

THE WHITE HOUSE

WASHINGTON

May 27, 1992

I am delighted to send warm greetings to all those who are gathered in Washington, D.C. for the 45th Annual Meeting of the President's Committee on Employment of People with Disabilities.

The passage of the Americans with Disabilities Act of 1990 marked a great victory for our entire Nation. By requiring the elimination of barriers that, in the past, have prevented many Americans with disabilities from participating fully in the social and economic mainstream of our society, this law will open doors of opportunity to millions of our citizens. At the same time, as more and more persons with disabilities enter and advance in the workplace, all of us will benefit from the contribution of their knowledge, talents, and skills.

The theme of your meeting, "Full and Harmonious Compliance with the ADA," underscores your commitment to the implementation of both the letter and the spirit of this historic legislation. As members of the Committee well know, the ADA is not meant to be an impetus for excessive government regulation and years of costly litigation -- although it certainly provides due legal recourse for victims of discrimination and injustice. Rather, our goal is to make equal opportunity for persons with disabilities a cherished principle in the United States, as well as nationwide policy and practice. The ultimate success of the ADA will require the sustained cooperation of government, business, advocacy groups, and persons with disabilities, and I salute all of you for helping to make the promise of the ADA a reality.

Barbara joins me in sending best wishes for a successful meeting.

A handwritten signature in dark ink, appearing to read "George Bush". The signature is fluid and cursive, with the first name "George" written in a larger, more prominent script than the last name "Bush".





## THE PRESIDENT'S COMMITTEE ON EMPLOYMENT OF PEOPLE WITH DISABILITIES

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CHAIRMAN  
JUSTIN DART

June 1, 1992

### PRESIDENT BUSH REAFFIRMS SUPPORT FOR ADA

In spite of the general acceptance of ADA by those members of the business community and public who have received accurate information, people with disabilities have not escaped the political negativism of 1992. During the past few months a handful of longtime disability rights foes in Congress have called for the weakening or repeal of ADA. Pat Buchanan and a small number of other prominent conservative commentators have criticized President Bush for his support of ADA. The spokesperson for Presidential candidate H. Ross Perot was quoted by the Washington Post as referring to people with disabilities in nursing homes as "cripples."

During my recent visits to each of the fifty states - and by telephone and mail - you have expressed concern about rumors that the President was bowing to pressure and backing off on his support for ADA - that ADA regulations had been suspended. I and others have consulted the White House.

1. ADA regulations are not and never were suspended.
2. President Bush and Vice President Quayle remain firm in their support for ADA. I enclose a statement signed May 27 by President Bush.

That is good. The President and his administration - and our friends in the Congress will provide leadership for the implementation of ADA, but Washington can't do the job alone. In the final analysis we of the disability community will implement ADA, or it won't be implemented. We've got to lead the way, to inform, to motivate, to monitor progress in every community. Thanks to you, we have made a great start. But we are a long way from the promised land of equality, jobs, prosperity and full access in real life mainstream America.

We must continue to meet misinformation with truth. We must train all of our disability community colleagues to be effective ADA advocates, and participants in the democratic process. We must educate all leaders of business and government and operators of public facilities about their rights and opportunities - and help them to comply fully with minimal litigation and maximal profit. We must utilize all media to inform employers that ADA employment protections become effective on July 26, and what those protections are.

The President's Committee, Yoshiko and I personally, will cooperate in any way possible.

*I appreciate your leadership for  
a more just and productive America.*

DIGNITY, EQUALITY, INDEPENDENCE THROUGH EMPLOYMENT

*Justin Dart*





June 26, 1992

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Executive Director

Senator Robert Dole  
Suite SH-141  
Hart Senate Office Building  
Washington, DC 20510

Dear Senator Dole:

Your speech before the National Health Council was excellent. Having heard your comments about the need for the Americans with Disabilities Act and the persistent concerns raised by small business owners in Kansas regarding the costs of compliance, I felt compelled to seek some resources and testimonials to assure that ADA is a well-balanced, thoughtful and significant piece of legislation for which your support will always be remembered.

Through a partnership with the Small Business Legislative Council, United Cerebral Palsy Associations, Inc. has produced a 12-minute video (enclosed) to educate small businesses about employing persons with disabilities. Also, I am enclosing a letter from the SBLC's President, John Satagaj, describing their members' reactions initially to ADA, and how, with education and understanding, these perceptions have changed for the better. Remember, Mr. Satagaj's Council of **100 organizational members represents over one million small businesses nationwide.**

I am also enclosing several testimonials from small business owners with which UCPA and some of our affiliates have worked in securing employment for people with cerebral palsy and other disabilities. These stories are word processor copies of articles which will appear in the next edition of UCPA's newsletter, *The Networker*. These stories and quotes are powerful examples of changes in thinking about persons with disabilities -- to be inclusive and understanding.

**Senator Robert Dole**

June 26, 1992

Page two

Over the past two years, I have been contacted several times by Judy Krueger, U.S. Small Business Administration, Kansas City, Missouri, who has asked me to present two ADA workshops for small businesses in conjunction with your Kansas office and the Kansas Council of Independent Living Centers. At this time, I may only be able to do an August 7 workshop in Topeka. It's great to see SBA, KCILC and your office planning an ADA educational workshop for small businesses.

Finally, Senator Dole, I would be honored to help you in any way in your campaign in Kansas. For over 20 years you have given me more wonderful opportunities than anyone can dream of in a lifetime. And, from a professional perspective, persons with disabilities are honored to have your support on the key issues in our lives -- the Americans with Disabilities Act, personal assistance and assistive technology. Please let me know if I can be of assistance to you.

Sincerely,



John D. Kemp  
Executive Director

JDK/aeb

Enclosures

cc: John Satagaj  
Michael Morris  
Jim Hollahan



NEWS AND INFORMATION FOR ACTIVE PEOPLE WITH DISABILITIES  
AND THOSE WHO WORK WITH THEM

# *action* DIGEST

March 6, 1992

The Honorable Robert J. Dole  
United States Senator  
SH 141 Hart Senate Office Building  
Washington, DC 20510-1601

Dear Senator Dole;

Over a year ago I contacted your office and shared with them that I was working on a magazine for people with disabilities known, at the time as Enable. I knew then that I wanted to share with the readers, some of the insight that you have as a Senate leader and as a disability rights advocate. During the ensuing months one of the things that kept me pushing forward on the magazine concept was my desire to share the words you so graciously provided with my friends and colleagues in the disability community.

Tenacity paid off. Enclosed are copies of the Premiere Issue of action DIGEST which was mailed out to 14,000 people nationwide on February 28, 1992. Your message to the disability community appears on page four of the publication. They are as appropriate today as they were the day you wrote them and I am particularly proud to feature them in this special issue.

On a personal note, I want to acknowledge the leadership role you played in moving the Americans with Disabilities Act into enactment. There are a whole lot of people who have taken credit for this landmark legislative action but the list all-to-often does not recognize the key role you played. I know that I speak for many when I say thank you for your support and your effort.

Please know that if there is ever any way in which I can be of assistance to you, all you need to do is call.

Sincerely,

David T. Williams  
Editor

Enclosure

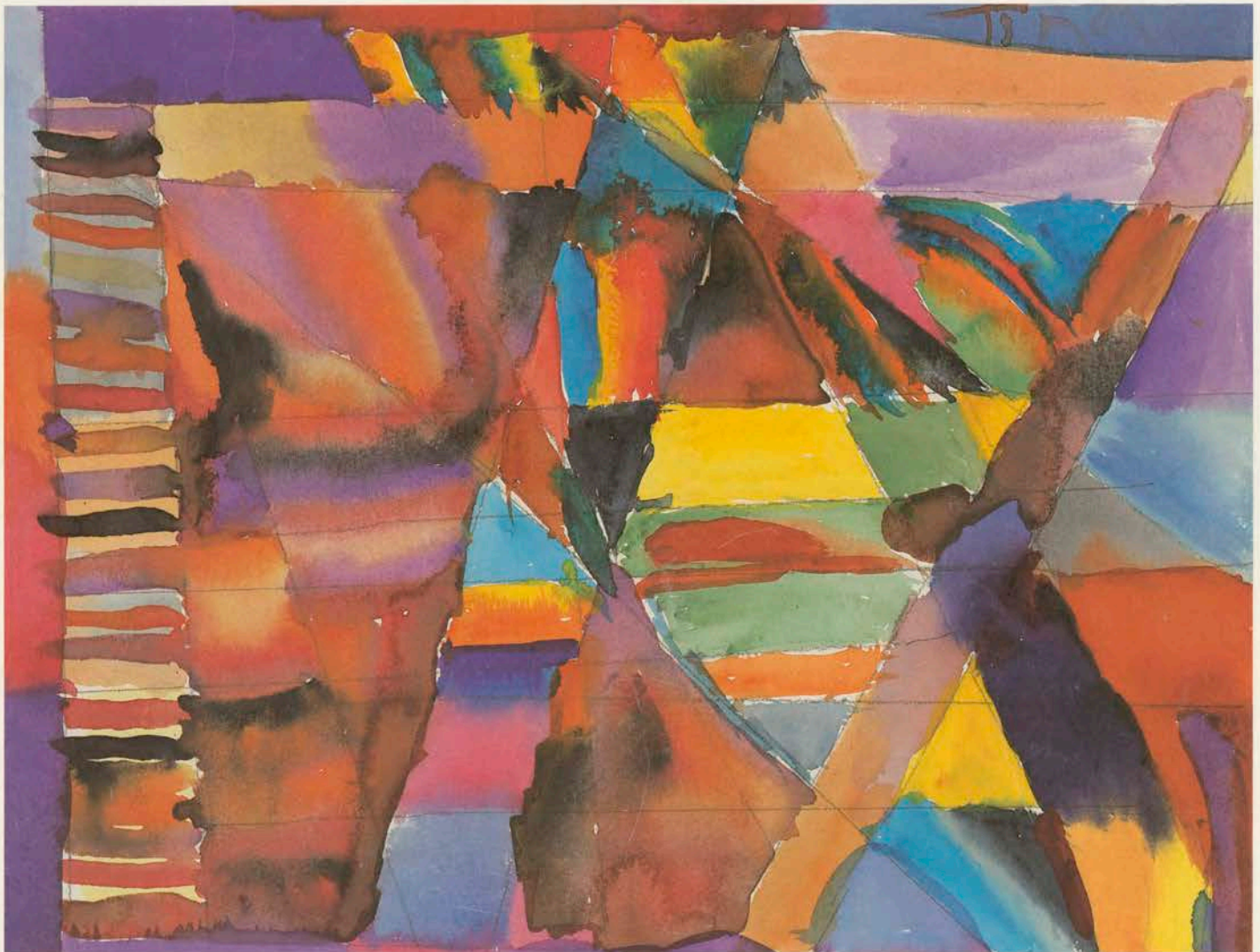
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MAR/APR 1992  
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NEWS AND INFORMATION FOR ACTIVE PEOPLE WITH DISABILITIES  
AND THOSE WHO WORK WITH THEM

# *action* DIGEST™



SENATOR BOB DOLE ON THE ADA AND BEYOND  
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Wheelchair manufacturer and Model \_\_\_\_\_

List other disability publications you read \_\_\_\_\_

Tell us where you heard about *action DIGEST* \_\_\_\_\_

Comments and suggestions for future issues of *action DIGEST* \_\_\_\_\_

Reader Inquiries \_\_\_\_\_

Pen Ultimate \_\_\_\_\_

### ABOUT THE COVER

The watercolor on the cover is by Tina Johnson of Columbus, Ohio. She is enrolled in the Creative Skills Program at the Grace Center of United Cerebral Palsy of Columbus and Franklin County.

The artist works in a variety of media but finds water colors best suited for bold expressions with bright contrasting colors. She has exhibited at galleries in the Columbus area and is preparing for a spring show where, along with that of several other students in her class, will be featured on a "gallery hop" tour. ♦

MAR/APR 1992



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The artist works in a variety of media but finds water colors best suited to her flair for bold expressions with bright contrasting colors. She has exhibited at several galleries in the Columbus area and is preparing for a spring show where her work, along with that of several other students in her class, will be featured on a local "gallery hop" tour. ♦

**MAR/APR 1992**

## WELCOME

Welcome to the premiere issue of action DIGEST. We hope you will find it informative, entertaining and thought-provoking. Our goal is to produce a periodical of "news and information for active people with disabilities and those that work with them."

The magazine is based on the belief that there is common ground in the many topics that interest consumers, their family members, therapists, medical equipment vendors and others. By gathering that information in one place, we can build bridges, strengthen existing relationships and, we hope, help unite the disability community. action DIGEST provides you, our readers, an opportunity to express your opinions, share information and inform each other about what's important.

This is a time of change and challenge for the disability community. The Americans with Disabilities Act is now law, but the long process of making it work has just begun. At the same time, other issues will demand our attention: access to health care; funding for long term home care, attendant services, and education are among them.

The effort to get the ADA enacted proved that using our individually unique talents, we can accomplish together those things that we cannot do alone. The vision and support of the Invacare Corporation has enabled us to produce a vehicle that can bring us together to conquer the challenges still before us.

We look forward to your contributions to this effort.

The staff of action DIGEST

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## It's YOUR TURN

*action* DIGEST will publish opinions, pose questions and share information with our readers. The cover of each issue will feature the work of an artist with disabilities.

Writers, poets, cartoonists and reporters with disabilities will also help fill the pages of this publication. People who are interested in contributing to future issues of *action* DIGEST, should send for a copy of the "*action* DIGEST Style Manual for Contributors" at 8 East Long Street, Suite 222, Columbus, Ohio, 43215-2914. All contributors will be paid for work published.

Try our "Reader Inquiry" section for the answer to a question. Questions selected for publication will be those which address policy or technical matters of interest to a large segment of our readers. Don't be shy. If you have

a question, chances are there is someone else with the same one.

Another feature of *action* DIGEST is the "Reviews". Disability issues are beginning to be covered in a variety of "mainstream publications" and in some specialty magazines. *action* DIGEST staff will read and review as much material as possible, but we might miss something you think would interest other readers. If so, write a short review and send it, along with a complete copy of the article and the publication, and we may include it in a future issue. We will also include selected reviews of new books, films, plays, and art exhibits on disability-related topics.

Your opinions and comments are welcome and important. They may appear in the "Letters to the Editor" section of future issues. Finally, each issue will include a calendar of national events. If your organization is sponsoring a meeting, event or educational conference, send a copy of the promo-

tional brochure or a press release with the pertinent details.

With your help and participation, *action* DIGEST will quickly become one of the most useful and well-read publications you receive. We look forward to hearing from you. ♦

## *action* DIGEST SCOUTING FOR COVER ART

*action* DIGEST is looking for talented artists. You've probably already noticed the outstanding work of this issue's cover artist, Tina Johnson.

The cover of each issue of *action* Digest will feature an original work by an artist with a disability. This is an opportunity for artists to have their work seen in a national publication. Selected work will become the property of Invacare Corporation as part of its permanent art collection. Each artist

whose work is chosen for publication will be paid.

Artists should submit two slides or photographs of their work. Do not send actual work. A self-addressed stamped envelope should accompany the slides. Entries must be received by April 15, 1992 for the remaining issues in 1992. Artists will be notified of the selections by May 1. Any professional or amateur artist with a disability may submit their work. Work in all media may be submitted but artists should consider entries that lend themselves to color print reproduction. Each work must be original and must not have been reproduced in any other publication. Entries should be sent to:  
*action* DIGEST, 8 East Long Street,  
Suite 222, Columbus, OH 43215-2914 ♦

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# ADA Gala Marks Start of New Era

**"This is an historic evening... (it) gives me confidence that the support for future struggles will be there." Justin Dart Jr.**

Over nine hundred disability rights advocates gathered in Washington's elegant Union Station to celebrate the long awaited implementation of the Americans with Disabilities Act. The festive event, held on February 1, 1992 to honor the beginning of a new era of opportunity and access for people with disabilities, was organized by the Disability Rights Education and Defense Fund, Inc. DREDF is one of the many national advocacy organizations that worked to secure passage of the Americans with Disabilities Act.

DREDF staffers were joined by other officers in "ADA Army" from the Dole Foundation, the Epilepsy Foundation of America, the National Easter Seals Association, the National Association of Developmental Disabilities Councils, United Cerebral Palsy Association, and others.

The event was an opportunity for the many individuals who worked at the local, state and national levels to come together again in celebration of the law's passage. The crowd was dotted with several well-known leaders in the disability community, including EEOC Chairman Evan Kemp. Mr. Kemp, who introduced President Bush at the signing of the bill on July 26, 1990 was joined by Justin Dart Jr. from the President's Committee on Employment of People with Disabilities. Justin and his wife Yoshiko helped organize the grass roots campaigns that resulted in thousands of letters and telephone calls to members of Congress and White House personnel.

But the majority of the people who came were the not-so-well-known "foot soldiers" - people who helped move the legislation by doing the unglamorous work of participating in the many marches in support of the ADA or organizing letter-writing campaigns to reluctant legislators. Dart summed up the event in these words: "This is an historic

evening. Watching the entire disability community come together to celebrate what we have accomplished together in the ADA gives me confidence that the support for future struggles will be there."



The highlight of the evening was an auction with former Congressman and long-time disability rights advocate Tony Coelho serving as auctioneer. The first item auctioned off was a golf club -purported to have magical powers - from the bag of Vice President Dan Quayle. It was purchased by Justin Dart after a spirited bidding that began furiously and never abated. Two basketballs autographed by NBA great Magic Johnson brought in \$600 each. A week for two in Hawaii went for over \$3,000. While all these items may be well worth the price, the real value is that proceeds will support the ongoing work of DREDF.

