* Clearly, the dissemination of information regarding positive examples of ADA implementation would hold much promise in speeding up the process of compliance and in reducing the number of complaints under the Act. In this regard, participants had several suggestions:

- (a). There should be an on-going, national effort to disseminate ADA success stories.
- (b). Examples of successful compliance should be disseminated by enforcement agencies such as the Department of Justice in order to encourage voluntary compliance.

¹⁰ Blanck, P. (1994). *Communicating the Americans with Disabilities Act -- Transcending Compliance: A Case Report on Sears, Roebuck, and Co.* Washington, DC: Annenberg Washington Program.

(c). There is a particular need to provide persons with disabilities and the general public with *basic* information regarding the ADA.

(d). This basic information campaign as well as other ADA-related information efforts should be produced in accessible formats and should also be available in several languages.

(e). Particular outreach efforts should be made to ensure that individuals from racial, cultural, and ethnic minorities and youth are informed of the ADA's provisions. There is a national need for outreach to minority communities, people with low incidence disabilities, and people living in rural areas.

In its 1993 report, *Meeting the Unique Needs of Minorities with Disabilities: A Report to the President and the Congress*¹¹, the National Council on Disability detailed the difficulties experienced by members of minority groups who had disabilities in receiving information and services. More specifically, the Council found:

The ADA holds great promise for minority persons with disabilities, but the promise will be realized only if specific efforts are made for outreach, education, and removal of barriers in minority communities. (p.4).

Unfortunately, this outreach has yet to occur to any great extent. Participants also noted that persons with low-incidence disabilities and persons who live in rural areas also had significant informational needs regarding the ADA. Once again, a possible solution in this area might be through providing resources to grassroots organizations which serve minority communities, organizations of and for persons with low-incidence disabilities, and to organizations serving rural areas.

(f). The education of philanthropic organizations could yield support for continued public education regarding the successful implementation of the Act.

Clarify and Strengthen the Legal Framework Surrounding the Americans with Disabilities Act

Meeting participants stressed that at present legal actions involving the Americans with Disabilities Act remain largely uncoordinated. Better coordination of legal activities in order to establish a clear framework for interpretation of the ADA through case law.

¹¹ National Council on Disability. (1993). *Meeting the Unique Needs of Minorities with Disabilities: A Report to the President and the Congress*. Washington, DC: Author.

As there is no specific clearinghouse for the dissemination of information on legal activities regarding the ADA, there is a danger that the development of an authoritative body of case law regarding the Act will be slowed. Several suggestions were offered to remedy this situation, including the establishment of a national clearinghouse or other information bank regarding ADA cases or a national conference which would present information and training in the area of case law on the ADA.

Participants noted that the ADA was too big to be implemented solely from Washington, DC, but no consensus was reached as to the best strategy for ensuring evenness in implementation across the nation. The continuing lack of affordable legal resources for people with disabilities was cited as one of the major factors impeding the proper implementation of the ADA.

Provide Resources and Coordinate Federal Efforts to Enforce the Americans with Disabilities Act

While participants were generally supportive of the intent of various Federal agencies to enforce the provisions of the ADA to date, they noted that there was a significant frustration in the disability community regarding the backlog of complaint processing at the Federal level. While certain agencies such as the Equal Employment Opportunity Commission have since begun to explore methods by which they might streamline their processing of complaints, it is clear that additional resources are needed, if the law is to be effectively enforced.

Participants expressed particular concern with the Department of Transportation, stating that it had bypassed the usual rulemaking process in issuing its definition of "unduly burdensome" accommodations, that it had missed deadlines in the law, and that it gave the appearance of being extremely lenient in issuing waivers to covered entities in order to effectively exempt these entities from various provisions in the Act. In addition, participants expressed concern as to whether the Department would utilize the findings and recommendations of the Congressionally-mandated independent study on the accessibility of Over the Road Buses conducted by the Congressional Office of Technology Assessment as the actual basis for its upcoming *Notice of Proposed Rulemaking* concerning the accessibility of Over the Road Buses.

On a more positive note, participants Stated that the Federal Communications Commission had been effective in implementing the regulations under its jurisdiction in a timely and effective manner. The next challenge in this area will be ensuring that people with disabilities have access to the "information superhighway" which will revolutionize the field of telecommunications.

Provide More Technical Assistance

Technical assistance efforts designed to promote ADA implementation need to be more targeted and directed toward a wide variety of entities. Participants Stated that the best way to increase knowledge of the Americans with Disabilities Act among people with disabilities would be to target this information toward grassroots organizations of and for people with disabilities. In many instances, it might be feasible to provide these organizations with resources to educate their membership and the community at large.

Participants also Stated that technical assistance was needed in the education of architects and design professionals so that they might be able to include accessibility features from the earliest possible phases of their work, thereby obviating the need for costly retrofitting later.

Finally, meeting participants suggested that better coordination was needed in the area of technical assistance both among government agencies involved in these activities and private sector entities involved in the delivery of technical assistance. Several participants suggested that, given the marked variability in the quality of technical assistance materials which have been developed in the private sector in response to the ADA, some form of certification or approval by agencies charged with enforcement of the ADA might be advisable. This would help to ensure the accuracy of these materials and to build trust among covered entities.

Summary of the National Meeting of Experts on the Americans with Disabilities Act

The overriding message emanating from the national meeting of experts was that the Americans with Disabilities Act was a law of vital importance to Americans with disabilities and that its overall implementation was proceeding well. However, there were significant informational gaps concerning the Act, its lower-than-predicted costs, and emerging case law. These informational gaps were particularly wide in minority communities, among people with low-incidence disabilities, and in rural areas. Efforts to streamline the processing of complaints and to direct sufficient resources to respond in a timely fashion to these complaints need to be undertaken. In addition, more resources need to be devoted to legal services in order to ensure that people with disabilities can access the rights and protections of the Act. Finally, further technical assistance is needed to enable people with disabilities and covered entities to implement the law in an effective manner.

Roundtable Discussion on the Implementation of the Americans with Disabilities Act

On August 23, 1994, the National Council on Disability sponsored a roundtable discussion on the implementation of the Americans with Disabilities Act as part of its quarterly meeting in Seattle, Washington. At the beginning of the day, leaders from Federal agencies with ADA implementation responsibilities presented data on specific areas under their purview to the Council and to approximately 200 individuals in attendance. After this, individuals representing various local and State agencies as well as employers from Seattle and throughout the State of Washington described their efforts to take a positive approach to the implementation of the ADA. Attendees were then invited to share their views regarding the implementation of the ADA to date.¹²

During the course of the day, information was gathered on Title I - Employment, Title II - Public Services, Title III - Public Accommodations and Services Operated by Private Entities, Title IV - Telecommunications. In addition, the area of Transportation was given specific attention. Finally, information regarding strategies to implement the ADA at the local and State level were described. Information from each of these areas will be summarized below.

Title I - Employment

As of August, 1994, the Equal Employment Opportunity Commission (EEOC) had received almost 30,000 complaints regarding employment discrimination under the ADA. Of these, the largest percentages by disability category were as follows: approximately 20% were from individuals with back impairments, 13% from individuals with neurological impairments, and 10% from individuals with emotional or psychiatric impairments. Half of the complaints alleged discharge based on discrimination, 25% alleged failure to provide reasonable accommodations, and 11% alleged failure to hire based on discrimination. Of the total number of charges, approximately 46% have been resolved in some fashion, 34% through a finding of "no cause". As of August, 1994, 26 cases were in court, with approximately 200 others headed to court.

During the Roundtable, participants identified the following issues as needing attention in order to better implement Title I:

- ◆ More resources are necessary for enforcement.
- ◆ More guidance is needed regarding the relationship of Title I to Worker's Compensation provisions.

¹² Please refer to Appendix B for the Roundtable Agenda.

- ◆ Clarification is needed regarding the relationship of the ADA to union contracts. For example, if job reassignment constitutes a "reasonable accommodation" yet conflicts with seniority provisions in a collective bargaining agreement, which takes precedence?
- ◆ More information is needed regarding chemical sensitivity and environmental illness issues.
- ◆ More information is needed on accommodating people with mental health issues and cognitive disabilities in the workplace.
- ◆ Medical professionals need to learn more about "essential job functions" when evaluating individuals' ability to perform work.
- ◆ The private sector needs more education regarding the provisions of Title I.
- ◆ Consideration should be given to using Medicaid to pay for diagnostic testing.
- ◆ A more precise definition is needed for "specific learning disabilities".
- ◆ The relationship of the ADA to the Family Medical Leave Act should be explored.

Title II - Public Services

As of August 1994, the Justice Department had received approximately 2,400 complaints under Title II of the ADA. Slightly over half of these complaints were referred to seven other Federal agencies for investigation by programs under their jurisdiction, while 1,100 involving issues such as law enforcement, courts, and city and town buildings were retained by the Justice Department for investigation. To date, most of the complaint investigations have led to informal settlements involving voluntary compliance by covered entities.

Participants at the Roundtable made the following suggestions for improving compliance with Title II:

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- ◆ More exploration needs to take place on meeting the needs of individuals with "invisible" disabilities.
- ◆ More resources need to be directed at providing legal services to low- and middle-income people with disabilities.
- ◆ Police departments should make greater use of sign language interpreters during arrest processes with deaf individuals.
- ◆ Procedures for obtaining interpretative services for non-English language deaf people or those who require tactile interpreters need to be improved.
- ◆ More "front-end" planning needs to take place in order to avoid the costs of retrofitting facilities for access.
- ◆ Training needs to occur at the highest levels of an organization, if real change is to occur.

Title III - Public Accommodations and Services Operated by Private Entities

As of August 1994, the Justice Department had received approximately 2,600 complaints regarding Title III of the ADA. Of these, approximately 63% involved the alleged failure to remove barriers in existing facilities which were "readily achievable", 20% involved the failure to provide "auxiliary aids", and another 10% involved the failure to modify policies that precluded or impaired the participation of people with disabilities in programs. Thus far, there have not been a significant number of complaints regarding new construction and alterations.

Participants in the Roundtable offered the following suggestions for improving compliance with Title III:

- ◆ Clarification is needed over the number of van parking spaces that should be provided at existing facilities.
- ◆ Clarification is also needed between the requirements of the law for barrier removal versus new construction.
- ◆ Building officials need basic training regarding Title III requirements.

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◆ Businesses need to provide consistent accommodations such as materials in alternative formats for people who are blind, interpreters for people who are deaf, etc., rather than the present situation in which either no accommodations are readily available or the quality varies widely from one setting to another.

◆ Businesses should hire sign language interpreters on their regular staff, just as they hire a certain number of Spanish speaking individuals (etc.) to meet customers' needs.

◆ Doctor's offices and clinics need to utilize assistive listening devices.

◆ Clarification is needed in order to ensure that covered entities understand that they are required to make reasonable accommodations under Title III, no matter how large or small their business is or how many employees they have.

◆ There should be a qualification standard uniformly applied to sign language interpreters.

◆ Consideration should be given to the development of a certification program for ADA consultants in order to improve quality in these services.