As for the auctioneer, Tony Coelho does not have to worry about his future. Building on some of the legendary debating skills he used to sway colleagues during his years in Congress, Coelho did a superb job of calling the auction and "encouraging bidders" to dig a little deeper into their pockets for items on the auction block. As the auction proceeded, the partygoers feasted on a bountiful buffet provided through the generous donations of several local restaurants and hotels.

It has been said that, through the ADA, the disability community became "family." The atmosphere in the East Hall that evening was not unlike that of a family reunion: as the clock moved towards the scheduled hour for the event to end, groups began to gather around to share one last story, or say fond farewells to colleagues and friends who had gathered for the joyous celebration of a job well done. ♦

**BY FRANCES DWYER McCaffrey**



"I have always been inspired by the state motto of Kansas 'To the stars through difficulties'. Well, in 1990 our nation devoted itself to ensuring that people with disabilities have the opportunity to reach for the stars, to develop to their fullest potential, and to enter the mainstream of society. When Congress passed the Americans with Disabilities Act (ADA), we not only outlawed discrimination against people with disabilities, but also ensured that we all have the opportunity to live lives of dignity and independence.

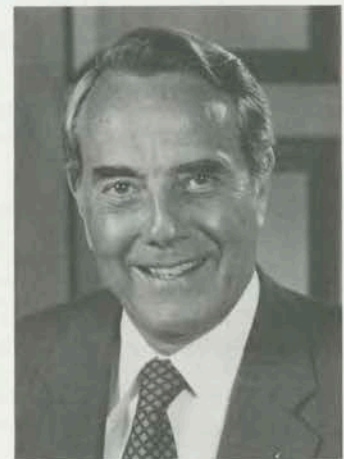
"The ADA is an important beginning, giving us not only a framework from which to work, but also a mandate from which to proceed. However, to reinforce the goals of ADA and to move disability policy forward into the next century, it is critical to maintain a united and solid partnership between the disability communities as well as the public and private sectors. Working together, we can ensure that every American citizen will be provided the access and opportunity to be a part of all that society offers.

"The Congress had a very busy year in 1991 and has a full agenda for 1992. We will be considering a variety of disability programs that must be updated to meet the reality of an ADA world. The list is comprehensive and includes many critical issues such as the re-authorization of early intervention services for children with disabilities, the Protection & Advocacy for Mentally Ill Persons Act, and the Education of the Deaf Act. Furthermore, Congress will be exploring personal assistance services and other new disability initiatives. Although these issues and many others are very important, we must not forget to monitor compliance with ADA. Since the regulations are

As this inaugural issue of *action DIGEST* goes to press, people with disabilities are beginning to taste the fruits of the long, hard struggle to get the Americans with Disabilities Act signed into law. Lift-equipped busses are on the street, many businesses are making their facilities and their services accessible to this expanding market and employers across America are figuring out how to best make the new law work. But the world is still far from perfect. There are still serious issues facing people with disabilities. *action DIGEST* asked Senate Minority Leader Robert Dole, an eloquent supporter of disability rights and a key player in the effort to get the ADA enacted, what issues he thought the disability community should focus on in the coming months.

## A Message from Senator Robert J. Dole

"The ADA is an important beginning, giving us not only a framework from which to work, but also a mandate from which to proceed."



*Senator Robert J. Dole is the Senior Senator from the State of Kansas and currently serves as Minority Leader in the Senate. He has been a long-time activist on disability issues and Co-chairs the Senate Bi-Partisan Working Group on Disability Policy. His knowledge of disability issues comes from personal experience as he lives with the challenges caused by an injury sustained in combat during World War II. ♦*

being published on time, it is critical to enforce the rules being promulgated.

"These issues, and many others, need systematic examination and Congressional consideration if we are to fulfill ADA's promise. Clearly, if we are going to make our dream of equal opportunity for people with disabilities a reality, it is imperative that disability initiatives are cut from the same cloth as the ADA."



Battery powered wheelchairs are the key to independent mobility for many active people with disabilities. Advances in technology have provided many options which can enhance their utility. Chairs can match individual life-styles for control, speed and certain terrain covered. Common to all power drives is a battery. Three types of batteries are used in power drives: conventional lead-acid, sealed lead acid and gel-cell.

**Conventional lead acid batteries** are the "high performance and high maintenance" option. They will hold a charge longer and provide more power than the other types if they are properly maintained. Fluid level must be checked regularly. If it is low, it must be replenished with distilled water. If it gets jostled and the fluid (battery acid) spills, it can cause harm to equipment, clothes and skin.

**Sealed lead acid batteries** don't have the power and are not able to hold a charge as long as conventional batteries. However, they don't require as much maintenance and they are less likely to cause damage in the event of an accident. They are more expensive than conventional batteries but have the added benefit of being more acceptable for air travel. Unlike conventional batteries, they may be removed from the chair and stored in special shipping containers.

**Gel-Cell batteries** are also popular among power drive users who travel by air. The disadvantage, however, of the gel-cell is that it is the least powerful of the three options and the most expensive.

Regardless of the type used, the average life of a set of batteries is six to eight months. This will vary depending on type of use, the care of the battery and the general condition of the chair. Inefficient drive systems, dirty electrical contacts or under-inflated tires will take a toll on the batteries. Adding the "high performance options" to a chair will also affect the life of the battery. Increased speed, for example, will shorten its life. The "enemies" of batteries are improper charging, inadequate maintenance, weather and battery abuse. There are several types of battery chargers, so it's important to read the instruction manual. Batteries can be either overcharged, which can result in damage to the cells, or undercharged which leads to poor performance and shortened life span. A good automatic dual mode charger will only charge as necessary and may be worth the extra cost.

# PERFORMANCE

## THE POSITIVES & NEGATIVES OF POWER DRIVE BATTERIES

BY HYMIE POGIR

Regardless of the type used, all batteries require maintenance.

- ✚ Conventional battery fluid should be checked weekly.
- ✚ Each cell should be checked and distilled water should be used to fill them when low.
- ✚ Connector posts on all batteries should be cleaned with wire-wool to insure good contact between the battery and the cable.
- ✚ The battery cable should be securely fastened.
- ✚ Corrosion on the posts should be cleaned with a mixture of baking soda and water.

A great deal of similarity exists between batteries for wheelchairs and the ones used in cars. Batteries rely on a chemical reaction to generate power. Very cold weather slows that reaction and causes the battery to lose its charge. Power drives should be stored in a warm place when not in use. Rain, snow and mud can also cause problems if they get into the connectors on the chair.

Finally, the practice of repeatedly running the batteries all the way down before charging them is also damaging. Batteries are electro-chemical units and constant discharging to near zero power weakens the battery and adversely impacts its ability to accept a charge. Avoid draining the battery (power) dry because each time you do, the rechargeable life of the battery is shortened each time.

The independent mobility that a power drive wheelchair can provide will be quickly forgotten if the user is left stranded by battery failure that could have been avoided.

*Hymie Pogir is Vice President of Marketing for Rehab Products with Invacare Corporation. He is an internationally recognized expert on power driven mobility devices. ♦*



## Profile:

Aldous Huxley wrote "experience is not what happens to a man; it's what a man does with what happens to him". Georgia Secretary of State Max Cleland is living testimony to these words. His life was forever changed when he left both legs and most of his right arm on the soil of war-torn Vietnam. Captain Cleland moved to recover a loose hand grenade that threatened the lives of the men around him and it exploded. Others would call the event an act of heroism but Max insists it was a "dumb accident". Nonetheless, a grateful nation awarded him the Silver Star for his act.

Lesser men would have withdrawn into the protective shell of self-imposed isolation from such a severe injury. Not Max Cleland. In short order Max would show, in words first used by Ernest Hemingway in his epic *A Farewell to Arms*, that he had become "strong at the broken places".

Max used Hemingway's words as the title of an autobiography about his experience after his injury in Vietnam. It is a moving story of how strength can challenge adversity and win. *Strong at the Broken Places* is not a chronology of clinical experiences but

cally and learned from them. Max knew he would return to the Georgia state ballot.

Cleland's political odyssey took an unexpected turn in 1977 when President Jimmy Carter picked Max to serve



## Georgia Secretary of State

the plain-talk recollections of a man who has faced his demons and come to terms with them. There are times when the reader literally can feel the presence of Max Cleland in the room and the words on the pages magically transform themselves to sounds as if Max were right there telling his story. The author openly describes his anger at acquiring a disability, the rejection he encountered and his attempts to deal with disability by denial. He is able to capture some of the irony and humor that adjusting to disability can bring out.

In 1970, just two years after his injury, Max Cleland was elected to the Georgia State Senate from his hometown district. At the age of 28, he was then the Senate's youngest member. Cleland's was not an easy victory resulting from "sympathy votes". He worked from sun-up into late evenings often doing twelve or more events in different locations in one day. His election was the result of hard work and a real "grassroots" campaign.

After two terms in the Georgia Senate, Cleland set his sights a little higher and ran state-wide for the position of Lieutenant Governor. It was a long, grueling campaign. The results were not what he hoped for, and he experienced the pain of defeat. Like any successful person, he accepted the results philosophi-

as the Administrator of the Veterans Administration in Washington. President Carter said of his appointment, "I knew that I needed someone with whom the veterans of America can identify, someone they knew understood what they were going through. I also knew that the Administrator had to be a person of passion and compassion. It soon became clear that Max Cleland was the obvious choice".

Washington insiders refer to the VA as the "ultimate bureaucracy, a challenge to even the most experienced administrator". Max approached this challenge as he had every other. His energy and enthusiasm soon made everyone forget that he was the youngest man and the only Vietnam vet ever to head the Veterans Administration.



The commitment of Max Cleland to veterans' issues clearly comes from personal experience and has not abated over time. Even though he no longer serves as administrator of the agency, he remains in touch through old friends. Last year, as the nation kept its eyes on the Persian Gulf, Cleland kept one focused on the VA. "Congress may have to re-examine the GI Bill and the budget to make certain that it can meet the needs of those who served in the most recent conflict," he has noted.

An interesting side of Cleland's character began to show itself during his term at the VA. Washington is a city where status is everything and the trappings of office are more important to some than the office itself. As administrator of the VA, Cleland was entitled to a chauffeured limousine. To the surprise of many, he refused to use it and drove himself to most of his appointments.

signal about the abilities of all of us who live with handicaps."

At the end of his tenure at the Veterans Administration in 1981, Cleland returned to Georgia and in 1982 Cleland ran for the Office of Georgia Secretary of State. He remembered the lessons of his earlier defeat and, this time he won. Cleland was re-elected in 1986 with over 76% of the vote. He is the largest vote getter in Georgia history and won re-election without opposition in 1990. Max Cleland was sworn in for his third term as Georgia's Secretary of State on January 14, 1991.

When asked what it is like to have a disability and hold high office Max responded, "When Andy Young was elected to Congress a friend came up to congratulate him and to tell him that he knew Young would be a great black Congressman. Young turned to his

irregularities in the polling place. It is no surprise that Secretary Cleland was instrumental in getting the Voter Access Act passed by the U.S. Congress. Armed with federal law and determined to provide other states leadership by example, he set about his work. The end result is that today, most of the country's polling places are accessible to citizens with disabilities.

"Max Cleland is one of the most progressive people to serve as Secretary of State in any state in the U.S.," says former Ohio Secretary of State Sherrod Brown. "He has taken his agency and made it the focus of so much of what is important to the ordinary citizens of his state. The real tribute is that you know that everything he does, he does because it is the right thing to do. Max has an infectious enthusiasm for life and it is easy to see that enthusiasm has had a positive impact on his Office."

*"I don't want to be a great disabled Secretary of State, I want to be a great Secretary of State who happens to be disabled."*

# Max Cleland

BY DAVID T. WILLIAMS

People in Washington did not understand his actions but friends like Carl Nunziato, a fellow Vietnam vet who shared the rehabilitation experience with Max at Walter Reed Army Medical Center, did. Nunziato observed that, "for Max, the visibility of his disability is intentional. He figures that every time someone sees him accomplish even the smallest task on his own, it sends a

friend and corrected him, 'No, my goal is to be a great Congressman who happens to be black.' I don't want to be a great disabled Secretary of State, I want to be a great Secretary of State who happens to be disabled."

In Georgia, the Secretary chairs the state Election Board which supervises municipal, county, state and federal elections year-round and investigates

Max is a deeply religious man and credits much of his success on his faith and tries to repay his debt through service to the church. He has written extensively and is a much sought-after inspirational speaker. The Reverend Robert Schuler, well-known evangelist described Max in these words: "Max does not preach. He just tells a story that comes from so deep in his heart that you know without him saying it, how deeply he believes. As you listen, you feel how that belief gives him strength and you find yourself wanting to believe as deeply as Max does so that you too, can have his strength."

Max Cleland embodies the words of Aldous Huxley. He is a man of great strength, unquestionable integrity, quiet wisdom and tremendous vision. He is a man of experience who has done well with what has happened to him. ♦



Seating for wheelchair users is often overlooked by people who use them. Yet proper seating is like a good pair of shoes. The wrong fit can make one's life miserable. The right fit will allow you to forget about the seating and concentrate on other things.

Unlike the purchase of shoes, however, getting the right seating requires a knowledge of seating biomechanics and sometimes, the skills of a clinician. The intent of this article is to help you to become familiar with some

person, the sitting reference position is different from the standing position. The hip, knees, elbows are all flexed 90 degrees and the palm faces downward.

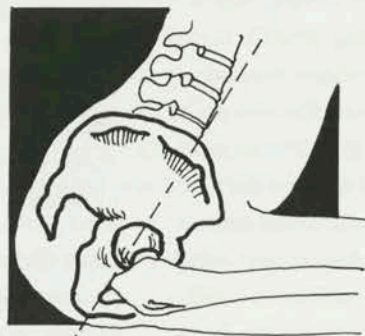


Figure 1

To achieve good seating, conditions such as abnormal Pelvic Tilt (Figures 1 & 2), Pelvic Obliquity (Figure 3) and Pelvic Rotation (Figure 4) may need to be addressed.

pelvis which is positioned in a posterior tilt, rotated and oblique with further complications such as a dislocated hip. Some individuals may have a compound curve in addition to abnormalities in the pelvic or rib anatomy. In these cases the individual should work with a clinician who has a good working knowledge of:

- 1) the deforming forces present;
- 2) the realistic limits of correction which can be achieved; and,
- 3) the ability to fabricate, or assist in the fabrication of the seating system.

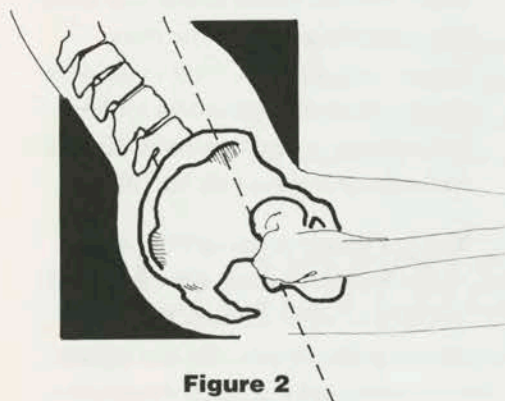


Figure 2

of the terms and basic principles used by those who design and prescribe seating systems. With that knowledge, you and the seating clinician can design the most functional and comfortable seating system.

Let's look first at some basic information on body planes, abnormal body postures, and corrective forces. We'll discuss the application of these principles in the provision of seating systems and examine a few important concepts which will help you understand the reasons for choosing one type of seating system over another.

When describing an anatomical movement or position of a seated

person, the sitting reference position is different from the standing position. The hip and trunk position must be examined. Four major postures of the trunk are Kyphosis, Lordosis, Rotation, and Scoliosis (Figures 5, 6, 7, 8).

Many of these movements would be relatively easy to deal with if they were the only force or movement interfering with seating and positioning. In the real world, however, things are not so. It is not uncommon, for example, to have a

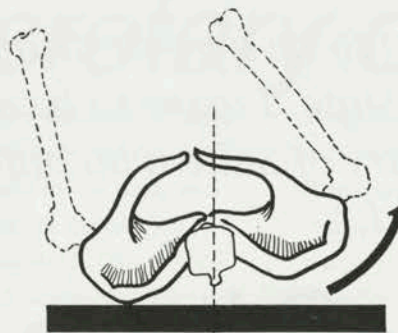


Figure 3

When a seating system is used to enhance the position of the user it is often said to utilize "corrective forces" in one way or another to achieve a given "corrected" posture. The term "corrective force" is somewhat misleading when used in this context. Almost all

existing seating hardware only blocks movement: it doesn't really "correct" it in an active sense. In contrast, a

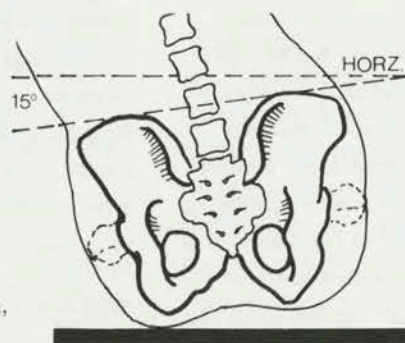


Figure 4

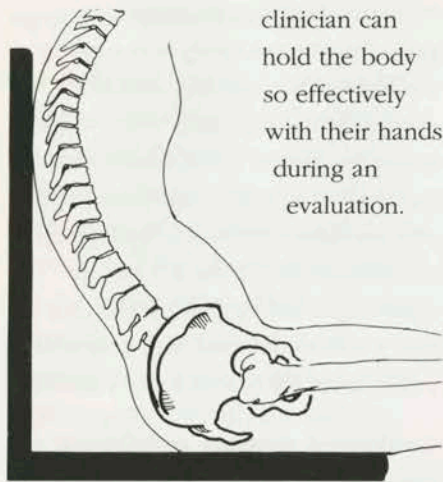
## THE BIOMECHANICS OF SEATING: A CONSUMER'S GUIDE

BY ALLEN SIEKMAN



therapist or seating clinician can apply a corrective force with their hands to change both direction and magnitude of an applied force. This is one of the

reasons that a clinician can hold the body so effectively with their hands during an evaluation.