◆ People with disabilities themselves should be included in judgments concerning what constitutes compliance.

Title IV - Telecommunications

Participants in the Roundtable concerning Title IV expressed general satisfaction with progress to date in implementing the requirements of the ADA related to the provision of relay services. They also discussed broader telecommunications and information access issues, such as access to the "information superhighway". Noting that, in general, there is a tremendous gap between the State of technology and the State of access standards to technology, they offered the following suggestions:

◆ Software developers need to ensure that new programs and products are accessible for people with disabilities. For example, the rapid growth of icon-driven programs (such as

21.

Windows) is effectively shutting blind and visually impaired individuals out of their jobs.

◆ The growth of voice mail services has far outstripped the growth of TDD operators, thus producing significant barriers to people with hearing and speech impairments. An industry-wide standard for a pause control system is needed.

◆ Technology is available to allow devices such as automatic teller machines (ATMs) to "talk". This technology needs to be used much more extensively than at present.

◆ The Justice Department or the Access Board should develop standards for making information systems kiosks more accessible.

◆ Long distance telephone carriers should be more flexible in allowing TDD callers to transfer from one service to another.

◆ The Federal Communications Commission (FCC) should ensure that in selling licenses for communications radio frequencies for personal telephones, cellular, telephones, etc. that they do not interfere with frequencies reserved for FM loops used by people who are hard of hearing.

◆ The FCC needs to issue rules regarding hearing aid compatibility telephones.

◆ Consideration should be given to the development of rules governing the confidentiality of information resulting from communication via message relay systems.

Transportation

As of August, 1994, the Department of Transportation had received over 500 complaints regarding the transportation requirements of the ADA. The most common complaints come from people with disabilities who have been refused transportation, people who experience discrimination in receiving transportation services, a lack of accessible key stations, and a lack of curb cuts. Department officials have been informed by covered entities that timelines have been or will be missed in important areas: the July 1993 compliance date for accessibility of key stations has been missed in many areas, and the

July 26, 1994 compliance date for one accessible car per train has also been missed in many instances.

During the Roundtable, participants offered the following suggestions for improving compliance with the ADA:

- ◆ The Secretary of Transportation should accept the findings of the Congressional Office of Technology Assessment's study regarding the accessibility of over-the-road buses and issue rules consistent with this Congressionally mandated study.
- ◆ Clarification is needed on whether repaving roads constitutes an alteration which triggers the requirement to install curb cuts.
- ◆ Extensive training is required for the staff of paratransit systems regarding the accurate and timely processing of requests for services.
- ◆ Federal standards for access to ferries and other vessels should be developed.
- ◆ Clarification is needed regarding which entities are responsible for the accessibility of bus stops.

Seattle and the State of Washington:
Progress in Implementing the Americans with Disabilities Act

Washington State has moved to fully implement the Americans with Disabilities Act because we acknowledge the right of each citizen to participate in state services, programs and opportunities free from discrimination. We have found that implementation costs little and can result in dramatic improvements in the lives of people with disabilities. Further, by enabling people with disabilities to be self-sufficient and to obtain gainful employment, ADA can result in reduced welfare and other program expenditures.

- Governor Mike Lowry

During the ADA Roundtable, Members of the National Council on Disability as well as nearly 200 attendees had the opportunity to hear from a number of individuals who were involved with ensuring the successful implementation of the Americans with Disabilities Act in Seattle and throughout the State of Washington.

In the opening session, Mayor Norman Rice of Seattle spoke eloquently regarding the City of Seattle's efforts to adopt a positive approach to the full implementation of the ADA:

As everyone in this room knows, the Americans with Disabilities Act is the long awaited and long overdue legislation that finally gives Americans with disabilities a guarantee of the most basic civil rights. As I'm sure you are also aware, passing the ADA was only the beginning. The real work lies in implementing and enforcing and tearing down myths and the stereotypes so prevalent in our society. We in Seattle...can...take pride in our city's efforts to make itself accessible to people with disabilities. Our overall goal is to go beyond simply making access. We want people to have a truly comfortable, barrier-free environment.

Noting that the City of Seattle had established ordinance prohibiting discrimination based on disabilities prior to the passage of the ADA, Mayor Rice discussed several efforts the City had made toward the active implementation of the ADA and some of the results of these efforts.

- ◆ The city has taken steps to begin increase the hiring of qualified workers with disabilities.
- ◆ The Mayor appointed two city-wide ADA coordinators. One of these coordinators works specifically on implementation and the other addresses public accommodations.
- ◆ Seattle has established an ADA Citizens Advisory Committee to evaluate and prioritize access issues.
- ◆ The Seattle Public Library has opened its entire collection to patrons who have visual impairments by providing assistive technology. The library also has a coordinator for services for patrons who are deaf or hard of hearing.
- ◆ The city has hired advocates for disability-related concerns within the city government to provide a link to the community at large.
- ◆ As part of its approach to the issue of managing growth and maintaining a high quality of life for its citizens, the city has included accessibility features in its plans to increase and improve housing and public transportation.

Mayor Rice noted that there is still much work to do. However, he Stated his belief that Seattle is up to the challenge, and welcomed the future involvement of all

organizations in making the ADA work in Seattle. In his concluding remarks, Mayor Rice offered the following observation:

The true test of a just society is whether everyone is able to participate. Everyone has the right to be heard, and each of us must be empowered to give a voice to our particular needs and concerns.

Later in the day, representatives from various State agencies involved in the implementation of the ADA as well as employers had the opportunity to share information regarding efforts to positively implement the ADA in the State of Washington and in the State's employment sector.

Mary McKnew, ADA coordinator in the Governor's Office, discussed Statewide compliance activities under Title II of the ADA and the role that the Governor's Office had played in that area. One of the first steps taken in response to the ADA in the Governor's Office was the issuance of Executive Order 9303, which clarified the implications of the ADA to State agency directors in such diverse agencies as Fisheries and Wildlife, Agriculture, Transportation, etc. An ADA coordinator was appointed within each State agency to serve as the central point of contact, to perform agency self-evaluations, and to develop transition plans for submission to the Office of Financial Management. In addition, agency directors were required to hold meetings in barrier-free locations, provide meeting materials in alternative formats, and ensure that assistive listening devices and interpreters were available. The Executive Order also required that public transportation should be made available (in effective alternative means as necessary), and that nondiscrimination be the rule in employment.

In order to increase public awareness of the ADA, the Governor's Office ran advertisements, put up posters, and established a telephone line and point of contact for written inquiries. In addition to the objective of increasing public awareness, these activities also provided a vehicle for the public to inform the Governor's Office of difficulties they might be having in trying to access State services.

A Statewide ADA Task Force was established, with 75 percent of the members being people with disabilities, whether citizens or State employees. The Task Force, which also included representatives of different key State agencies, organized itself around various issues such as communication barriers, employment, facilities access, etc. The Task Force identified broad barriers that people were experiencing across the 135 State agencies as well as the higher education programs supported by the State government and also considered the best means of educating the over 40,000 employees of the State of Washington.

One example of how the State has used information arising from this education and outreach effort is found in the State's establishment of a braille center that contracts with the State printer's office. Previous to the establishment of this braille center, State

agencies were often bewildered when citizens requested information in braille. Today, the turnaround time for such a request is often 24 hours. At the time of the roundtable, the State was in the process of developing a guidebook listing each State agency, its central contact for requests for materials in alternate formats, tape or braille.

The State legislature appropriated funds for operating expenses and capital improvements in response to the ADA. Some of these funds were used by the Department of Personnel to hire a "reasonable accommodations" expert who is available to agency managers to answer questions, identify and locate sources for acquiring accommodations, etc. The Department of Personnel also hired a staff trainer knowledgeable of the provisions of the ADA. This trainer works in coordination with other ADA trainers located in various key departments in order to promote compliance with the ADA. State employees are provided training on topics such as disability awareness, how to use accessible telephone equipment such as a TDDs, and a wide variety of other disability-related topics. Within the Department of General Administration, there is a coordinator for ensuring that State agencies have accessible services and equipment. Equipment such as assistive listening devices can be loaned out to State agencies requiring their use, thereby leading to the most cost-effective use of this equipment. Through another effort, the Department of General Administration is attempting to increase access to public meetings, hearings, and conferences sponsored by the State. This involves training State employees involved in planning for such events in areas such as architectural access.

In the State of Washington, the Governor's Committee on Disability Issues and Employment is the recipient of a grant from the National Institute on Disability and Rehabilitative Research establishing the Northwest Disability Business Technical Assistance Center. The Center provides information and referral, technical assistance, and training on the ADA to people with disabilities, businesses, public accommodations, and the public. The Center is one of 10 regional centers that cover the country for this purpose. Its region includes Alaska, Washington, Idaho and Oregon. Toby Olson, who directs both the Governor's Committee on Disability Issues and Employment as well as the Center, reported that early on, the Center developed a cadre of Statewide networks, organizations, and broad-based coalitions of organizations interested in the ADA. Resources were deployed in order to develop capacities for effective ADA implementation throughout the region. As training was conducted in the States, other efforts were launched in order to build capacity at the local level.

For example, in Alaska the Center has fostered a regional mentor approach. Beginning with an initial intensive training program for 24 individuals, 12 were recruited to establish a network across the State. This network accomplishes its work through monthly telephone conference calls to share technical information, new developments in the application of the Act. Members then recruit apprentices in their communities who can share this information with others all across the State. In Washington State, the State network has a Rural Concerns Subcommittee that has traveled to rural

communities throughout the State. Through advance publicity, the subcommittee has been able to attract the participation of people in rural areas who are interested in disability issues, bring them together in meetings, and develop strategies for ADA implementation.

Finally, roundtable participants heard from employers in the State of Washington who had taken proactive steps to implement increased access to employment for persons with disabilities. Ms. Annella Zamora of McCaw Cellular Communications reported that her company had developed a broad base of employees with disabilities. She stated that McCaw had developed a diverse group of employees, as it has always been part of the McCaw culture to go into the community and employ persons with different disabilities, looking at person's skills first. The ADA had proven helpful in lending more support and accelerating the pace of this process.

Mr. Danny Delcambre, owner of the Ragin' Cajun Restaurant in Seattle, reported that he had established his restaurant in 1993. Given his own hearing disability, he chose to hire people skilled in sign language. In this effort, he was provided with assistance from the State Department of Vocational Rehabilitation. He was also able to obtain tax credits for his business.

Mr. Joey Vigil, of the Naval Undersea Warfare Division, reported that his Division had embarked upon an aggressive program to hire people with disabilities eight years ago. At that time, there were over 4,000 employees, 95 of whom had disabilities. The hiring effort received guidance from an Advisory Committee for Employees with Disabilities, which provided direct access to the commanding officer. Fifty percent of the Committee was made up of disabled employees, and other members included top level managers, as well as a facility engineer (for advice on reasonable accommodation). Deaf employees formed a Deaf Employees Advisory Forum. At that time, the Division worked with approximately 47 different State and private agencies. Members of the Committee participated in recruiting trips, through which the Division hired engineers and scientists, and other professionals. As a result of this and related efforts, the number of employees with disabilities rose from 95 to 578. Currently, employees with disabilities make up 17% of the workforce. The current average hourly wage for employees with disabilities at the Division is \$14.00/hour.