**Figure 5**

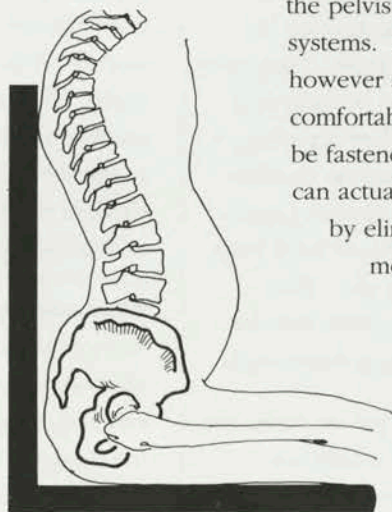
This may seem like a small point, but it is one of the key principles of postural seating that everyone should know. The seating system is a static device used to align and hold a person in a manner that improves posture and alignment while maintaining or improving function. Corrective forces which can be applied by another person's hands are not present in the seating system.

There are some general principles of control that apply to seating. These controlling methods include basic mechanical principles which are used to stabilize the posture. The shape and firmness of pads or belts used to control body position has a great deal to do with the success of the seating

system. It's also an area where the strict principles of biomechanics do not always work. As any wheelchair user knows, a good seating system has to provide more than maximum control. It also must be comfortable and promote or enhance function while being attractive and "user friendly."

When deciding on pads and restraints to control body position the following should be considered

- firm supports generally hold the posture of the user better than soft supports. For example, a firm lateral thoracic support on a bracket will usually stabilize the trunk more effectively than a soft contoured backrest;
- flexible restraints such as lap belts and shoulder straps do not control the pelvis as well as rigid systems. Rigid restraint systems however are usually less comfortable, often not able to be fastened by the user and can actually decrease function by eliminating desired body movement;



**Figure 6**

block lateral movement more effectively than a molded-in lateral support surface such as those found on a contoured seat.

Finally, it is essential to remember that the principles outlined above cannot be applied like a cookbook. Each person is different. What works for one

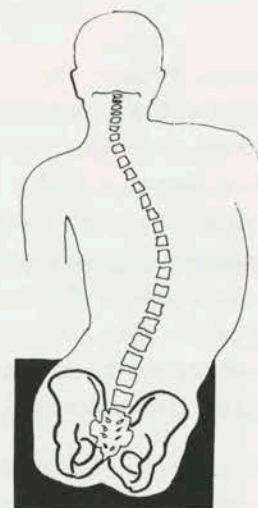
person may be wrong for another. The seating clinician must work with the individual to identify the problem and apply creative solutions.

A wheelchair without the proper seating is like a shoe without a sock. You may be able to use it but optimal

comfort and support will be achieved when each element is considered and made to fit the individual.



**Figure 7**



**Figure 8**

*Allen Siekman is Director of Marketing for Seating and Positioning Products with Invacare Corporation. Prior to that, he was associated with the Seating Clinic at Stanford University. This article is excerpted from a lecture on the "Biomechanics of Seating", presented by the author at the 1991 National Home Health Care Exposition in Atlanta. A complete copy of the presentation can be obtained by calling 216-329-6149. ♦*



# TIPS ON SELECTING A SEAT CUSHION

BY SUSAN PROCTOR, OTR

A cushion is an important wheelchair accessory which can greatly enhance an individual's use of their wheelchair. A properly selected cushion can provide comfort, protection from pressure sores, and may extend sitting tolerance. It can augment sitting stability, posture and balance and influence seat height, which in turn influences transfers. The cushion affects the wheelchair user's center of gravity and relative position of the body. In short, selection of the proper cushion is critical.

Fortunately, a variety of cushions are available to meet a range of needs. Determining the most appropriate type of cushion requires consideration of the individual's physical characteristics (e.g., size and weight, balance, activity level, etc.) as well as those of the cushions available (e.g., stability, moisture repellency, maintenance requirements, etc.).

As with any major purchase, the selection process includes the consumer, a rehabilitation professional and the durable medical equipment dealer. The first step is to assess the user's needs. Next, the team strives to match those needs to the characteristics of cushions that are appropriate. Then, the individual must actually try out the cushion before making the final selection.

There are two categories of cushions: general purpose cushions and specialty cushions. General purpose cushions are fabricated from poly-urethane foams. They range in price between \$25 and \$100. The three types of general purpose cushions are "egg crate" or convoluted foam, flat single density foam, and contoured multi-density foam. Specialty cushions are designed to provide greater support and protection. They are usually more expensive than the general purpose cushions, and range from \$100 to \$400. Specialty cushions include contoured pressure relief foam, fluid suspension and gel cushions.

The **"egg crate" convoluted foam** cushions are usually made from low density poly-urethane foam. They offer minimal protection and provide very little pelvic stability. They are often used by hospitals to provide comfort for temporary wheelchair use. Convoluted foam cushions should be at least 2" thick for wheelchair use. They should not be used by those without sensation or the ability to shift weight.

**Flat single density foam** cushions are generally provided by wheelchair manufacturers as a standard cushion with the purchase of the chair. Quality and density of the foam varies greatly between suppliers. Single density foams provide some protection from bottoming out when used in 2" or 3" thicknesses. Pelvic stability is greater than "egg crate" foam cushions, but is not adequate for long term or full-time wheelchair use.

**Contoured multi-density foam** cushions can provide increased pelvic

and lower extremity stability, improved pressure distribution and comfort. The increased function is achieved by providing a moderately firm support at the front of the cushion, medium support at the hips, and softer support under the pelvis. Contoured foam cushions can provide adequate support and pressure distribution for long term wheelchair use. They are usually lightweight and easy to handle and many come equipped with a moisture-proof cover for incontinence protection.

**Contoured pressure relief foam** cushions are made from various densities of foam and pre-contoured by the manufacturer to provide a relief or cut-out area for the high risk areas on the sitting surface. Pressure relief cushions use the cut-out areas of the cushion to decrease pressure at the sharp, bony areas of the pelvis and to transfer that pressure to the long bones of the leg and hips. This style of cushion is often used by individuals with a history of pressure sores.

**Fluid suspension cushions** include some of the most advanced designs of all cushions. A fluid suspension cushion can use either air or liquid as the fluid mechanism. The fluid acts as a support surface and flows throughout the cushion to conform to the body and equalize the pressure. They are the most widely prescribed cushion for individuals with a high risk of developing pressure sores.

The buyer must beware, however, because all fluid cushions are not the same. The more advanced of the fluid cushions include design features which prevent bottoming out and enhance pelvic stability. Others are not much



more than a bag of fluid, offering little stability and often giving insufficient support and protection.

**Gel cushions** contain a non-flowing gel which behaves somewhat like fluid but does not flow to equalize the pressure. Gel cushions are generally the heaviest of all cushions and can be extremely difficult to maneuver in and out of the wheelchair. They offer some distribution of pressure, but are generally not thick enough to prevent bottoming out through the cushion. This is especially true when bony prominences are sharply defined.

Given the variety of cushions available to today's wheelchair user, it is important for the buyer to carefully consider the advantages and disadvantages to each type before selecting one. In addition, the buyer may have several different needs to consider, and one type of cushion may not satisfactorily meet them all. In such a situation, the wheelchair user, the DME dealer, and others who are involved in the decision may have to help prioritize the user's needs. The choice of cushion may meet the most important ones, or the most number of them, even if all cannot be completely met. Finally, some wheelchair users have more than one cushion: they may own two of the same type or two or more different types. This approach can help lengthen the life of the cushion, and may be a partial solution if one cushion doesn't have all the features the individual wants or needs.

*Susan Proctor is a Registered Occupational Therapist in private practice. She specializes in seating, mobility and augmentative communications. ♦*

## WE MAY BE YOU

*Words sometimes incline us,  
sometimes define us,  
sometimes align us.*

*Language often separates us;  
Buzzwords frequently label us;  
Euphemisms seldom enable us.*

*"in order to qualify for benefits,  
each applicant must meet or fulfill  
one of the following..."*

*"...blind..."  
Love is...  
So you say you're in love?*

*"...having a handicap..."  
Few of us play golf.*

*"...differently able..."  
Some of us aren't -  
some of you are.*

*"...visually impaired..."  
"could I see your license and registration Please?  
...blood alcohol level of 0.21..."*

*"...slow..."  
...winning time, Boston Marathon -  
men's division, 2:09:46;  
woman's division, 2:23:14;  
wheelchair division, 1:30:44.*

*"...physically challenged..."  
"For the next thirteen weeks I'm going to be  
you ladies' father and mother until and if  
you become worthy of being in this man's Corps."*

*"...person with a disability..."  
can you do everything well?  
You may be us.*

*Charles H. Snow, III*

*Charles H. Snow, III is a free-lance poet  
and writer who makes his home in Westerville, OH.*



## Review - *The Creative Woman* - "Swimming Upstream: Managing Disabilities"

BY LOUISE FISHER

Judy Panko Reis, as guest editor of the Summer, 1991 issue of *The Creative Woman* assembled "Swimming Upstream: Managing Disabilities." This special edition of the quarterly publication was written by and about women with disabilities. In the introduction, Panko Reis writes, "Our ability to craft new meaning into the way humans think about routine life activities derives in part from the creative tension we experience in our everyday swim upstream against the disabling flow of the status quo... Essentially that is what this excursion upstream is all about," she writes. "[It is] women shaping routine uncertainties... into creative acts... to transcend... barriers."

This handsome edition is worth writing for and keeping in one's library. Women with various disabilities are featured: mothers caring for their children; artists who are blind; a choreographer with quadriplegia; and a writer/photographer who is deaf. One article describes the battle that two determined Chicago women encountered when they advocated for accessible public transportation, and documents their triumphs. Another allows us to share in the sorrow and fear of a woman who is HIV positive. The articles, all with illustrations, present these and other stories.

Women with disabilities face "the double handicap" of gender and disability discrimination. "Swimming Upstream: Managing Disabilities" dispels some of the myths about what women with disabilities can do. It is must reading for both men and women. A bibliography, "Women and Disability" by Theresa Rooney is included.

*The Creative Woman*, Summer, 1991, Governors State University, University Park, IL 60466, 46 pages. ♦

## March

- 15-18 **National Rehabilitation Association Eleventh Annual Governmental Affairs Seminar**, Holiday Inn Capitol, Washington, D.C. Contact: NRA, 1910 Association Drive, Suite 205, Reston, VA 22091. (703) 715-9090.
- 18-21 **"Technology and Persons With Disabilities," Seventh Annual CSUN International Conference**, Los Angeles Airport Marriott Hotel, Los Angeles, CA. Contact: Dr. Harry Murphy, Conference Director, California State University, Northridge, 18111 Nordhoff Street-DVSS, Northridge, CA 91330. (818) 885-2578.
- 28-31 **American Occupational Therapy Association (AOTA) Annual Conference and Exposition**, George R. Brown Convention Center, Houston, TX. Contact: Lisa Elliott, AOTA, 1838 Picard Drive, Rockville, MD 20849-1725. (301)948-9626.

## April

- 22-25 **"Independence '92" - The International Congress on Disability**, Vancouver, British Columbia, Canada. Contact: Independence '92, Suite 200, 1190 Melville Street, Vancouver, BC V6E 3W1, Canada. (604)689-5084.
- 25-29 **National Wheelchair Basketball Association Final Four Tournament** - Albuquerque NM. Contact: Stan Labanowich (606) 257-1623.

## May

- 7 **National Barrier Awareness Day**, An event designed to sensitize public officials and the media about barriers to independent mobility. Washington D.C. Contact: Thomas Farrell, National Barrier Awareness Foundation (707) 542-9565.
- 12-15 **FUTURE SHOW '92**, A Trade Show for HME Suppliers, Distributors and Dealers. Bally's Hotel in Las Vegas. Contact: Bill Chafin of SEMCO Medical Expositions (404) 641-8181.
- 15-17 **Abilities Expo, '92** - Giant exhibit hall of new and innovative equipment and supplies and services for people with disabilities. Anaheim Convention Center, Anaheim, CA. Contact: RCW Productions, Inc. (619) 944-1122.
- 27-29 **"ADA: Working Together for a Change" Annual Meeting of the President's Committee on Employment of People with Disabilities**. Washington D.C. Hilton. Contact: PCEPD (202) 376-6200.
- 29-31 **Abilities Expo**, Raritan Center Expo Hall, Edison, NJ. Contact: RCW Productions, Inc. (619) 944-1122.

*If your organization is sponsoring an event in May, June, July or August, 1992 and you wish to have this event included in the next edition of the action DIGEST calendar, please submit the following information: the date(s) of the event; the name of the event; where the event will be held; who to contact for more information; and a brief description of the event. To be included in the next issue of this information must be received by April 1, 1992. Send to: action DIGEST, 8 East Long Street, Suite 222, Columbus, OH 43215-2914. ♦*



## MK III™ Printer



A new generation of electronics used in power drive wheelchairs makes it possible to customize over two dozen control aspects of the chair. These variables need to be monitored to insure the chair continuously responds to the user's commands in the way it was programmed. Data on these variables was hand recorded from interpretations of readings on a variety of instruments. This in fact is important information and there was no consistent and reliable way of dealing with it until now.

**Action MKIII™ Printer**, the first unit designed exclusively for power drive electronics, will change all that. The portable MKIII™ printer is a unique approach to providing a permanent record of valuable client and maintenance information. This light-weight (1.5 pounds) thermal printer provides an instant printout of performance settings which can serve as a double-check for users, a historic log for therapists and a trouble-shooting guide for service technicians. The Action MKIII™ plugs right into the MCC MKIII™ module on Invacare and Action power chairs. ♦

# NEW PRODUCTS

From Invacare Corporation and its subsidiaries

## Avanti™ Foam-in-Place



**Avanti™ Foam-in-Place Kit** makes it possible for the dealer/therapist team to quickly fabricate a custom molded backrest for clients with severe deformities or complex seating needs. The kit includes everything needed to provide a complete backrest: back shell, mounting hardware, soft or firm foam kits, cover material, mounting clips and complete instructions. The Avanti™ Foam-in-Place Kit is easy to use. Simply position the consumer, add the chemical compounds provided to the vinyl envelope and watch as the seat back molds itself to the exact contours of the user. The Avanti™ Foam-in-Place Kit makes it possible to provide custom molded seating at an affordable price. ♦

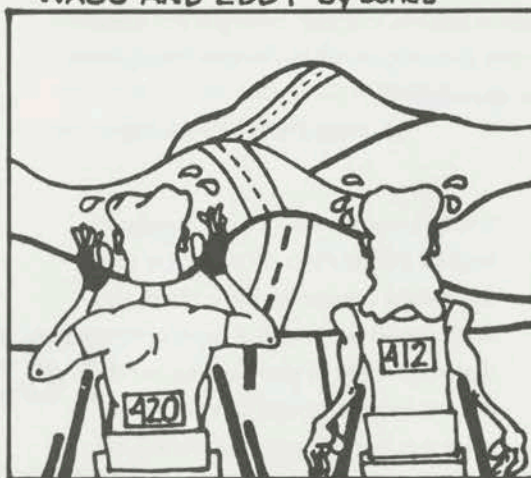
## Super Pro-T™



**Action Super Pro-T™** offers active consumers and sports enthusiasts the ultimate in fit, strength and maneuverability. The new "squeeze frame" design lowers the individual's center of gravity resulting in improved stability. The tapered front end positions and protects the legs. The frame design also brings in the front caster forks which have been fitted with roller blades instead of traditional wheels. The end result is reduced resistance, better response and a tighter turning radius. A fixed seat back provides more comfort and stability with less weight. Several types of high performance rear wheels are available to enable users to stay on top of their game.

In addition, the Super Pro-T™ looks great. It is available in a variety of hot colors and custom paint options to fit the owner's taste. Style, comfort, stability and maneuverability - the Action Super Pro-T™ will give the owner years of unmatched performance. ♦

## WAGS AND EDDY by bones



"I DON'T THINK I CAN  
TAKE ANY MORE OF THESE  
FLAT COURSES."



## READER INQUIRY

The doctor recently suggested that we purchase an electric wheelchair for my son. The dealer has been very helpful but we are trying to figure out what type of battery to get for Jason's wheelchair. He is a very active 12 year old. Who can give us the best information on this topic?

*Ruth Ann Furnari, Methuen MA*

## RESPONSE

Choosing the wheelchair, along with the seating and positioning devices and the control mechanism should be a group effort. Choice of batteries should also be done by a team that usually includes the doctor, the occupational therapist, the dealer and most importantly, Jason.

Some batteries require more maintenance than others (See article on page 5.) and some hold a charge longer.

The choice of batteries will depend on the options on the chair, the type of use and Jason's life-style. If the OT thinks he has good hand dexterity and could take responsibility for maintenance, a conventional lead acid battery might work. However, since you describe Jason as "very active" you

should consider whether he is likely to take his chair over rough terrain or engage in the kind of activities where he could take a spill. Battery acid can damage the chair and is a safety hazard for Jason.

Jason and you need to know the risks and the benefits. The dealer knows how hard Jason has been on past equipment and the health care professionals know his physical needs. Finally, don't worry about making the "wrong" choice. An active user will have to replace the batteries within a year and you can make a change at that time if you want to.

*John Roberts  
Invacare Technical Services*

## READER INQUIRY

I use a wheelchair and live in a small town where the airport does not have jetways. Boarding aircraft is next to impossible. When I asked the airport director why he couldn't do something about this he responded that the costs are too high. Is there any place to go for relief?

*Price Kellar, Springfield MO*

## RESPONSE

Most airports fall under the provisions of Title II of the ADA and thus, may have to make some "readily achievable accommodation" pursuant to the Act. However, you might share the following information with the airport director.

The Air Carrier Access Act provides that the Federal Aviation Administration (FAA) may reimburse any airport or any commercial air

carrier up to \$75,000.00 toward the cost of installing or purchasing lift equipment which makes it possible for people with mobility impairments to board planes. Specifics on the devices covered under this program as well as the process for applying for funds can be obtained by writing the Federal Aviation Administration, Air Carrier Access Act Compliance Unit, 800 Independence Avenue, Washington DC, 20591.

*David T. Williams  
action DIGEST Editor*

## READER INQUIRY

Under the Americans with Disabilities Act (ADA), can an employer impose a provision on my group health care plan which would deny coverage for health care services related to my disability?

*D. Rikki Dunson, Columbus OH*

## RESPONSE

Yes and no. An employer may maintain health care insurance that contains a pre-existing condition clause or that limits amounts paid for certain types of benefits, or limits the number of times the insurance plan will pay for a particular service. However, the informational documents provided by the plan must describe the specific pre-existing conditions for which the

insurance plan will deny coverage as well as information on any caps or limitations imposed. Most often, the time period for which a health plan will deny coverage of pre-existing conditions is limited to one or two years. After this period, you will be eligible for coverage as if you had become disabled after you were fully covered by the plan.

An employer-provided health plan may not impose different restrictions on coverage for employees with disabilities than it does for the rest of the work force. Obviously, a uniformly applied restriction may impact on an individual with a disability more than other employees. Also, although your disability may present some health care needs that the employer's health plan does not cover, you are entitled to health coverage afforded to other employees that is not related to your disability or other excluded pre-existing conditions.

*Robert A. Lynch, Esq.  
Baker and Hostetler, Columbus OH*



*action* DIGEST has recruited an editorial board to advise the staff and critique the publication. These individuals have made a significant contribution to the disability movement as professionals, consumers, and advocates. They will serve the magazine as writers, reviewers, and as "a panel of experts" to answer reader questions. *action* DIGEST would like to thank them for their contributions.

**Pat Bailey** (Glens Falls NY) is the mother of Ryan, a five year old boy with cerebral palsy who also has a significant hearing loss. Pat formed a parent support group through the Helen Hayes Hospital for parents of children with multiple disabilities. Most recently, Pat has been busy preparing the local public school district to receive Ryan into a regular kindergarten class in September 1992.

**Julia A. Bluhm, JD** (Tallahassee FL) is Director of the Florida Client Assistance Program. Julie has extensive experience representing people with disabilities in legal matters. She also has a working knowledge of laws related to accessible construction and building codes, having served on the Ohio Board of Building Standards before moving to Florida where she serves in a similar capacity.

**B. Richmond (Rick) Dudley** (Silver Spring MD) is a member of United Cerebral Palsy Association (National) and is the co-chair of the Advocacy and Governmental Activities Committee. Rick is a Senior Program Analyst with the U.S. General Services Administration. He has a long history of service on federal, state and local advisory boards on disability issues.

**David Efferson, OTR** (Haywood CA) has used a wheelchair most of his life. He has worked in the hospital setting as an occupational therapist for many years. He is the owner of Wheelchair Specialized Services, a medical equipment dealership.

**Robert Harris** (Cincinnati OH) is a disability rights advocate with the Cincinnati Human Relations Commission. A member of the Ohio Rehabilitation Services Commission and a national and international representative of the Very Special Arts Organization. Bob is an accomplished artist and cartoonist, with insight on the needs of minority individuals with disabilities.

**Mark Johnson** (Atlanta GA) is an advocacy specialist at the Shepherd Spinal Center. He is active in ADAPT (America's Disabled for Attendant Programs Today) and was very involved in community organizing for accessible public transit.

**Mark Shepherd** (North Ridgeville OH) is the Director of Consumer Marketing for Action Technology, a subsidiary of Invacare Corporation. As Director of Consumer Marketing, Mark has contact with a variety of individuals and organizations in the disability community. Shepherd plays a key role in the design and quality assurance of Action Technology's light-weight wheelchairs.

**Janet Stout, OTR** (Indianapolis IN) has a special interest in the area of the area of transportation of children and adults with mobility impairments. An Associate Professor of Occupational Therapy at Indiana University Medical Center, she is active in the RESNA special interest group on seating and the state and national occupational therapy associations.

**Pam Wilson, MD** (Lakewood CO) has completed her residency in pediatrics and is now enrolled in a residency program in physical medicine. Born with spina-bifida, she brings a special perspective to the practice of medicine and has a deep interest in exercise physiology, physical fitness and wellness programs for children with disabilities.

**Christine Wright, OTR** (Cupertino CA) has extensive knowledge and experience in the area of seating and positioning. She has been part of the team at the Stanford University Seating Clinic for several years. In addition, Christine is a recognized expert in the area of alternative and augmentative communications. She is currently enrolled in a graduate program in health care administration. ♦

# Meet the *action* DIGEST Editorial Board



## PEN ULTIMATE

### Keep the Passion

*DeZell*



We live in a world of change. Science and technology are making the previously impossible possible. The dominance of the human spirit has enabled individuals to lash out at governments that would deny them free thought and free speech. It has changed the map of the world and banished those who would try to oppress that spirit. Hidden to some and invisible to many is one of the most significant changes in the history of man; the recognition in law that people with disabilities are endowed with the same rights as all citizens.

It is a time to celebrate but it is also a time to be vigilant. It takes only a cursory review of history to see why.

Less than thirty years ago people with mental retardation were almost automatically placed in institutions. One of the main reasons for institutionalization was to "protect" them from society - and society from them. Slowly, many of these institutions have closed. Yet tens-of-thousands of people are still living in the remaining human warehouses. Why? Because the residents of today's institutions require the most (and often the most expensive) supports to live in the community. At the same time, the passionate pleas of families who cried out for the release of their loved ones have now faded and many of today's captives appear to have no one to speak out for them.

In 1973, acknowledging that people with disabilities deserved access to government buildings and programs, Congress adopted Section 504 of the Rehabilitation Act. Yet even today, individuals often have to file lawsuits against their own governments to get the barriers removed. In 1975, courageous individuals staged a ten-day sit-in in the San Francisco offices of the U.S. Dept. of Health, Education and Welfare. These American heroes knew how to make government understand their needs and its responsibilities. Is it possible the passion that drove them is gone?

Two years after Section 504 was passed, Congress declared that all children - especially those with disabilities - had a right to a "free and appropriate public education". But for many families the path to securing education for a child with disabilities is still tortuous. Parents are often forced to become adversaries with the very people with whom they must be partners if the child is to benefit from an educational experience. The needs of children with disabilities are all too often caught in the seemingly endless cross-fire of funding battles. Resolution, when it does occur, is frequently the result of tenacious parents who wear "the system" down before it wears them out.

And now, we have the Americans with Disabilities Act (ADA). It promises many things: access to every facet of life in the community; access to employment; to dignity and equality. The ADA makes these and many other promises, and to date, Washington is working very hard to keep them. But we must be vigilant.

We must watch to make sure that the funding needed to make the promises come true does not get lost. We must continue to educate policy-makers about what the ADA does not provide, such as access to health care and health insurance, personal attendant services and the ongoing support for items like long term home care and durable medical equipment. It is our responsibility to help employers understand that the provisions of ADA need not be burdens but solutions to growing labor needs.

Let no one kid you. No one individual politician moved the ADA on to passage. No single organization turned this set of moral imperatives into law. The passion of millions of Americans who felt disenfranchised and disillusioned fueled a flame so hot that it moved the bureaucratic wheels of Washington just as surely as the burner on a stove brings water to a boil.

The disability community must watch carefully as the rules for ADA are promulgated and implemented to make sure that they reflect the promises made. Advocates must learn how to monitor the funding process to make certain that budget short-falls don't provide excuses for not complying with the Act. Those who fought for the passage of the ADA must watch out for, and occasionally take responsibility for others who may not know or understand the rights this law has afforded them. Each time a new person is empowered with the knowledge of their rights, all people with disabilities become a little stronger.

The one thing that we must guard against at all costs is the gradual loss of the passion that brought about the victory we now celebrate in the ADA. We need look no further than the evening news and the stories about Eastern Europe and the former Soviet Union to know that it takes passion to build a world of change. From the fires of our passion, our continued progress is forged. ♦

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MAR/APR 1992



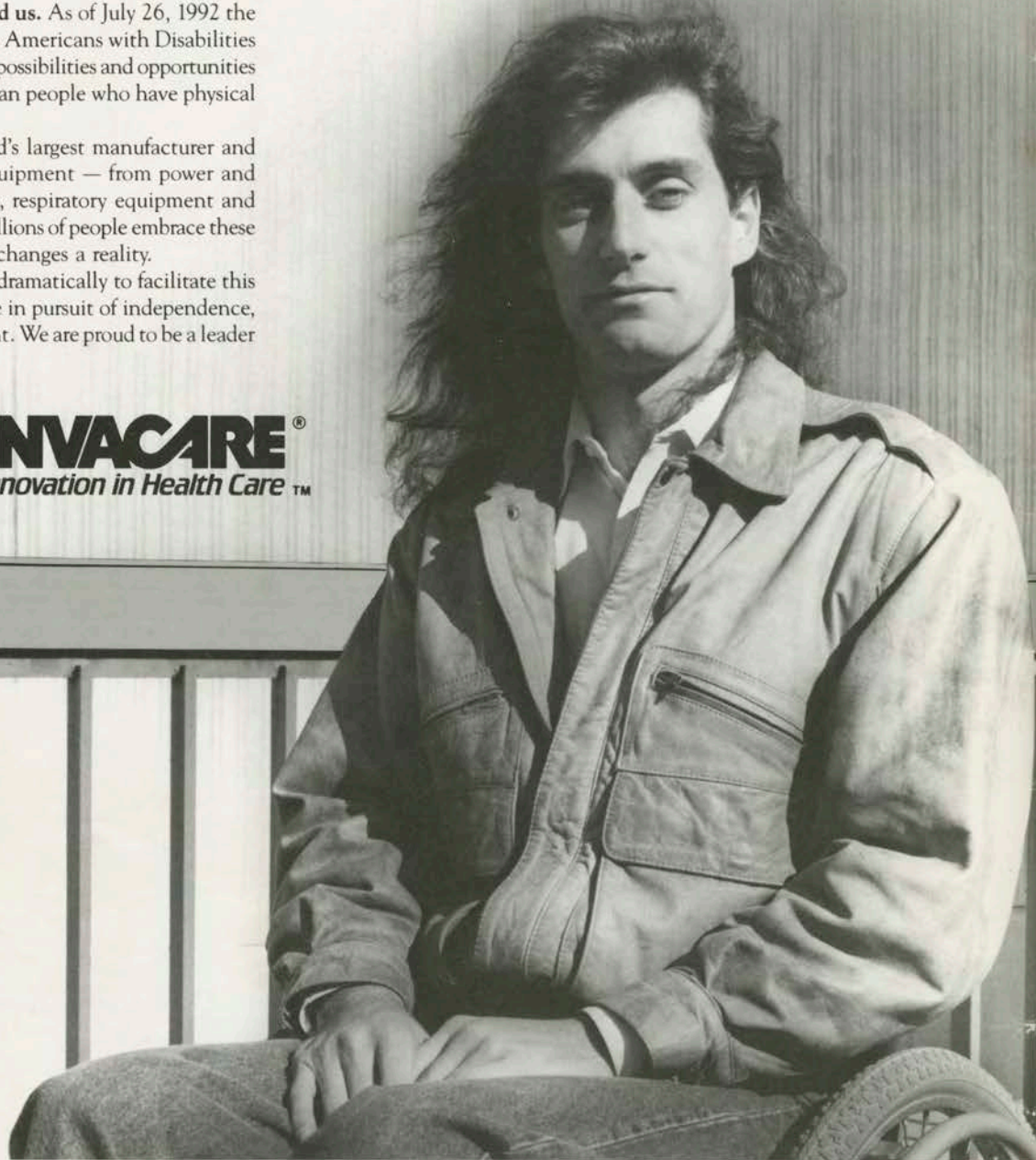
# Leading A World Of Change.

There is a world of change around us. As of July 26, 1992 the world is changing for the better. The Americans with Disabilities Act opens all doors and offers endless possibilities and opportunities to the more than 43 million American people who have physical or mental disabilities.

Invacare Corporation is the world's largest manufacturer and distributor of home health care equipment — from power and manual wheelchairs to patient aids, respiratory equipment and homecare beds. Our products help millions of people embrace these new opportunities and make these changes a reality.

Our product lines have expanded dramatically to facilitate this proud, positive movement and those in pursuit of independence, integration and personal achievement. We are proud to be a leader in this world of change.

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DEPARTMENT OF TEACHER PREPARATION AND SPECIAL EDUCATION

**ANNOUNCEMENT  
NEW FUNDING FOR DOCTORAL LEADERSHIP TRAINING  
IN SECONDARY SPECIAL EDUCATION AND TRANSITION**

Dear Maureen:

We are pleased to announce that the Department of Teacher Preparation and Special Education has just received a 5-year grant award for Doctoral Leadership Training in Secondary Special Education and Transition from the U.S. Office of Special Education, Division of Personnel Preparation. We will be able to offer support for 13 students in doctoral training, many of whom have been on a waiting list for entry into our program.

I and my staff look forward to working with you more closely over the coming years.

Sincerely,

A handwritten signature in cursive script, reading "Carol A. Kochhar".

Carol A. Kochhar, Ed.D., Assistant Professor,  
Director, Doctoral Leadership Training in Secondary Special  
Education and Transition





DEPARTMENT OF TEACHER PREPARATION AND SPECIAL EDUCATION

## ANNOUNCEMENT

### **LEADERSHIP 2000: PREPARING FOR INNOVATION: DOCTORAL LEADERSHIP TRAINING FOR SPECIAL EDUCATORS IN SECONDARY EDUCATION AND TRANSITION**

#### **Project Abstract**

With the advent of major national educational reform initiatives, such as the New American Schools Demonstration and the Individuals with Disabilities Education Act (1990), those who aspire to be educational leaders, or to prepare them for the secondary education classrooms of tomorrow, **must understand both contemporary school environments and the processes of school reform and innovation.** This doctoral program is designed to **improve the way we prepare our educational leaders for academic and public service roles.** Secondary special education and transition leaders must be trained as change agents to improve the quality of vocational and transition services for students with disabilities.

This interdisciplinary Doctoral Leadership Training Program offers 90% tuition support for 20 doctoral leadership students over a five-year period to (a) fill new and emerging roles created by recent legislative mandates and (b) to strengthen existing leadership roles related to career/vocational special education and transition. The program provides preservice training for leadership roles related to secondary special education and transition, including special educational administrators and supervisors, transition specialists and coordinators, state and local interagency service coordinators, business-education liaisons, and policy specialists and advocates.

The program combines an interdisciplinary doctoral leadership training curriculum in secondary special education with year long internships in public service roles in educational settings ("**internships in innovation**"). This approach is based on the assumption that, along with content knowledge and skills in design and management of educational programs for special needs students, **adequate preparation of educational leaders requires (1) interdisciplinary course work and knowledge of interagency collaboration in service delivery, and (2) guided participation in educational innovation and change within urban school systems and other public service settings.**

The curriculum content for career/vocational special education and transition assists the student to form a ***comprehensive picture of transition service delivery*** that integrates the roles of relevant agencies, begins in early secondary education and includes post-secondary planning, extended employment support and transition to independent living.



The program emphasizes:

1. *New course work in career/vocational education service delivery systems and their interface with the special education and rehabilitation services delivery.*
2. *Interdisciplinary programming and multi-agency systems planning and management, and links with community support systems.*
3. *New course work in evaluating educational programs and outcomes for special learners in secondary settings.*
4. *Professional practice "internships in innovation" designed to engage leadership students directly in the design and implementation of actual innovation and change interventions within educational settings.*
5. *Preparation for academic careers as teacher educators.*

The Department of Teacher Preparation and Special Education offers an extensive combination of academic and social supports for students to ensure the successful completion of doctoral course work, professional experiences, and dissertation research. These include doctoral program orientation, participation of faculty mentors, academic support seminars, professional writing clinics conducted by faculty, support services for students with disabilities, peer support groups, and computer skills training opportunities.

The program brings together faculty from the Departments of Special Education, Rehabilitation Counseling, and Educational Leadership, and will conduct a series of field-based content validation and graduate follow-up studies that will be shared with the field. Graduates of this leadership training program will serve the national educational goals of improving transition outcomes for youth with disabilities.