Mr. Vigil credited the Division's adoption of a Total Quality Leadership approach to management as one of the key factors contributing to the success of employees with disabilities. Training and upgrading of skills are constantly emphasized in order to ensure that employees not only maintain their skills, but develop new ones to meet new challenges in the workplace.

Mr. Norm Tate, of the Auburn office of the Teleservice Center for the Social Security Administration described his office's success in hiring and retaining employees with disabilities. Mr. Tate reported that the Center has been in operation for approximately

five years. From the beginning, a goal was to hire people with disabilities. At present, the Center employs approximately 500 employees, 30% of whom have disabilities. Beyond the hiring process, the Center has provided employees with disabilities with career development opportunities, so that at present, several are moving up the management line.

In this effort, the Center received assistance from the State Division of Vocational Rehabilitation, agencies serving people who are blind or visually impaired, and many other agencies. In addition to the assistance provided by agencies, Mr. Tate cited *true commitment at the top* as a key factor in leading to these positive outcomes.

The Council was encouraged by the efforts both within the City of Seattle and the State of Washington to adopt a positive approach to the implementation of the Americans with Disabilities Act. Beyond the impressive gains that have been made in access to the physical, communications, and employment environments, the strength of the partnerships that have been formed will greatly assist in the continued smooth implementation of the Act.

Summary of the Americans with Disabilities Act Roundtable Discussion

The general conclusion from the Roundtable was that implementation of the ADA was proceeding reasonably well. Several speakers stressed the fact that while further training, clarification, and (in some instances) regulatory actions might be required, the ADA itself was sound and should not be amended. In spite of initial fears on the part of some that the ADA would be very expensive or would take great efforts to implement, early implementation has been achieved in many areas in a cost effective and efficient manner. This has been particularly true in organizations which have a strong commitment to their communities:

As I've said, it's always been a part of [our company's] culture to go into the community and employ people with disabilities, to look at the skill set first and, secondarily, to look at the disability....What happened with the ADA, I believe, is that we were lent more support in moving more quickly forward....To date, we have not realized any tax breaks or incentives. I think it was corporate responsibility to move forward with this without any of the incentives.

Another participant put it this way:

Incentives? I'll buy you lunch: that's a good incentive!

Finally, another participant described the importance of leadership in implementing needed organizational change:

CONCLUSIONS

In its early implementation, the Americans with Disabilities Act has begun to create this paradigm shift in America. The goals of the ADA — for equality of opportunity, full participation, independent living, and economic self-sufficiency — are beginning to shape our national culture. An example of this is found in the partnerships which have emerged between public and private sector entities in places such as the City of Seattle and the State of Washington in order to foster the smooth implementation of the Americans with Disabilities Act. These partnerships provide positive examples of how adaptive change is occurring.

The conclusions of this brief summary report echo those expressed in the Council's two earlier reports on the implementation of the Americans with Disabilities Act¹³. What is needed to improve upon the implementation of the Americans with Disabilities Act is greater public awareness, further education and clarification regarding the provisions of the law, and the appropriate resources to both encourage voluntary compliance and to ensure effective enforcement. A recent study by the General Accounting Office also confirms these conclusions:

Overall, we observed steady improvement in both accessibility and awareness during the initial 15 months that the ADA was in effect. However, enough areas of concern remain to suggest a need for continuing educational outreach and technical assistance to businesses and government agencies covered by the act and continued monitoring by the Congress. (p.2).

...while accessibility for persons with disabilities is steadily improving, there remains a need for continuing educational outreach and technical assistance for businesses and government agencies covered by the ADA and therefore the continued attention of a watchful Congress. (p.15).¹⁴

¹³ National Council on Disability. (1993). *ADA Watch -- Year One: A Report to the President and the Congress on Progress in Implementing the Americans with Disabilities Act*. Washington, DC: Author.

National Council on Disability. (1993). *Furthering the Goals of the Americans with Disabilities Act Through Disability Policy Research in the 1990s: Summary of Proceedings*. Washington, DC: Author.

¹⁴ General Accounting Office. (1994). *Americans with Disabilities Act: Effects of the Law on Access to Goods and Services*. Washington, DC: Author.

The present report contains many suggestions for how the Federal government might improve its efforts to ensure that the implementation of the Americans with Disabilities Act goes forward in a manner which guarantees the freedoms established and protected under this landmark civil rights legislation. Improvements in implementation are essential to guaranteeing that the future of America is characterized by equality of opportunity, full participation, independent living, and economic self-sufficiency for *all* citizens. The National Council on Disability remains firmly committed to making the Americans with Disabilities Act work for all citizens, thereby ensuring equal access to the American dream.

Americans with Disabilities Act. These partnerships provide positive adaptive change is occurring.

The conclusions of this brief summary report echo those expressed in the Council's two earlier reports on the implementation of the Americans with Disabilities Act.¹⁰ What is needed to improve upon the implementation of the Americans with Disabilities Act is greater public awareness, further education and clarification regarding the provisions of the law, and the appropriate resources to both encourage voluntary compliance and to ensure effective enforcement. A recent study by the General Accounting Office also confirms these conclusions.

Overall, we observed nearly improvement in both accessibility and awareness during the initial 15 months that the ADA was in effect. However, enough areas of concern remain to suggest a need for continuing educational outreach and technical assistance to businesses and government agencies covered by the act and continued monitoring by the Congress. (p.2).