CONTACT: Dr. Carol A. Kochhar, Director, 202-994-1536





DEPARTMENT OF TEACHER PREPARATION AND SPECIAL EDUCATION

## **ANNOUNCEMENT:**

### **NEW FUNDING IN SECONDARY SPECIAL EDUCATION AND TRANSITION SERVICES**

We are pleased to announce that the Department of Teacher Preparation and Special Education has just received two additional grant awards from the U.S. Department of Education, Office of Special Education, for the training of special educators:

1. ***SERVING STUDENTS WITH TRAUMATIC BRAIN INJURY: A MASTER'S DEGREE PROFESSIONAL TRAINING AND DEVELOPMENT PROGRAM:*** Prepares teachers and related service personnel to provide educational service to students with traumatic brain injury and assist TBI students in making the transition from rehabilitation hospital to reentry into school and from high school to work and postsecondary training. This program provides course work in (a) assessment and diagnostics, (b) cognitive remediation, (c) educational planning and development for students with TBI, and (d) transition and interagency services coordination. The project responds to new legislation, the Individuals With Disabilities Education Act (IDEA), which has included traumatic brain injury under the definition of "disability".
2. ***CORRECTIONAL SPECIAL EDUCATION/ADJUDICATED YOUTH:*** Prepares special educators to teach juvenile offenders with disabilities in correctional or alternative educational settings. The program is designed to (a) alleviate the effects of a shortage in the supply of certified special educators of adjudicated youth, and (b) assist juvenile service agencies and institutions to initiate, develop and maintain quality education and training programs. This project responds to new legislation, I.D.E.A. and the Carl D. Perkins Vocational and Applied Technology Education Act, which mandate educational services to youth in correctional or alternative educational settings.

Carol A. Kochhar, Ed.D., Assistant Professor,  
Coordinator, Secondary Special Education/Transition Programs





DEPARTMENT OF TEACHER PREPARATION AND SPECIAL EDUCATION

## **SECONDARY SPECIAL EDUCATION AND TRANSITION PROGRAMS**

The Secondary Special Education and Transition Programs have a unique emphasis based on an interdisciplinary and cross-departmental approach to training. The program prepare professionals for teaching, leadership and support roles that assist at-risk youth and youth with disabilities to make a successful transition from schooling to employment, postsecondary settings, and independent adult life. The programs coordinate with other Departments within the School of Education and Human Development, including Educational Leadership, Human Services and the Rehabilitation Counseling program.

The program core combines course work in special education programming related to the career/vocational development of adolescents, interagency services coordination/case management, rehabilitation, academic and vocational assessment and evaluation, vocational-technical and transition curriculum and strategies, business-education linkages, legal issues and public policy. The following programs are offered at advanced graduate levels:

1. **DOCTORAL LEADERSHIP TRAINING IN SECONDARY SPECIAL EDUCATION AND TRANSITION:** Prepares for leadership roles in secondary special education and transition, including special education administrators, transition coordinators, program specialists and advocates at the local, state and national levels.
2. **MASTERS DEGREE PROFESSIONAL TRAINING FOR SERVING STUDENTS WITH TRAUMATIC BRAIN INJURY:** Prepares teachers and related services personnel to provide appropriate services for students with TBI. Offers course work in cognitive remediation and technology, assessment and diagnostics, educational planning and development, transition and interagency services coordination.
3. **COLLABORATIVE VOCATIONAL EVALUATION TRAINING:** Prepares personnel for leadership in providing vocational evaluation services for individuals with disabilities. This is a collaborative program with the DTPSE and Rehabilitation Counseling Education program.



4. **BUSINESS-EDUCATION PARTNERSHIPS:** Prepares personnel to coordinate and consult on transition planning among special and vocational educators and business professionals. The program provides diverse and in-depth experiences in business and industry.
5. **CAREER TRANSITION ASSESSMENT SPECIALIST:** Prepares professionals to coordinate and consult on transition planning with special and vocational educators, other school and community-based personnel, and centers on preparation for leadership roles in career assessment methods for youth with disabilities.
6. **LEARNING DISABILITIES/SECONDARY SPECIAL EDUCATION:** Prepares secondary special education teachers for programming to meet the academic and functional educational needs of youth with learning disabilities.
7. **CORRECTIONAL SPECIAL EDUCATION/ADJUDICATED YOUTH:** Prepares special educators to teach juvenile offenders with disabilities in correctional or alternative educational settings. The program is designed to (a) alleviate the effects of a shortage in the supply of certified special educators of adjudicated youth, and (b) assist juvenile service agencies and institutions to initiate, develop and maintain quality education and training programs.

Contact: Dr. Carol Kochhar, Coordinator. 202-994-1536

CK:6/92



# American Psychiatric Association

1400 K Street, N.W.  
Washington, D.C. 20005 USA  
Telephone: (202) 682-6000  
APA FAX: (202) 682-6114

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February 21, 1988

The Honorable Robert Dole  
141 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Dole:

The American Psychiatric Association, a medical specialty society representing over 35,000 psychiatrists nationwide urges you to co-sponsor S.J. Res. 55, a resolution introduced by Senator Paul Simon proclaiming October 1-7, 1989 Mental Illness Awareness Week. As with all resolutions, the purpose of this resolution is to direct the attention of Congress and the public to an important problem: in this case, to the plight of the mentally ill, but more specifically to the advances in research that promise increasingly hopeful treatment.

This year's resolution is similar to the one that was passed by Congress last year, and focuses on the exciting breakthroughs in biomedical research that have radically increased knowledge about the causes and treatment of severe mental illness. One of the critical messages of this resolution, which is also actively supported by the National Alliance for the Mentally Ill (NAMI), is that mental illness is a treatable disease, and one that should not be the subject of the stigma historically attached to it.

Also, as last year, the American Psychiatric Association, along with NAMI, is planning a Capitol Hill symposium on advances in research and treatment that will focus on specific types of mental disorders. Similar activities are being planned concurrently in congressional districts throughout the country.

We urge you to co-sponsor and support this resolution to ensure its timely passage, and, most importantly, to help make all Americans aware of the help and hope available to the mentally ill, and remove the stigma society places upon them.

Sincerely,

Melvin Sabshin, M.D.  
Medical Director

PG:ew

Shelley Haynes Simon  
yes 2-25-89



## *The Joseph P. Kennedy, Jr. Foundation*

1350 NEW YORK AVENUE, N.W., SUITE 500  
WASHINGTON, D.C. 20005-4709  
(202) 393-1250

### ***1st Annual Best Buddies Ball "Spring Fling"*** **Fact Sheet**

When: Saturday, April 29, 1989

Time: 9:00 pm - 1:00 am

Where: Galleria at Lafayette Square  
1155 21st Street, N.W.  
Washington, D.C. 20007

What: A semi-formal dance to benefit Best Buddies of America. Best Buddies is a non-profit organization that matches University students with mentally retarded persons. It strives to enhance the social and developmental skills of both participants.

Goal: To raise \$25,000 to help Best Buddies of America develop Chapters in a joint effort with Universities throughout the United States.

Admission:	Super Buddy	\$500 - includes buffet dinner for 2 at the home of Sargent and Eunice Shriver, 2 Ball Tickets, and your name in the evenings' program.
	Good Buddy	\$250 - includes buffet dinner for 2 at the home of Sargent and Eunice Shriver and 2 Ball Tickets.
	Buddy	\$50 - 1 Ball Ticket.
	College Buddy	\$25 - 1 Ball Ticket (must be a college student).

Raffle  
Drawings: \$1.00 Raffle tickets may be purchased before or during the event to be eligible for numerous prizes!



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## *The Joseph P. Kennedy, Jr. Foundation*

1350 NEW YORK AVENUE, N.W., SUITE 500  
WASHINGTON, D.C. 20005-4709  
(202) 393-1250

### Best Buddies

Best Buddies is the nation's first, unified recreational and social program for University students and persons who are mentally retarded.

Best Buddies is unique because it brings persons with Mental Retardation together with their peers on a basis of full equality, friendship and participation. Best Buddies transforms perceptions and relationships by demonstrating the gifts, competence, life skills and character of persons will all levels of mental capacity.

Buddies go to the movies, basketball games, museums, bowling trips, baseball games, or they just hang out together and talk. In addition to one-on-one outings, the chapter organization conducts two to three programs on a semester basis which include all members of the Best Buddies organization from that particular chapter.

Best Buddies started at Georgetown University in Washington, D.C. in the Fall of 1987 with 49 Georgetown University students and 49 mentally retarded students from the Lt. Joseph P. Kennedy School, the National Children's Center, and the St. John's School.

Today Best Buddies has enrolled 108 participants in the Georgetown chapter alone. Twenty-five new members have been added this January -- they form the nucleus of a new Best Buddy chapter at Catholic University.

Responsibility for the quality and growth of Best Buddies lies with the Board of Directors which recently received 501(c)3 status from the Internal Revenue Service. The organization is incorporated in the District of Columbia and plans to expand in 1989, to other Colleges and Universities, many of which have already initiated contacts with Best Buddies headquarters.

Best Buddies is financed by grants from individuals, schools, and foundations across the country. However, if Best Buddies is to achieve its objectives of national and possibly international expansion, it will require the support of many more individuals and organizations dedicated to the goal of full and equal social as well as economic opportunities for persons with mental disabilities. You can help!



KANSAS

# DEPARTMENT OF HUMAN RESOURCES



## COMMISSION ON DISABILITY CONCERNS

1430 S.W. Topeka Boulevard, Topeka, Kansas 66612-1877  
913-296-1722 (Voice) • 913-296-5044 (TDD) • 561-1722 (KANS-A-N)

Mike Hayden, Governor

January 26, 1990

Ray D. Siehndel, Secretary

Kent Waldrep, President

Kent Waldrep National Paralysis Foundation

14651 Dallas Parkway, Suite 136

Dallas TX 75240

Dear Mr. Waldrep:

I understand that you are advocating for language in the Americans with Disabilities Act which would mirror Greyhound Bus Lines' interim policy for assisting disabled travelers. I have reviewed both your position letter and the Greyhound policy and find them unacceptable.

A few weeks ago my office (which is the Kansas counterpart to the Texas commission) received a letter from a disabled consumer who had been denied a ticket to ride Greyhound from Wichita to Topeka over the Christmas holiday. The reason for the denial is not clear: the would-be passenger had arrived at the "full service" Wichita station accompanied by an assistant to



waldrep

1-26-90

page 2

help him board the coach; he had also arranged for an assistant to help him disembark at the "full service" terminal in Topeka.

In reviewing Greyhound's interim policy, I noticed that the final decision as to whether or not a disabled passenger can ride unaccompanied rests with Greyhound's personnel. This is perhaps why the disabled passenger was denied a ticket, despite the fact that he had ridden the bus unaccompanied on previous occasions.

The flaw inherent in allowing or, as is the case with Greyhound, encouraging unqualified personnel to make a determination as to a U.S. citizen's fitness to travel on a public conveyance reeks of paternalism and runs diametrically counter to the philosophy of independent living and self-determination. The paternalism which is reflected in the Greyhound interim policy would have been substantially lessened had Greyhound sought and heeded input from groups of qualified disabled consumers in the development of the policy. One reason we see no such condescending attitudes in the ADA is precisely because it is the product of such involvement.



waldrep

1-26-90

page 3

It is possible that the disabled consumer against whom Greyhound discriminated did not give the required 48 hour notice. If this is the case, I believe this situation only points out how ridiculous the requirement is. It also calls into question the efficacy of efforts (if any) by Greyhound to notify prospective passengers with disabilities of the 48 hour requirement since the disabled person had no knowledge that the requirement existed. Neither was he told by the Greyhound agent that the notice is required. Nonetheless, the coach he wished to ride had no interim stops to make between Wichita and Topeka. Therefore, the rationale espoused by Greyhound that the 48 hour notice is required in order to "make necessary arrangements along the route" would not apply.

Finally, as to your assertion that the ADA is being "crammed down the throats" of American business, I submit that discrimination has been crammed down the throats of people with disabilities from time immemorial. The ADA is a rational and well-balanced compromise which makes substantial progress in



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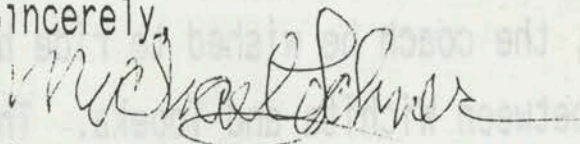
page 4

addressing concerns of people with disabilities as well as society in general. It would be egregiously counterproductive to now attempt to cloak the selfishness of one special interest in terms of a "bold progressive move" or kindred foolish deception.

WE HAVE COMPROMISED ENOUGH!

Thank you for your consideration of my remarks. I trust you had no difficulty in spending the recent holiday season in the location of your choice.

Sincerely,



Michael Lechner

Executive Director

cc: Members; Representatives Slattery & Whittaker; Senator Dole



## INTERIM TRAVEL ASSISTANCE PROGRAM

### 1. Disabled travelers may choose to travel with or without a companion.

a. If he or she wishes to travel with a companion, the disabled traveler need not call ahead. A disabled person may travel with one companion. The companion travels on the disabled person's ticket, just like with the current Helping Hand policy. The companion provides any assistance necessary for boarding and alighting from the bus.

b. If he or she wishes to travel alone, the disabled traveler must call Greyhound at least 48 hours prior to the time of departure to advise Greyhound of his or her itinerary. The Telephone Information Center will be taking these calls at 1-800-752-4841 and will gather the relevant information about the traveler and convey it on to you. In addition, you should call the agent at the passenger's destination to confirm that arrangements have been made for any necessary assistance in disembarking.

c. Some persons in extreme and unusual circumstances will not be able to travel safely without a companion. This situation must be handled sensitively, explaining to the individual that Greyhound wants to provide a safe and pleasant trip to as many people as possible, and that it is in the interest of the person's safety that he or she travel with a companion. If you believe that these circumstances exist, call your Regional Company President or his designated person.

### 2. Greyhound will transport most types of battery operated wheelchairs.

a. A disabled traveler should be advised when purchasing his or her ticket that most, but not all, chairs will fit in the Greyhound baggage compartment.

b. The battery must be disconnected from the chair and placed in a battery box. These battery boxes will be provided to all full-service agency locations in the very near future. If, for some reason, you need a box and do not have a box, please call your Regional Company President or his designated person and discuss the appropriate response.

1) Greyhound will not charge the traveler for the battery box; however,

2) The battery box must be left with the agent at the traveler's final destination.

3) These boxes are reusable.

c. Batteries (in the battery boxes) must be stowed in the baggage compartment of the bus and blocked and braced so as to prevent short circuits, spillage of battery fluid and movement.



- d. The wheelchairs should be placed in the baggage bays of the buses in an upright position, if at all possible. Sometimes this can be accomplished by removing the foot rests or handles. If the chair will not fit upright, it is better to lay the chair on its back rather than on its side. Laying the wheelchair on its side can possibly cause damage.
  - e. If some pieces of the wheelchair are removed in order to make it fit in the bus bay, try to ensure that all removed pieces are stowed with the chair in a manner designed to reduce any chance of separation from the chair.
  - f. Be sure to advise the disabled traveler that our current tariff provides for a maximum of \$250.00 for lost or damaged baggage, and that for an additional fee he may declare a higher value on his chair, up to a maximum of \$1000.
  - g. There will probably be a few chairs that will not fit in the baggage bay no matter what you do. In those cases, explain the dilemma in a sensitive and professional manner, and offer to refund the person's ticket. Be sure to contact your Regional President or his designee if you feel the situation is becoming problematic.
3. It is no longer necessary for the blind or disabled traveler to present any documentation, doctor's certificate, or other proof of his disability.
4. Our policy with regard to seeing eye or hearing ear dogs remains the same: they can travel as a companion to the blind or deaf individuals at no extra charge.
- a. They must be harnessed, but they do not need to be muzzled.
  - b. They should ride on the floor near the person's feet.
  - c. These dogs come in a wide variety of types; they are not all German Shepherds.



## STATEMENT

### INTERIM TRAVEL ASSISTANCE PROGRAM

Grayhound has had a long-standing policy to treat disabled passengers with respect and sensitivity to their special needs. Under our current Helping Hand program many hundreds of thousands of travelers have been accommodated. For example, last week our Central and Eastern Regions handled approximately 180 disabled travelers. As a part of its desire to serve the disabled community, Grayhound has committed to revise and update its Helping Hand program in an effort to accommodate and provide mobility for the disabled travelers of today. In order to meet this commitment by year's end, Grayhound has developed an interim policy for the transportation of the disabled.

The interim Travel Assistance Program permits disabled travelers to travel with or without a companion. If he or she wishes to travel with a companion who will provide any needed assistance in boarding or alighting from the bus, the companion travels on the disabled person's ticket at no additional charge, just like with the current Helping Hand policy, which has been in effect for the last 15 years.

If the disabled traveler wishes to travel alone, he or she must call Grayhound at least 48 hours prior to the time of departure to advise Grayhound of his or her itinerary as well as any special circumstances relating to the person's disability. Advance notice is required so that proper assistance can be arranged along the route. Grayhound's Telephone Information Centers will be taking these calls at 1-800-752-4841. Note: Some persons in extreme and unusual circumstances will not be able to travel safely without a companion.



Until very recently, the DOT regulations did not permit Greyhound to carry wheelchair batteries. Now, however, Greyhound has permission from DOT to transport most types of battery operated wheelchairs. The battery must be disconnected from the chair and placed in a battery box provided by Greyhound. The boxes are currently being manufactured for us and should be in full service agencies in the near future.

It is no longer necessary for the blind or disabled traveler to present any documentation, doctor's certificate, or other proof of his or her disability. Seeing eye and hearing ear dogs can travel as a companion to blind or deaf individuals at no extra charge.

We are in the very initial stages of a new program designed to provide mobility to the disabled traveler of today. It should be noted that the intercity bus provisions of the Americans with Disabilities Act ("ADA") are currently under review by the Congress with final action on the bill expected sometime within the first half of 1990. When that action occurs, the interim policy will be refined to reflect the final provisions of the ADA.



KANSAS

# DEPARTMENT OF HUMAN RESOURCES



## COMMISSION ON DISABILITY CONCERNS

1430 S.W. Topeka Boulevard, Topeka, Kansas 66612-1877  
913-296-1722 (Voice) • 913-296-5044 (TDD) • 561-1722 (KANS-A-N)

Mike Hayden, Governor

April 27, 1990

Ray D. Siehndel, Secretary

TO: Representatives Chuck Douglas, Bill McCollum, Tom DeLay

FROM: Michael Lechner, Executive Director *Michael Lechner*

SUBJECT: Americans with Disabilities Act (H.R. 2273)

This memorandum is written in response to your letter to your colleagues of March 29, 1990 which bore the banner, "THE ADA - ANOTHER CATASTROPHIC ACT?" I will answer each of your assertions in the order they were presented.

1. No one knows how many different physical or mental conditions are covered. It does not matter how many there are. We are not prescribing medicine, we are mandating access. Access is achieved by making reasonable accommodation to the functional and cognitive limitations of people who are covered by the ADA, not to specific diagnoses. If a person with a disability cannot negotiate stairs, it does not matter if the reason for this limitation is emphysema, spinal cord injury, Multiple Sclerosis or anything else; the functional limitation is the same and the accommodation will be the same. If your concern about "900 disabling conditions" being accommodated was valid, one must



ADA Memo; 4-27-90; page 2

believe that a person who uses a wheelchair because of spinal cord injury would require a ramp which cannot be utilized by a person who uses a wheelchair because of Muscular Dystrophy. This is patently absurd.

2. Your contention that the concepts of "regarded as" and "association with" have not been applied in the private sector is nothing more than bad quality hogwash. Protections in the Civil Rights Act of 1964 extend to people who are regarded as being members of protected groups. Further, people who associate with members of protected groups are protected in the same statute. It is common knowledge that the Civil Rights Act of 1964 covers the private sector. It would seem that you didn't get very much out of high school civics.

3. All but one of the terms you identify as "undefined" have been defined in 14 years of case law under the regulations implementing Section 504 of the Rehabilitation Act of 1973. Only the term, "readily achievable" is not. This term has been included at the insistence of small businesses providing public accommodations. I agree that this term is vague and has no history of case law to rely upon. It is my opinion that "readily achievable" will result in unreasonable accommodations, such as



ADA Memo; 4-27-90; page 3

shouting information to hearing-impaired people (much the way Saturday Night Live used to broadcast its "News for the Hard of Hearing"). The hardship placed on small businesses by the other terms is questionable, given the fact that many small nonprofit organizations have been complying with these terms under Section 504. I seriously doubt that they could fit into your reference to the government's deep pocket; some have no pockets at all, yet they successfully comply.

4. Discrimination against certain groups has been illegal under the Civil Rights Act of 1964, regardless of whether or not it is intentional. Your implication that havoc will reign if intentional and unintentional discrimination are not differentiated ruptures on this point. Further employers cannot be prosecuted under the ADA unless they refuse to make a reasonable accommodation. Accommodations are made at the request of an employee. If a disabled employee does not request a specific accommodation, the employer is not liable if it is not provided.

5. As originally drafted, the ADA would have protected someone who was about to be discriminated. That provision has long since been dropped under S. 933 compromises. If you have



ADA Memo; 4-27-90; page 4

been following the ADA at all, you should know that this term will not be part of H.R. 2273.

In conclusion, I must say that the only discernable catastrophe in this matter is the prevalence of fraudulent hyperbole such as that propagated in your 3-29 letter. I am thankful that none of you is my representative.

cc: KCDC Members; President Bush; Kansas Congressional Delegation  
\adamemo



# Congress of the United States

Washington, DC 20515

March 29, 1990

## THE ADA - ANOTHER CATASTROPHIC ACT?

Dear Colleague:

At some point we will learn our lesson: laudable goals do not automatically translate into good legislation.

Only last year we were forced to repeal two bills - Catastrophic Health and Section 89. This year we're getting another shot at a laudable goal: anti-discrimination protection for America's disabled citizens. It's about time! We strongly support the goals of independence, freedom of choice and elimination of discrimination for the disabled in America.

There is a problem, however. In our idealistic haste to pass all five titles of the Americans with Disabilities Act, we have ignored a few "glitches." If we don't correct these "glitches," we are going to return to this bill - mark my words - in the not so distant future, to revise, if not repeal, some of its provisions.

Here are some examples:

- \* Advocates of the ADA claim that more than 900 conditions would constitute a "disability" including emotional, behavioral, personality and eating disorders. Since no such list exists, employers and owners of public accommodations will be unsure as to who qualifies as disabled.
- \* Because of language that includes people who are "regarded as" disabled under the ADA's protection, individuals may receive blanket anti-discrimination protection in so far as they are "regarded as" disabled or they have a relationship or association with someone who is disabled. Although this terminology has been used in other legislation, it has not been applied in a private sector context.
- \* As currently drafted, the ADA includes such phrases as "essential functions," "undue hardship," "readily achievable," and "reasonable accommodation" without any "reasonable" definitions. As with Section 89,



\* As currently drafted, the ADA includes such phrases as "essential functions," "undue hardship," "readily achievable" and "reasonable accommodation," without any "reasonable" definitions. As with Section 89, compliance with these terms will involve voluminous paperwork and man hours since avoiding discrimination will require detailed, case-by-case, fact-specific, individualized inquiry and analysis rather than any up front standards and requirements. In the end, small businesses will suffer as they bear the costs of allowing the courts to define and interpret this legislation.

\* Under the ADA, no distinction is made between intentional and unintentional discrimination. An employer who unknowingly fails to make an accommodation would be treated the same as an employer who deliberately refused to do so.

\* Remedies are available for persons who believe they are about to be discriminated against.

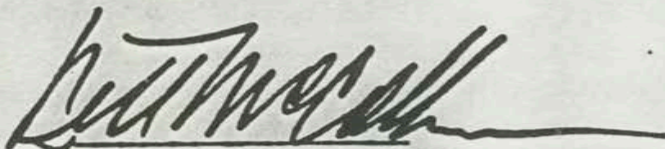
\* The ADA will give the federal government disproportionate impact in the hiring practices of churches and synagogues since they are not excluded as employers.

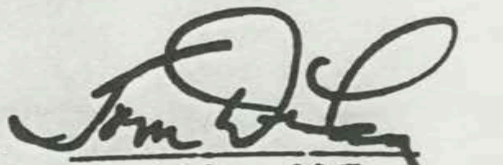
Although compliance with the provisions of this bill will impose great costs on both small and large businesses, very little attention has been devoted to how those costs will be met. A critical provision missing from this legislation is a tax credit to provide incentives to businesses to "reasonably accommodate" the disabled and to slightly ease the burden of compliance.


In other words, while well-intended, the ADA risks becoming another CATASTROPHIC.

If you, too, are concerned with the way the ADA is shaping up, please help send a message to President Bush, urging him to check out the fine print before he signs the contract.

If you need additional information or would like to cosign the attached letter, please contact Lori Farber at 5-5951.

  
Bill McCollum, M.C.

  
Tom DeLay, M.C.

  
Chuck Douglas, M.C.



KANSAS

# DEPARTMENT OF HUMAN RESOURCES



## COMMISSION ON DISABILITY CONCERNS

1430 S.W. Topeka Boulevard, Topeka, Kansas 66612-1877  
913-296-1722 (Voice) • 913-296-5044 (TDD) • 561-1722 (KANS-A-N)

Mike Hayden, Governor

June 12, 1990

Ray D. Siehndel, Secretary

Senator George Mitchell

U.S. Senate

Washington DC 20510

Dear Senator Mitchell:

Please reject the ADA conference committee report if it contains the Chapman amendment or similar language. As some of us remember, the Department of Justice under Reagan attempted a similar, but ill-fated strategy in proposing a rule that concerned communicable diseases.

This amendment is particularly pernicious because the ADA definition of disability includes people who are "regarded as having a physical or mental impairment". Therefore, employers will be allowed to legally discriminate against anyone whom they regard as having such a communicable disease, regardless of the validity of their assumption. For example, it may allow an employer to deny a food-handling job to a person who has had polio if the employer regards that person as having a communicable disease.



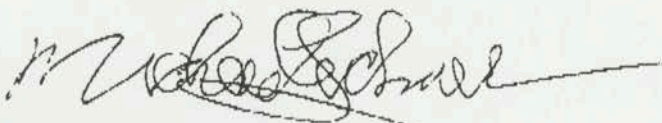
-page 2-

The insidiousness of the Chapman amendment lies in its endorsement of irrational public attitudes toward all people with disabilities. It perpetuates the damaging myth that disabled people are sick and that association with us will result in sickness for the general public.

Lastly, the ADA has other safeguards against people with disabilities being in jobs if they present a direct threat to the health and safety of themselves or others. These safeguards render the Chapman amendment unnecessary and superfluous.

Thank you for your consideration of my remarks. I trust you will rise above the fear and ignorance that spawned this amendment and reject it.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael Lechner", with a long horizontal line extending to the right.

Michael Lechner  
Executive Director

cc: KCDC Members

\gmada



AL SIMPSON  
WYOMING

# Whip Notice

## United States Senate

OFFICE OF  
THE ASSISTANT REPUBLICAN LEADER  
WASHINGTON, DC 20510-7022

July 9, 1990

Dear Colleague:  
The schedule for the Senate is as follows:

Monday, July 9:

The Senate will not be in session.

Tuesday, July 10:

The Senate will convene at 9:30. After a period for morning business (not to extend beyond 10:00), the Majority Leader has expressed his intention to move to proceed to S. 2104, a bill to amend the Civil Rights Act of 1964. It is also possible that he may move to consider the Conference Report on the Americans with Disabilities Act. The Senate will recess from 12:30 until 2:15 in order to accomodate party policy lunches.

Wednesday, July 11:

The Senate is expected to resume consideration of S. 1970, the crime bill. A vote on final passage has been ordered for 8:00 pm.

Balance of the week:

The Majority Leader has announced that the following measures might be expected to be considered prior to the August recess: campaign finance reform, farm bill, debt limit extension, defense authorization, and any available appropriations bill. If you have questions, please call 224-2708.



Al Simpson  
Assistant Republican Leader

Steve  
628-4160  
Mike Davidson  
444435  
ET  
267-3846



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Office of the Attorney General  
Washington, D.C. 20530

July 26, 1989

Honorable Edward M. Kennedy  
Chairman, Committee on Labor and Human Resources  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

During my testimony before your Committee on June 22, 1989, I presented this Administration's endorsement of comprehensive civil rights legislation for persons with disabilities. The Administration continues to believe that the Americans with Disabilities Act, S. 933, is an appropriate vehicle for landmark legislation in the disability rights area. Our agreement in concept for new legislation, however, cannot mask the problems that we have with several of the bill's provisions. I certainly hope, however, that further discussions will allow us to reach common ground on the issues over which we have differed.

For the past month representatives of the Department of Justice, the Department of Transportation, and the White House have met with you and staff from your Committee and from Senator Dole's office in an attempt to resolve our differences. The discussions have proceeded positively and amicably through numerous sessions, with both sides acting in good faith. The goal has been to reach agreement on a revision of S. 933 that both the Administration and the sponsors of the bill could endorse. Although we have reached agreement on a number of specific issues and provisions, our discussions thus far have not yet reached that goal.

This letter is the "bill of particulars" that I discussed at our meeting Monday night. It constitutes a statement of the Administration's views on the major items in the bill as it is currently drafted and is a summation of the major provisions upon which we agree. More importantly, it posits several options for further discussion over two of the thorny issues over which we have differed: remedies and the scope of public accommodations.

Employment

Perhaps we have reached the most agreement on the employment provisions of the bill. Indeed, the changes that we have agreed upon remove many of the egregious problems that the ADA as



introduced would have caused, particularly for small businesses that are the backbone of our economy.

The Administration continues to endorse the concept of paralleling in the disability area Title VII of the Civil Rights Act of 1964. We believe that, like Title VII, coverage should be phased-in over time. We propose that S. 933 apply to all employers with 25 or more employees two years from enactment of the legislation and that, two years later, coverage be phased-down to include all employers with 15 or more employees. This two-year implementation period will give the Administration time to craft implementing regulations and to engage in wide-reaching technical assistance efforts to explain the bill's requirements to covered entities.

The Administration endorses using the existing standard from the Federal Government's regulations implementing section 504 of the Rehabilitation Act of 1973. Thus, employers would be obligated to make reasonable accommodations to the known disabilities of applicants for employment or employees unless such accommodations would result in an undue hardship on the operation of the employer's business. We recommend that, whenever possible, language in the statute should be taken verbatim from the existing Federal section 504 regulations. This approach is particularly important for the "reasonable accommodation/undue hardship" requirement. (In fact, whenever possible, for all titles of S.933, standards imposed on recipients of Federal funds who would also be subject to the requirements of the Fair Housing Act and Section 504 should be consistent.)

The Senate staff agreed with our suggestion of deleting title I of S. 933 and moving certain of its provisions to the other substantive titles of the bill. For the employment provisions, we agreed to include language from the general prohibitions on discrimination found in Subpart B of the regulations of the Departments of Health and Human Services and Labor implementing section 504. We have included the concept of reemployment inquiries about applicants' disabilities, as well as placing severe restrictions on reemployment physicals and language on selection criteria and testing. We were pleased that there is now agreement with our suggestion that any notion of "anticipatory discrimination" be deleted from S. 933. The Senate staff have also agreed that the bill would include language clarifying that employer-provided health insurance is not required to cover preexisting conditions or alter employer choice of the mix of medical services eligible for reimbursement under a plan.



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### Remedies

The Administration's position on remedies is based on the belief that S. 933 should use existing civil rights laws for minorities and women as its model. S.933 as introduced would inevitably lead to a massive burden of litigation, benefitting lawyers more than those we all seek to assist.

We would use existing enforcement procedures under Title VII of the Civil Rights Act of 1964 for employment and existing enforcement procedures under Title II of the Civil Rights Act of 1964 for public accommodations. The Administration has opposed going beyond such a model for remedies in this area to include compensatory and punitive damages and jury trials for two reasons: our earnest belief that existing Title II and Title VII remedies will be effective in enforcing the new statute and our fear that the lure of large settlements in compensatory and punitive damages will unnecessarily promote litigation.

However, because of your concern that additional remedies should be available in S. 933, particularly to combat wilful and egregious acts against persons with disabilities, we have given consideration to other options. There are a range of alternatives in the remedies area that, while different from S. 933's current requirements, would nonetheless provide additional remedies for persons with disabilities. Using the pattern and practice authority given to the Attorney General in the Fair Housing Act Amendments of 1988 as a model, the Attorney General could be given authority to seek civil penalties in cases involving egregious and wilful violations. Such an approach could provide substantial penalties in set amounts, with increasing penalties for subsequent violations. This type of approach would not likely foster needless litigation and would still provide a strong fiscal incentive for covered entities to avoid discriminatory practices.

### Public Accommodations

The Administration believes that any new civil rights law for persons with disabilities should cover public accommodations if that law is to guarantee access to the mainstream of American life. S. 933 as currently drafted would extend the reach of Federal regulation inappropriately to encompass practically every structure in America for human use -- even homes and churches. This intrusion, we fear, is overly broad and surely would have unknown and unintended consequences.

To this end, we have proposed paralleling the coverage of Title II of the Civil Rights Act of 1964. This would provide coverage of inns, hotels, motels, restaurants, cafeterias, lunchrooms, gasoline stations, motion picture houses, theaters, concert halls, sports arenas, and other places of entertainment.



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We have also entertained the concept of adding other categories of public accommodations to this list, particularly the professional offices of health care providers.

The Administration continues to link the scope of coverage of public accommodations with the extent of the nondiscrimination obligation. We have recently given consideration to alternatives suggested by a two-tiered or bifurcated approach to accessible public accommodations. Perhaps we can explore the ramifications of a bifurcated or two-tiered approach that would duplicate the broad coverage of S. 933 but which would provide reduced obligations for some public accommodations.

Under one version of such an approach, the first tier would include all public accommodations covered by title II of the Civil Rights Act of 1964 plus the professional offices of health care providers. These public accommodations would be subjected to nondiscrimination rules, new construction requirements, existing building requirements, including minimal retrofitting requirements (those that are "readily achievable"), and the requirement to provide auxiliary aids to persons who have hearing or vision impairments.

The second tier would include the categories in S. 933 that may truly be described as public accommodations (not all new private buildings as now covered by S. 933). These additional categories of accommodations would be subjected to a significantly less far-reaching set of requirements. Under this compromise approach, the obligation would cover new construction only; there would be no retrofitting or auxiliary aids obligation. Instead, entities covered by this second tier would be required to have any new facilities constructed for first occupancy 30 months after enactment of the bill be accessible. Similarly, when such entities make significant renovations or alterations of their existing facilities, they would have to make such alterations in an accessible manner.

The second tier could contain an exemption for small businesses, perhaps based on the size of the enterprise. In addition, the second tier public accommodations would not be required to install an elevator in buildings up to 3 stories in height.

This approach has the advantage of providing broader coverage, thus promising a fuller implementation of the goal of opening up all aspects of American life to persons with disabilities. It is still cost conscious, however, avoiding costly retrofitting requirements for the second tier and restricting second tier requirements to the more cost effective approach of making new buildings accessible. This approach would, as does S. 933, subject virtually all new non-residential construction to Federal jurisdiction, in a sense establishing a



Federal building code for all private commercial construction. The Administration would be interested in having the views of S. 933's sponsors on this type of approach to making public accommodations accessible.

During discussions, we have come to understand S. 933's use of the term "readily achievable," the concept that will apply to making alterations in existing facilities. The Senate staff's proposal that facilities will only need to be retrofitted if the alteration is easily accomplishable, or is able to be carried out without much difficulty or expense is an approach that, if fully supported in the legislative history with specific examples, can be viewed favorably by the Administration. Finally, your Committee staff agreed that neither the phrase "potential places of employment" nor anything in the public accommodation provisions is intended as a separate basis for coverage of employers.