...while accessibility for persons with disabilities is steadily improving, there remains a need for continuing educational outreach and technical assistance for businesses and government agencies covered by the ADA and therefore the continued attention of a watchful Congress. (p.12).¹¹

¹⁰ National Council on Disability. (1993). ADA Watch - Year One: A Report to the President and the Congress on Progress in Implementing the Americans with Disabilities Act. Washington, DC: Author.

¹¹ National Council on Disability. (1993). *Pushing the Goals of the Americans with Disabilities Act Through Disability Policy Research in the 1990s: Summary of Proceedings*. Washington, DC: Author.

¹² General Accounting Office. (1994). *Americans with Disabilities Act: Effects of the Law on Access to Goods and Services*. Washington, DC: Author.

Appendix A

A Brief Description of the Americans with Disabilities Act

ADA Requirements

An estimated 49 million Americans with physical or mental impairments that substantially limit daily activities are protected under the ADA. These activities include working, walking, talking, seeing, hearing, or caring for oneself. People who have a record of such an impairment and those regarded as having an impairment are also protected. The ADA has the following five titles:

- Title I — Employment
- Title II — Public Services (including Public Transportation)
- Title III — Public Accommodations and Services Operated by Private Entities
- Title IV — Telecommunications
- Title V — Miscellaneous Provisions

The following is a brief summary of some of the major requirements contained in the ADA statute. To determine all of the requirements that a covered entity must satisfy, it is necessary to refer to the regulations, guidelines, and/or technical assistance materials that have been developed by the Department of Justice (DOJ), the Equal Employment Opportunity Commission (EEOC), the Department of Transportation (DOT), the Federal Communications Commission (FCC), and the Architectural and Transportation Barriers Compliance Board (the Access Board). In addition, the Internal Revenue Service (IRS) has developed regulations on the tax relief available for certain costs of complying with the ADA, such as small business tax credits.

Title I — Employment

Title I of the ADA prohibits discrimination in employment against people with disabilities. It requires employers to make reasonable accommodations to the known physical or mental limitations of a qualified applicant or employee, unless such accommodation would impose an undue hardship on the employer. Reasonable accommodations include such actions as making worksites accessible, modifying existing equipment, providing new devices, modifying work schedules, restructuring jobs, and providing readers or interpreters.

Title I also prohibits the use of employment tests and other selection criteria that screen out, or tend to screen out, individuals with disabilities, unless such tests or criteria are shown to be job-related and consistent with business necessity. It also bans the use of pre-employment medical examinations or inquiries to determine if an applicant has a disability. It does, however, permit the use of medical examinations after a job offer has been made if the results are kept confidential, all persons offered employment in the same job category are required to take them, and the results are not used to discriminate.

Employers are permitted, at any time, to inquire about the ability of a job applicant or employee to perform job-related functions. Under the ADA, the employment provisions took effect on July 26, 1992, for employers with 25 or more employees, and will take effect on July 26, 1994, for employers with 15 or more employees. As required, the EEOC issued its regulations by July 26, 1991.

Title II — Public Services

Title II of the ADA requires that the services and programs of local and State governments, as well as other non-Federal government agencies, are accessible to people with disabilities. Regulations from the Attorney General's office at DOJ were issued on July 26, 1991, in compliance with the ADA.

In addition, Title II seeks to ensure that people with disabilities have access to transportation. All new buses must now be accessible. Transit authorities must provide supplementary paratransit services or other special transportation services for individuals with disabilities who cannot use fixed-route bus services, unless this would present an undue burden.

In the area of rail transportation, the ADA requires that all new rail vehicles and all new rail stations must be accessible. In addition, existing rail systems must have one accessible car per train within five years of enactment. Amtrak must make all of its existing stations accessible within 20 years. Key stations of subway systems and other commuter rail systems must generally be accessible within three years. Regulations from the Secretary of DOT were due on July 26, 1991, but were somewhat delayed.

Title III — Public Accommodations

Public accommodations include the broad range of entities that affect commerce, including sales, rental, and service establishments; educational institutions; recreational facilities; and social service centers. The ADA prohibits the use of eligibility criteria that screen out or tend to screen out individuals with disabilities, unless necessary for the delivery of goods and services. It also requires public accommodations to make reasonable modifications to policies, practices, and

procedures, unless those modifications would fundamentally alter the nature of the services provided by the public accommodation.

Title III also requires that public accommodations provide auxiliary aids necessary to enable persons who have visual, hearing, or sensory impairments to participate in the program, but only if their provision will not result in an undue burden on the business. Thus, for example, a restaurant would not be required to provide menus in braille for blind patrons if it requires its waiters to read the menu. The auxiliary aid requirement is flexible. A public accommodation may choose among various alternatives as long as the result is effective communication.

With respect to existing facilities of public accommodations, physical barriers must be removed when it is "readily achievable" to do so (i.e., when it can be accomplished easily and without much expense). Modifications that would be readily achievable in most cases include ramping of a few steps. However, all construction of new facilities and alterations of existing facilities in public accommodations, as well as in commercial facilities such as office buildings, must be accessible to people with disabilities (except that elevators generally are not required for facilities that are less than three stories high or have less than 3,000 square feet per story).

Regulations on public accommodations and commercial facilities from the Attorney General's office were issued on July 26, 1991. Title III also addresses transportation provided by private entities, and regulations on this component were issued by the Secretary of DOT on September 6, 1991.

Title IV — Telecommunications

Title IV of the ADA amends the Communications Act of 1934 to require that telephone companies provide telecommunication relay services. The relay services must permit speech- or hearing-impaired individuals who use TDDs or other non-voice terminal devices opportunities for communication that are equivalent to those provided to other customers. Regulations were issued by the FCC on August 1, 1991.