#### Treatment of Religious Entities

The Administration believes that any legislative initiative in this area should be carefully crafted to avoid any potential confrontation with the First Amendment to the Constitution. For example, we believe that churches and synagogues should not be forced to expend monies which have been contributed for religious and charitable purposes in order to meet the expenses of litigation.

We are pleased with your Committee's offer to exempt employment practices from Federal jurisdiction if they are based on the religious tenets of a religious organization or if the employment decision is based on the religion of the employee. The Administration continues to believe, however, that religious entities must be fully exempted, particularly in the public accommodations area, but also in the area of employment.

#### Public Transportation

Our goal remains that persons with disabilities have access to adequate transportation in this country. For this reason, we continue to recommend that new public buses purchased after enactment of the bill be accessible. Similarly, the bill should also require paratransit services that supplement, rather than duplicate, fixed-route bus service. This paratransit service should be open to those persons with physical or mental disabilities who are unable to use the mainline accessible system by virtue of their disabilities.

We continue to believe, however, that the Secretary of the Department of Transportation should have leeway, in the form of a waiver authority, to make determinations in limited circumstances that not all new buses need be lift-equipped. It is axiomatic



that no rule is reasonable without an exception. For example, if the supply of lift-equipped buses is disrupted, the purchase of new buses should not come to a halt. Similarly, we believe that the obligation to provide paratransit services should be subject to a cost limitation, for example, at 2% of the transit provider's operating budget.

The cost of making older rail stations fully accessible is extremely high. With systems required to purchase lift-equipped buses, there will be fewer funds available for other transit expenditures. Also, increased service will be available with more accessible buses. Therefore, we believe that the provision to require retrofitting key stations in rail systems should be deleted from the bill. Consideration of any requirements in this area would depend on the establishment of a cap on paratransit expenditures. However, this in no way affects the current requirements that a newly constructed station or renovated station be made accessible.

#### Private Transportation

During the discussions, your staff presented a proposal that would reduce the requirements of S. 933 for private transportation. The Administration continues to believe, however, that, with the exception of employer-sponsored van pools, it would be premature to apply requirements to private establishments using vehicles for transporting individuals or to private entities primarily engaged in the transportation business. Little is known of the exact nature of the demand for accessible private transportation service by persons with disabilities. Furthermore, there is substantial evidence of the financial fragility of private providers, particularly intercity bus owners and operators, and our concern is that the additional costs of providing accessible transportation could drive private providers out of business and would result in decreased services for everyone, particularly vulnerable groups such as the elderly, the young and the poor, especially in rural areas. For these reasons, the Administration believes that S.933 should commission an in-depth study of this area which could determine if there is a need for future legislation.

#### Telecommunications

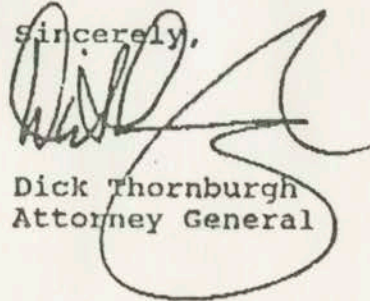
The Administration once again endorses the concept of making our Nation's telecommunications system accessible to persons who are deaf or who have hearing or speech impairments. We believe that functionally equivalent phone service for persons with hearing or speech impairments should be provided. We note that negotiations over amendments to the requirements in title V of S. 933 are continuing, and we remain hopeful that an agreement on the exact nature of the legislative vehicle that will ensure such equivalent service will soon be reached.



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I am certain that you will find this "bill of particulars" a useful spur to continued discussions. I request that you consider and respond to these points. Then, the principals can meet this Thursday for further discussions. We believe the Administration has made significant offers that, with similar offers on your part, could lead to agreement in key areas. We hope that you will respond in kind. The Administration looks forward to your views in response to this document.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dick Thornburgh", with a large, sweeping flourish extending from the end of the signature.

Dick Thornburgh  
Attorney General



1 United States the sum of \$10,000 for each such  
2 offense.

3 (B) SEPARATE OFFENSES.—Each distinct  
4 violation of the provisions of this title shall be a  
5 separate offense under subparagraph (A). In  
6 case of a continuing violation, each day shall be  
7 considered a separate offense.

8 (C) RECOVERING FORFEITURES.—Such for-  
9 feitures shall be payable and recoverable in the  
10 same manner as prescribed in section 504 of the  
11 Communications Act of 1934 (47 U.S.C. 504).

## 12 **TITLE VI—TECHNICAL ASSISTANCE**

### 13 **SEC. 601. ADMINISTRATION.**

14 (a) TECHNICAL ASSISTANCE; SHORT-TERM TRAINEESHIP;  
15 SPECIAL PROJECTS; DISSEMINATION OF INFORMATION; AS-  
16 SISTANCE TO NATIONAL COUNCIL ON DISABLED.—In carry-  
17 ing out this Act, the Commissioner of the Equal Employ-  
18 ment Opportunity Commission (EEOC) may—

19 (1) provide consultative services and technical  
20 assistance to public or nonprofit private agencies and  
21 organizations;

22 (2) provide short-term training and technical in-  
23 struction;

24 (3) conduct special projects and demonstrations;



1           (4) collect, prepare, publish, and disseminate  
2           special educational or informational materials, in-  
3           cluding reports of the projects for which funds are  
4           provided under this section;

5           (5) provide staff and other technical assistance  
6           to the National Council on the Disabled; and

7           (6) provide monitoring and conduct evaluations.

8           (b) UTILIZATION OF SERVICES AND FACILITIES; INFOR-  
9           MATION TASK FORCES.—

10           (1) IN GENERAL.—In carrying out the duties  
11           under this section, the Commissioner of the Equal  
12           Employment Opportunity Commission may utilize  
13           the services and facilities of any agency of the Fed-  
14           eral Government and of any other public or nonprof-  
15           it agency or organization, in accordance with agree-  
16           ments between the Commissioner and the head of  
17           such agencies, and may pay therefor, in advance or  
18           by way of reimbursement as may be provided in the  
19           agreement.

20           (2) APPOINTMENT.—In carrying out the provi-  
21           sions of this section, the Commissioner of the Equal  
22           Employment Opportunity Commission shall appoint  
23           such task forces as may be necessary to collect and  
24           disseminate information in order to improve the abil-



1       ity of the Commissioner to carry out the provisions  
2       of this section.

3       (c) RULES AND REGULATIONS.—The Commissioner of  
4 the Equal Employment Opportunity Commission may pro-  
5 mulgate such regulations as are considered appropriate to  
6 carry out such Commissioner's duties under this section.

7       (d) AUTHORITIES OF APPROPRIATIONS.—There are au-  
8 thorized to be appropriated to carry out this section such  
9 sums as may be necessary.

## 10       **TITLE VII—ENFORCEMENT AND** 11       **REMEDIES**

### 12       **SEC. 701. ENFORCEMENT AND REMEDIES.**

#### 13       (a) ADMINISTRATIVE ACTIONS.—

14               (1) IN GENERAL.—To pursue such administrative  
15 enforcement procedures and remedies as are avail-  
16 able under the regulations issued pursuant to sections  
17 105, 204, 304, 404, and 503, an action may be main-  
18 tained, based on a belief of a violation or perspective  
19 violation of any of the provisions of this Act, by an  
20 individual or class of individuals for such individual  
21 or class.

22               (2) REMEDY.—Agencies enforcing the regula-  
23 tions referred to in paragraph (1) shall have the au-  
24 thority to order all appropriate remedial relief includ-  
25 ing compliance orders, a cutoff of Federal funds, re-



EDWARD M. KENNEDY, CHAIRMAN

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LOWELL P. WEICKER, JR., CONNECTICUT  
THAD COCHRAN, MISSISSIPPI  
GORDON J. HUMPHREY, NEW HAMPSHIRE

THOMAS M. ROLLINS, STAFF DIRECTOR AND CHIEF COUNSEL  
HAYDEN G. BRYAN, MINORITY STAFF DIRECTOR

## United States Senate

COMMITTEE ON LABOR AND  
HUMAN RESOURCES

WASHINGTON, DC 20510-8300

July 26, 1988

Dear Colleague:

The enactment of the Civil Rights Acts of 1964 and 1968 heralded this nation's commitment to eradicating discrimination on the basis of a person's race, color, sex, religion or national origin. These Acts have been powerful weapons in our battle to end discrimination in housing, employment and public accommodations.

Yet there are over 43 million disabled Americans who are not protected by a federal law to combat discrimination in these same arenas. This fact was recognized by the National Council on the Handicapped in its 1986 report Toward Independence, and led to development by the Council of the Americans with Disabilities Act, a comprehensive bill to prohibit discrimination on the basis of handicap.

As the Chairman and Ranking Member of the Subcommittee on the Handicapped, we have introduced this legislation, S.2345, which is cosponsored by 14 of our Senate colleagues, because we believe it is time to end the discrimination that pervades our society and prevents individuals with disabilities from full participation in our workforce and our communities.

This legislation builds upon the success of existing law that is used by the federal government to prevent discrimination in federally-assisted activities. Specifically, it establishes a prohibition of discrimination against individuals with disabilities in employment, housing, transportation, public accommodations, public services, and communications. Further, the bill delineates what constitutes discrimination on the basis of handicap, and gives guidance to those covered by the Act, regulatory agencies, and the courts as to how the general concept of nondiscrimination on the basis of handicap is to be applied.

Americans with disabilities have the right to the equality of opportunity guaranteed to other minorities by our civil rights laws. They should no longer have to suffer from the prejudices, fears, and unnecessary obstacles that have prevented them from enjoying full participation in American life. Equating disability with inability is wrong, because these individuals want to work and live independently--and can do so if given the opportunity.



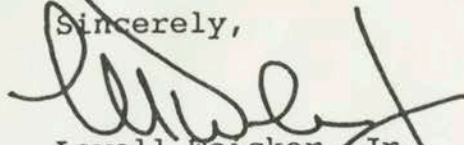
-2-

We urge you to support this legislation. If you have questions, or would like to cosponsor S.2345, please contact Terry Muilenburg at 4-1285, or Bob Silverstein at 4-6265.



Tom Harkin  
Chairman  
Subcommittee on the Handicapped

Sincerely,



Lowell Weicker, Jr.  
Ranking Minority Member  
Subcommittee on the  
Handicapped

#### CURRENT SENATE COSPONSORS

John Chafee  
Alan Cranston  
Christopher Dodd  
Robert Dole  
Tom Harkin  
Daniel Inouye  
Edward M. Kennedy  
John Kerry  
Patrick Leahy  
Spark Matsunaga  
John McCain  
Bob Packwood  
Don Riegle  
Paul Simon  
Robert T. Stafford  
Lowell Weicker, Jr.

Identical legislation has been introduced in the House by Representatives Tony Coelho, Silvio Conte, Major Owens, Jim Jeffords, and is cosponsored by 86 of their colleagues.





EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
WASHINGTON, D.C. 20507

MAY 7 1990

Honorable Robert Dole  
United States Senate  
Washington, D.C. 20510

ATTN: Mo West

Dear Bob:

I thought you might be interested in the speech I gave at the President's Committee on Employment of People with Disabilities Annual Conference at the Washington Hilton on May 2.

Sincerely,

A handwritten signature in blue ink, which appears to read "Evan", is positioned above the typed name.

Evan J. Kemp, Jr.  
Chairman

Enclosure



STATEMENT OF  
EVAN J. KEMP, JR.  
TO THE  
PRESIDENT'S COMMITTEE ON EMPLOYMENT OF PEOPLE WITH DISABILITIES  
ON ACCEPTANCE OF THE  
DISTINGUISHED SERVICE AWARD  
MAY 2, 1990

Yesterday, I had lunch with President Bush and Boyden Gray, who is Counsel to the President. We talked about the imminent passage of the Americans with Disabilities Act and what that will mean for people with disabilities. The President sees the Americans with Disabilities Act as the cornerstone for new and revised policies and programs that will encourage independence for people with disabilities, rather than dependence, and that will help us to take our rightful place in the mainstream of American life. He understands that paternalistic programs that encourage dependence damage our national fabric and all of our citizens--and especially those people with disabilities who are beaten down until they come to believe that they are not equal citizens, not even worthy of full human status.

I agree with the President. Paternalism does terrible things to its victims, and to societies that allow it to continue. We have allowed paternalism to continue too long in our attitudes towards people with disabilities. It's time for a change.

I hope that the President's Committee will join with President Bush and shift its focus from charity to rights, and that its members will see that their main purpose is to further the integration of people with disabilities into the mainstream of American worklife.

And change is coming within the disability community, whether or not we are ready for it. Paternalism is no longer acceptable. Charitable approaches are offensive. Voluntarism has not worked.

The new era will see a rights-bearing attitude on the part of people with disabilities and their advocates. No longer will we say, "hire the handicapped because it's good for business." In the new era, we will say, "do not discriminate against people with disabilities who are qualified to do the job."



Yes, it will be good for business. It will be good for everybody when people with disabilities are allowed to exercise their full potential as workers, citizens, and human beings. But that won't happen until we adopt a rights-bearing approach that makes it happen.

Yes, it's time for a change. I hope that the President's Committee will be in the vanguard of that change, empowering people with disabilities and speaking of rights and responsibilities, rather than charity and voluntary initiatives.

Perhaps the worst sin in this world is to be irrelevant. Those of us who do not change will find that we are irrelevant in the new era. People who do not change will not be attacked as much as ignored. Their work will be seen as increasingly without utility. As many of you know, there was a widespread sense five years ago that the President's Committee was becoming irrelevant. Some good changes have occurred since then. Now, it's time to move on, to change again as the world around you changes.

I thank you for this award, and I look forward to working with President Bush and with the President's Committee in the coming era of empowerment and independence for people with disabilities.



*Ewan Kemp*

337-4119

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
WASHINGTON, DC 20507

October 24, 1988



Office of the  
Commissioner

Mr. Howard Moses  
Legislative Liaison  
The President's Committee on Employment  
of People with Disabilities  
1111 20th Street, N.W.  
Washington, D.C. 20036

Dear Howard:

Thank you for asking me to comment on the Americans With Disabilities Act of 1988 (hereinafter "ADA"). My comments reflect my views alone and do not represent the official position of the Equal Employment Opportunity Commission.

The ADA is a comprehensive and ambitious bill that seeks to parallel in scope the civil rights protections provided racial and ethnic minorities, women, and older persons, but framed to combat the forms of discrimination confronting people with disabilities. Senator Weicker's statement upon introduction of the ADA accurately described the problems disabled people face on a daily basis: inaccessible housing, transportation, and communication; denial of reasonable accommodation; and rampant prejudice. I share the belief that Federal legislation outlawing such discrimination is urgently needed. If enacted, the ADA would go far to remove unfair and discriminatory barriers against people with disabilities. This, in turn, should result in significant Federal budgetary savings. Many billions of dollars are spent on Federally funded maintenance programs that keep disabled people from working.

*< 5 jobs? >*

However, as to the ADA's application to employment, I believe significant changes need to be made if the bill's overall goals are to be met, as discussed below.

1. Definition of "on the basis of handicap"

The ADA prohibits discrimination "on the basis of handicap" in contrast to Title V of the Rehabilitation Act of 1973, as amended, that focuses first on whether a claimant is an "individual with handicaps." The ADA parallels other civil rights laws that prohibit discrimination "on the basis of" other protected characteristics and do not define race, color, sex, national origin, and religion. This approach has some distinct



advantages over defining the group to be protected, as it focuses on the question "how was the claimant treated?" rather than "is the claimant a member of the protected group?" In so doing, the ADA furthers this Administration's goal of protecting the civil rights of individuals and not groups.

However, discrimination on the basis of handicap is not always similar to discrimination on the basis of other characteristics. One difference is that the nature and severity of the physical or mental impairment often determines the amount of prejudice encountered, and the need for accommodation and barrier removal. Obviously, a person with a sore back has not faced the same barriers to integration as a person using a wheelchair.

The congressional "Findings" in § 2(a) would lead one to believe that the ADA's primary objective is the eradication of discrimination against people with severe disabilities and that the latter group are intended to be the ADA's principal beneficiaries. For example, § 2(a)(6) states: "[P]ersons with disabilities are a discrete and insular minority who have been saddled with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness...." The congressional findings accurately depict the sad state of persons with severe disabilities in our country. On the other hand, to argue that persons with minor, common conditions, such as plantar's warts, are "relegated to positions of political powerlessness" would be stretching a point. Nonetheless, the ADA's definition of discrimination "on the basis of handicap" will include people with minor impairments who are not truly disabled.

"On the basis of handicap" is defined to mean "because of a physical or mental impairment, perceived impairment, or record of impairment." Contrast this with the definition of "individual with handicaps" under § 7(8)(B) of the Rehabilitation Act: "any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment." Under the Rehabilitation Act, a physical or mental impairment must substantially limit one or more major life activities, be perceived as limiting such activities or have a record of limiting such activities. The ADA, however, contains no similar qualifying language. Since "physical or mental impairment" is itself defined broadly to include "any physiological disorder or condition...affecting one or more systems of the body"--without regard to the seriousness of the condition--we would all be "handicapped" any time we were treated differently or not accommodated because of a minor physical or mental condition.



If employment of people with severe disabilities is a key goal of the ADA, the definition of "on the basis of handicap" should be amended. In my view, persons who claim to be disabled and who are seeking reasonable accommodation or barrier removal should have to prove that they are more than inconvenienced by a minor common impairment. On the other hand, I agree with the ADA that persons who are discriminated against because they have a record of or are perceived as having an impairment should be protected. Discrimination based on myths, fears and stereotypes about disability have been a continuing problem and should be outlawed regardless of the nature or degree of a person's impairment. Prohibiting discrimination based on stereotypes, however, is only a small part of what the ADA would accomplish. If, in addition, employers are required to provide equipment or services, remove architectural and communication barriers and undertake recruitment, those efforts should assist persons with severe disabilities only.