Title V — Miscellaneous Provisions

This title addresses such issues as the ADA's relationship to other laws including the Rehabilitation Act of 1973, requirements relating to the provision of insurance, regulations by the Access Board, prohibition of State immunity, inclusion of Congress as a covered entity, implementation of each title, promotion of alternative means of dispute resolution, and provision of technical assistance.

Appendix B
List of Participants in the National Meeting of Experts
on the Americans with Disabilities Act

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February 10, 1994

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Mr. Anthony Flack
NCD Council Member

Mr. Robert Muller
NCD Council Member

Dr. George Oberle
NCD Council Member

Mrs. Mary Raether
NCD Council Member

Mr. Edward P. Burke
NCD Acting Executive Director

Ms. Billie Jean Hill
NCD Staff

Mr. Mark Quigley
NCD Staff

Ms. Ramona Lessen
Assistant to the Chairperson

Appendix C ADA Roundtable Agenda

**National Council on Disability
ADA Roundtable
August 23, 1994**

**Westin Hotel
1900 Fifth Avenue
Seattle, WA 98101**

Agenda

- | | |
|----------------------|---|
| 9:00 - 9:15 |) The Administration's Commitment to Furthering of the Americans with Disabilities Act — Michela Alioto, Deputy Assistant for Domestic Policy, Office of the Vice President |
| 9:15 - 9:30 |) Implementation of the Americans with Disabilities Act in the Seattle Area — The Honorable Norman Rice, Mayor of Seattle |
| 9:30 - 9:45 |) Summary of Issues from the Council's National Meeting of Experts on the ADA — Marca Bristo |
| 9:45 - 10:30 |) Panel I
<div style="margin-left: 20px;">) Justice Department — Liz Savage</div> <div style="margin-left: 20px;">) EEOC — Peggy Mastroianni</div> |
| 10:30 - 10:45 |) Break |
| 10:45 - 11:30 |) Panel II
<div style="margin-left: 20px;">) President's Committee on the Employment of People with Disabilities — Richard Sheppard</div> <div style="margin-left: 20px;">) Department of Transportation — Susan Schruth</div> |
| 11:30 - 12:00 |) Overview of ADA-Related Issues in the State of Washington/Northwest Region — Sue Ammeter (Washington State Governor's ADA Project) |
| 12:00 - 1:30 | Lunch (on your own) |

Notes:

1. The filing a charge does not indicate whether the charge has merit.
2. This list adds up to more than 100% because individuals can allege multiple violations.
3. Percentages are rounded off.

- 1:30 - 4:30** **ADA Implementation: A Local/Regional Perspective**
(Introduced by Bonnie O'Day)
- 1:30 - 2:45** **) Panel III: Examples of Promising ADA Implementation Strategies — Sue Ammeter**
- 2:45 - 4:00** **) Working Group Sessions: Improving the Implementation of the ADA:**
-) Employment**
 -) Public Services**
 -) Transportation**
 -) Public Accommodations and Services Operated by Private Entities**
 -) Telecommunications**
- 4:00 - 4:30** **) Summary of Working Group Sessions**
- 4:30 - 6:00** **General Meeting Between Representatives from the Federal Government and Roundtable Participants Concerning Future ADA Implementation**

Appendix D

Statistical Information on the ADA as of September 30, 1994

As part of its follow-up to the ADA Roundtable held in Seattle, WA on August 23, 1994, the National Council on Disability requested Federal agencies that had participated in the Roundtable to provide summary statistics on their ADA-related charges and complaints as of September 30, 1994. This information is as follows:

Equal Employment Opportunity Commission

As of September 30, 1994, the Equal Employment Opportunity Commission reported the following data regarding charges it had received under the ADA:

Cumulative Charge Data for 7/26/92 — 9/30/94

Total ADA charges received during reporting period: 34,877.

Impairments Cited By Frequency

Impairments Most Often Cited	Number	Percentage of Total
Back Impairments	6,879	20%
Neurological Impairments	4,314	12%
Emotional/Psychiatric Impairments	3,913	11%
Extremities	2,407	7%
Heart Impairments	1,639	5%
Diabetes	1,238	4%
Substance Abuse	1,233	4%
Hearing Impairments	1,094	3%
Vision Impairments	1,035	3%
Blood Disorders	900	3%
Cancer	883	3%
HIV (Subcategory of Blood Disorders)	636	2%
Asthma	612	2%

Notes:

1. The filing a charge does not indicate whether the charge has merit.
2. This lists adds up to more than 100% because individuals can allege multiple violations.
3. Percentages are rounded off.

Number of ADA Lawsuits Filed by EEOC as of Oct. 1, 1994: 37

ADA Violations Most Often Cited

ADA Violations Most Often Cited	Number	Percentage of Total
Discharge	17,525	50%
Failure to Provide Reasonable Accommodation	8,777	25%
Hiring	3,860	11%
Harassment	3,665	10%
Discipline	2,526	7%
Layoff	1,849	5%
Benefits	1,330	4%
Promotion	1,323	4%
Rehire	1,285	4%
Wages	1,195	3%
Suspension	784	2%

Americans with Disabilities Act Resolutions of EEOC
7/26/92 — 9/30/94

Type of Resolution	Number	Percentage of Total
Administrative Closure	7,593	44%
No Reasonable Cause	6,111	36%
Merit Resolutions	3,358	20%
Settlements	1,174	7%
Withdrawal with Benefits	1,723	10%
Unsuccessful Conciliations	307	2%
Successful Conciliations	154	1%
TOTAL RESOLUTIONS	17,062	100%
TOTAL MONETARY BENEFITS = \$30,391,755		

Department of Justice

As of September 30, 1994, the Department of Justice reported that it had 1,400 ongoing investigations regarding complaints filed under Title II of the ADA and 1,100 ongoing investigations regarding complaints filed under Title III of the Act.

Department of Transportation

Data from the Department of Transportation indicate the following:

Reporting Year Number of ADA Complaints Received

1992	124
1993	234
1994	<u>460</u>
TOTAL	818

The Federal Communications Commission was assigned a very specific set of initial activities in the initial phases of the implementation of the ADA, most notably ensuring the development and deployment of a nationwide system of relay services for persons who are hearing or speech impaired by July 26, 1993. The Commission essentially met this deadline. Since that time, it has received five complaints. One involved interstate issues and was resolved by a final order. However, there is an appeal pending. The other four complaints involved intrastate issues, were referred back to the States, and were resolved at the State level.

APPENDIX E

A Brief Description of the National Council on Disability

Overview and Purpose

The National Council on Disability is an independent Federal agency led by 15 members appointed by the President of the United States and confirmed by the U.S. Senate. The National Council was initially established in 1978 as an advisory board within the Department of Education (Public Law 95-602). The Rehabilitation Act Amendments of 1984 (Public Law 98-221) transformed the National Council into an independent agency.

The overall purpose of the National Council is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all individuals with disabilities, regardless of the nature or severity of the disability; and to empower individuals with disabilities to achieve economic self sufficiency, independent living, and inclusion and integration into all aspects of society.

Specific Duties

The current statutory mandate of the National Council includes the following:

- * Reviewing and evaluating, on a continuing basis, policies, programs, practices, and procedures concerning individuals with disabilities conducted or assisted by Federal departments and agencies, including programs established or assisted under the Rehabilitation Act of 1973, as amended, or under the Developmental Disabilities Assistance and Bill of Rights Act; and all statutes and regulations pertaining to Federal programs which assist such individuals with disabilities in order to assess the effectiveness of such policies, programs, practices, procedures, statutes, and regulations in meeting the needs of individuals with disabilities;
- * Reviewing and evaluating, on a continuing basis, new and emerging disability policy issues affecting individuals with disabilities at the Federal, State, and local levels, and in the private sector, including the need for and coordination of adult services, access to personal assistance services, school reform efforts and the impact of such efforts on individuals with disabilities, access for health care, and policies that operate as disincentives for the individuals to seek and retain employment.
- * Making recommendations to the President, the Congress, the Secretary of Education, the Director of the National Institute on Disability and Rehabilitation Research, and other officials of Federal agencies, respecting ways to better promote equal opportunity, economic self-sufficiency, independent living, and inclusion and integration into all aspects of society for Americans with disabilities.

- * Providing the Congress, on a continuing basis, advice, recommendations, legislative proposals, and any additional information which the Council or the Congress deems appropriate;
- * Gathering information about the implementation, effectiveness, and impact of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.);
- * Advising the President, the Congress, the Commissioner of the Rehabilitation Services Administration, the Assistant Secretary for Special Education and Rehabilitative Services within the Department of Education, and the Director of the National Institute on Disability and Rehabilitation Research on the development of the programs to be carried out under the Rehabilitation Act of 1973, as amended;
- * Providing advice to the Commissioner with respect to the policies of and conduct of the Rehabilitation Services Administration;
- * Making recommendations to the Director of the National Institute on Disability and Rehabilitation Research on ways to improve research, service, administration, and the collection, dissemination, and implementation of research findings affecting persons with disabilities;
- * Providing advice regarding priorities for the activities of the Interagency Disability Coordinating Council and reviewing the recommendations of such Council for legislative and administrative changes to ensure that such recommendations are consistent with the purposes of the Council to promote the full integration, independence, and productivity of individuals with disabilities;
- * Preparing and submitting to the President and the Congress a report entitled *National Disability Policy: A Progress Report* on an annual basis; and
- * Preparing and submitting to the Congress and the President a report containing a summary of the activities and accomplishments of the Council on an annual basis.

Population Served and Current Activities

While many government agencies deal with issues and programs affecting people with disabilities, the National Council is the only Federal agency charged with addressing, analyzing, and making recommendations on issues of public policy which affect people with disabilities regardless of age, disability type, perceived employment potential, economic need, specific functional ability, status as a veteran, or other individual circumstance. The National Council recognizes its unique opportunity to facilitate

independent living, community integration, and employment opportunities for people with disabilities by assuring an informed and coordinated approach to addressing the concerns of persons with disabilities and eliminating barriers to their active participation in community and family life.

The National Council plays a major role in developing disability policy in America. In fact, it was the Council that originally proposed what eventually became the Americans with Disabilities Act of 1990. Our present list of key issues includes monitoring progress toward the implementation of the Americans with Disabilities Act, and the development of a comprehensive national disability policy.

Current Members

Marca Bristo, Chairperson
Chicago, IL

Anne C. Seggerman
Fairfield, CT

John A. Gannon, Vice Chairperson
Washington, DC and Cleveland, OH

Michael B. Unhjem
Fargo, ND

Linda W. Allison
New York, NY

Kate Pew Wolters
Grand Rapids, MI

Ellis B. Bodron
Vicksburg, MS

Larry Brown, Jr.
Potomac, MD

Mary Ann Mobley Collins
Beverly Hills, CA

Anthony H. Flack
Norwalk, CT

Robert S. Muller
Grandville, MI

Bonnie O'Day
Somerville, MA

Mary M. Raether
McLean, VA

Shirley W. Ryan
Kenilworth, IL