Permitting persons with minor, common impairments to prevail on claims for accommodation and barrier removal is likely to result in a flood of such claims, far surpassing the volume of claims by individuals with severe impairments. Even the Rehabilitation Act's more stringent definition has been trivialized by persons claiming to be handicapped because, among other things, they are left-handed, suffer from mild acrophobia or allergies, or are cross-eyed, or even because they cannot get up in the morning to get to work on time. Such claims have caused this Commission and Federal agency employers great difficulty in implementing § 501.

Several negative consequences may arise from the ADA's over broad definition as applied to private sector employment. Scarce employer resources may be used up in accommodating persons with minor, common impairments, making it impossible for the employer to afford an expensive accommodation for a person with severe impairments. And, although an impairment may be minor, its accommodation may not be minimal. For example, in a recent federal sector case, one agency provided a professional co-worker to assist an employee for several months because the employee was unable to handwrite correspondence due to an infected index finger.

Secondly, many minor impairments traditionally are the responsibility of the individual to accommodate because of their extremely personal and common nature. The ADA, however, appears to shift the burden completely on the employer to provide all necessary changes for the individual. I doubt that there is much political consensus to accommodate people who are left-handed, or have infected fingers, or plantar's warts. But those are the types of charges frequently filed in the Federal sector and I see no reason to assume that it will be different when private sector



employers are covered. The result of such charges may well cause a drastic curtailing of the law's accommodation requirement.

Third, the ADA requires employers to make "outreach and recruitment efforts to increase the work force representation of individuals with physical or mental impairments, or records of impairments...." (§ 8(c)(2)). This language will encourage employers to satisfy their affirmative action requirement by hiring the least disabled and most easily employed. *cc: [unclear]*

## 2. Reasonable Accommodation

Reasonable accommodation is crucial to the equal employment opportunity of persons with severe disabilities. Providing a workable, enforceable standard for reasonable accommodation requires not only defining the term but also setting forth the process inherent in all accommodation and removing disincentives to accommodation.

The ADA requires reasonable accommodation as well as removal of architectural, transportation and communication barriers. Reasonable accommodation is defined broadly in § 3(5) and must be provided not only in employment but also with respect to all activities covered by the ADA pursuant to § 5(a). Limitations on the duty to accommodate as well as remove architectural, transportation and communication barriers are set out in § 7. While the ADA's provisions on reasonable accommodation represent a giant leap forward, I have several concerns:

### a. Definition of reasonable accommodation

The ADA's definition of reasonable accommodation in § 3(5) correctly focuses on responding to an individual's abilities in order to provide an equal opportunity and partly follows the approach recommended by the U.S. Civil Rights Commission in its 1983 report, Accommodating the Spectrum of Individual Abilities. That report also viewed reasonable accommodation as the result of a problem-solving process undertaken jointly by a disabled person and the employer or other entity obligated to provide the accommodation. The ADA should adopt the process approach and provide standards or guidelines for accommodation in order to end the confusion surrounding the issue.

The process has several generic components, including identifying the abilities and limitations of the person with a disability; the barriers to participation in the service, program, activity, benefit or job; options for accommodation by consulting the disabled person and other experts as necessary; and then selecting the most appropriate accommodation. These components can be further refined by regulation tailored to the different areas covered by the ADA. For example, regulations implementing reasonable accommodation in employment might require that the



employer consider the impact of the accommodation on the employee's long-term career and advancement potential but prohibit the use of readers, interpreters or personal care attendants where such individuals would be performing the essential functions of the disabled person's job.

Secondly, the ADA would require an employer to waive or lower nondiscriminatory quantity and quality performance standards unless the employer could show that such changes would fundamentally alter or threaten the existence of the business. (§§ 3(5) and 5(b)(2)). Lowering performance standards effectively requires the employer to provide equal pay for unequal work. Economically, it may be just as expensive to provide a reader as it is to pay a co-worker overtime to complete the disabled employee's unfinished assignments. However, the impact on employers and co-workers is different. Lowering standards for disabled employees will only cause needless resentment and will reinforce the widespread misperception that disabled people are unproductive.

There is no question that supported employment programs are needed for those with severe disabilities who cannot compete in the private sector, even with reasonable accommodation, absent some form of subsidy. ~~However, to require such subsidized employment in an equal opportunity statute is not in the best long term interest of people with disabilities.~~

Third, the list of examples in § 3(5) does not include "reassignment to a vacant position" as a type of accommodation. The definition of reasonable accommodation includes only: "providing or modifying devices, aids, services, or facilities, or changing standards, criteria, practices or procedures...." Reassignment can be critical for existing employees who become disabled or whose existing disabilities worsen. However, without a specific statutory reference to reassignment, it is not likely to be included by agencies or courts. EEOC had interpreted its § 501 regulations to include reassignment as a reasonable accommodation. Ignacio v. U. S. Postal Service, Petition No. 03840005 (Sept. 4, 1984), upheld, 30 M.S.P.R. 471 (Spec. Panel 1986). However, a majority of courts have held that reassignment is not a required reasonable accommodation. See, e.g., Carter v. Tisch, 822 F.2d 465 (4th Cir. 1987) and cases cited therein.

b. Limitations on barrier removal  
and accommodation

Section 7(a)(1) provides that removal of architectural, transportation and communication barriers and accommodation are not required "if such barrier removal or accommodation would fundamentally alter the essential nature, or threaten the existence of the program, activity, business, or facility in



question." In other words, an employer would have to show that the business would be fundamentally changed or that it would have to cease operating or file bankruptcy if a particular accommodation were made or barrier removed. I have no problem with the fundamental alteration aspect of the standard. Of course, it remains to be seen what "fundamental alteration" means in the context of this bill. A bankruptcy standard, however, is unrealistic and overly stringent. Large concerns would never be able to prove that an accommodation would threaten the existence of the business no matter how unreasonable the cost of the accommodation.

I believe that the duty to accommodate should be substantial and that it may require an employer to incur significant cost. See Nelson v. Thornburgh, 567 F. Supp. 369 (E.D. Pa. 1983), aff'd mem., 732 F.2d 46 (3rd Cir. 1984), cert. den., 469 U.S. 1188 (1985). Many studies indicate that accommodations are usually of minimal cost and that facility accessibility, if done at the design stage rather than after a building is constructed, is also inexpensive. See generally, U.S. Commission on Civil Rights, Accommodating the Spectrum of Individual Abilities (1983), at 69-82.

However, some accommodations and facility modifications are very expensive. For example, providing readers, interpreters or personal care attendants on the job can be critical to the success of people with different disabilities and degrees of impairment. Such accommodations add large and continuing costs on an employer who hires persons needing such accommodations. Without external funding, a powerful financial disincentive will be created against hiring the most severely disabled. Although the ADA would make it illegal for an employer to deny a disabled person a job because of the cost of a needed accommodation, the ADA as currently drafted does little to tip the balance in favor of the disabled applicant. While the employer runs the risk of possible litigation and backpay liability for the spurned applicant, the cost of the accommodation will loom as a far greater certainty. Smaller employers, in particular, are likely to shy away from hiring a disabled person needing expensive accommodation. Yet, it is the smaller employers who are creating most of the new job opportunities.

For this reason, some form of federal funding should be provided for making reasonable accommodations where such costs rise to a certain level of expense. This could be done by means of tax credits, tax deductions, or by establishing a funding source to which private sector employers could apply.



3. Ambiguity in the scope and nature of employers covered and employment practices prohibited

In general, the ADA attempts to cover employment practices and employers covered by Title VII through a short hand reference to the latter Act, and by a broad grant of rulemaking authority to the Chairman of the Equal Employment Opportunity Commission. Little substantive guidance is provided concerning unlawful employment practices beyond the ADA's general nondiscrimination principles except for a lengthy provision limiting preemployment inquiries and preemployment medical examinations. Specifically, the ADA covers "employer practices, employment agency practices, labor organization practices and training programs covered by Title VII of the Civil Rights Act of 1964." (§ 4(a)(1)). The Chairman of the Equal Employment Opportunity Commission is required to promulgate regulations prohibiting "discrimination in regard to job application procedures, the hiring and discharge of employees, employee compensation, advancement, job training, and other terms, conditions, and privileges of employment." (§ 8(c)(1)(b)).

Taken together, these provisions raise concerns as follows:

a. Confusion as to employers covered

It is unclear whether the ADA is intended to apply to the employment practices of Federal, state and local governments and whether certain Title VII exceptions are intended to be incorporated into the ADA. The confusion arises because of the ADA's reference to "Title VII of the Civil Rights Act of 1964." Does this language refer to the original enactment, Pub. L. No. 88-352, 78 Stat. 253 (1964) or its "as amended" current version?

The question is significant because in 1972, Congress passed Pub. L. No. 92-261, 86 Stat. 103, amending § 701 by changing the definitions of "person", "employer", "labor organization", "employee", and "industry affecting commerce" to add, inter alia, state and local "governments, governmental agencies, [and] political subdivisions" and to exclude state elected public officials and certain advisors and staff members of such officials. The 1972 amendments also created in § 702 an exemption for employers employing aliens outside of the United States and for certain religious organizations. Finally, the 1972 amendments added § 717, providing Title VII rights to most Federal workers.

b. Confusion over substantive legal standards governing employment

The difference in language between Title VII and the ADA relating to employment practices also may result in unwanted application of Title VII standards to ADA cases. The ADA, of course, would



create different and more extensive prohibitions of employment discrimination from Title VII by requiring, e.g., substantial accommodations, barrier removal and more stringent restrictions on selection criteria. For this reason, the ADA, correctly, does not incorporate by reference §§ 703 and 704 of Title VII. Those sections describe "unlawful employment practices" and the courts have interpreted them to define what discrimination means under Title VII. The ADA's reference to "employer practices...covered by Title VII," therefore, may be interpreted by some courts to incorporate Title VII's more limited prohibitions into the ADA. While I recognize that § 5 of the ADA provides protection against such a result by spelling out the latter's requirements for accommodation, barrier removal and selection criteria, this will not foreclose the possibility of misinterpretation.

c. More statutory guidance needed  
on critical employment issues

The ADA provides insufficient direction on several key employment issues. First, the ADA does not prohibit retaliation against a disabled person who has opposed a practice that the ADA makes unlawful, or who has participated in a proceeding under the ADA, or who has filed a charge of discrimination or a civil action under the ADA. Protection from retaliation is essential if people with disabilities are expected to come forward to enforce their rights.

Second, the ADA does not address discrimination in health, life and disability insurance. Such employment benefits are particularly important to persons with disabilities. What is the employer's obligation to offer such insurance coverage if the insurance company refuses to cover a disabled applicant or if the coverage will be significantly more expensive? I am not referring only to discriminatory insurance practices based on unfounded stereotypes about disability and disease. There are disabling conditions which predictably result in higher medical costs, or a greater likelihood of early disability retirement or a shorter life span. Under these circumstances, is an employer obligated to provide equal benefits to all employees regardless of cost? Is the employer obligated only to provide benefits at equal cost even if the resulting benefits are lower for disabled employees? Congress confronted these same questions in the 1978 amendments to the Age Discrimination in Employment Act of 1967 when it was feared that the age-related costs of some employment benefits would create a financial disincentive to the employment of older workers. See 29 U.S.C. § 623(f)(2) (1982) and implementing regulations, 29 C.F.R. § 1625.10 (equal cost rather than equal benefits permitted for certain employment benefit plans having significant age-related costs). I am not recommending that the approach taken by the ADEA be adopted by the ADA. I simply wish to indicate that these issues can and



must be resolved by Congress if people with severe disabilities are to have a realistic opportunity to enter the workforce.

Third, the ADA does not address the impact of bona fide seniority systems and collective bargaining agreements on employment opportunities such as when a less senior employee with a disability seeks more favorable shift duty as an accommodation. Conflicts between Rehabilitation Act rights of disabled employees and collectively bargained rights of co-workers have plagued accommodation efforts in the past. See Carter v. Tisch, 822 F.2d 465 (4th Cir. 1987) and cases cited therein.

- d. Rulemaking authority is granted to the Chairman of the Commission

The ADA should be revised to require the Equal Employment Opportunity Commission to issue regulations, not the Chairman of the Commission. This change is necessary to conform the ADA with existing congressional grants of substantive rulemaking authority to the Commission, e.g., § 717(b) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-16(b); § 9 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 628 (1982).

#### 4. Administration and Enforcement

- a. No provision for state or local government enforcement

The ADA does not contain any authority for Federal funding of state and local government agencies to accept complaints of unlawful discrimination on the basis of handicap under state law provisions consistent with the ADA. The Equal Employment Opportunity Commission, by Congressional appropriation, provides funds to eligible state and local fair employment practice agencies to accept, investigate and resolve complaints of employment discrimination under Title VII and the Age Discrimination in Employment Act and equivalent state or local law. The Commission anticipates that approximately 45,000 charges of employment discrimination will be resolved through this system during FY 1989 at a cost of \$20 million. Providing funding for such agencies has helped to encourage the enactment of state and local fair employment laws and has assisted the Commission in its enforcement efforts by sharing the workload. Consideration might be given to such a Federal-State enforcement scheme for the ADA as well.

- b. Federal agencies are not provided statutory authority to enforce the ADA in Federal court



Section 9 of the ADA does not authorize the United States or any agency of the United States to enforce the ADA by civil action in the Federal district courts. Section 9 appears to limit ADA enforcement to administrative orders issued by agencies granted rulemaking authority under § 8 and to civil actions by private parties. Compare § 9 of the ADA with §§ 706(f) and 707, 42 U.S.C. §§ 2000e-5(f) and 2000e-6 (1982). This lack of explicit recourse to the courts for government enforcement is a serious deficiency. While I am not suggesting that Title VII's litigation authorization be copied, I do recommend that each agency having rulemaking responsibility be given explicit litigation authority to enforce the ADA within its particular subject matter jurisdiction.

c. Remedies for victims of discrimination

Confusion may be created by the use of different language to define administrative and judicial remedies authorized by § 9. Section 9(a)(2) grants administrative agencies authority to order "all appropriate remedial relief, including compliance orders, cutoff of Federal funds, rescission of Federal licenses, monetary damages and back pay." Although quite specific, this list fails to mention reinstatement, a common and important remedy in employment cases. In addition, an aggrieved individual may apply to a Federal district court for "injunctive relief, monetary damages, or both" (§ 9(b)(1)) and the court "shall grant such relief as the court determines is appropriate." (§ 9(c)). It may be advisable to specifically authorize the use of all legal and equitable remedies including those remedies available to administrative agencies.

d. Impact of ADA on Rehabilitation Act rights

Section 4(b) of the ADA attempts to preclude the ADA from affecting Title V of the Rehabilitation Act of 1973, as amended, and the regulations issued thereunder. Since the ADA will apply to almost all Federal contractors, recipients of Federal funds, and Federal agencies, there will be a considerable overlap between the two laws. This overlap may result in inconsistent standards being applied to covered employers. It is unclear how such inconsistencies should be resolved. Notwithstanding the intent of its drafters, I believe the ADA will have a significant impact on the rights and remedies under the Rehabilitation Act because it is far more comprehensive legislation.

In summary, I view enactment of the ADA as critical if people with disabilities are to have a realistic and equal opportunity for full participation in all aspects of American life. The changes I have recommended would, in my view, enhance the ADA's



effectiveness. Please feel free to call me or my Executive Assistant, Christopher G. Bell, at 634-6711 if you have any questions.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Evan Kemp". The signature is written in a cursive, slightly slanted style.

Evan J. Kemp, Jr.  
Commissioner



EDWARD M. KENNEDY, MASSACHUSETTS, CHAIRMAN

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NOR LITTLEFIELD, STAFF DIRECTOR AND CHIEF COUNSEL  
BRISTINE A. IYERSON, MINORITY STAFF DIRECTOR

## United States Senate

COMMITTEE ON LABOR AND  
HUMAN RESOURCES

WASHINGTON, DC 20510-6300

August 4, 1989

Dear Colleague,

On August 2, 1989, with the endorsement of President Bush, the Committee on Labor and Human Resources unanimously approved a substitute amendment to S. 933, the Americans with Disabilities Act of 1989 (ADA). 57 Senators, from both sides of the aisle, have cosponsored this legislation. A copy of the list of cosponsors is attached.

This landmark legislation extends civil rights protections to people with disabilities in the areas of employment in the private sector, public accommodations, services provided by state and local governments, transportation and telecommunication relay services.

The Americans with Disabilities Act balances the rights of people with disabilities with the legitimate concerns of the business community. The ADA does not create undue burdens on small business.

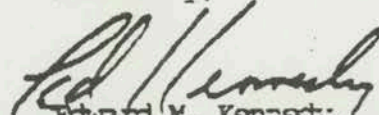
The ADA is not only the right thing to do for people with disabilities, but it is also the right way to help strengthen our economy and enhance our international competitiveness. The ADA will save the government and society billions of dollars by getting people off the dependency/social welfare rolls and into jobs, into restaurants, into shopping centers and into community activities.

We urge you to join us in cosponsoring this historic legislation.

Sincerely,

  
Tom Harkin

United States Senator

  
Edward M. Kennedy


United States Senator

  
Dave Durenberger


United States Senator

  
George Mitchell

United States Senator

  
Bob Dole

United States Senator

  
Jim Jeffords

United States Senator

  
Paul Simon

United States Senator

  
John McCain

United States Senator



LAW/JUDICIARY

# With Bush's Blessing, ADA Bill Sails Through Senate Panel

*Measure would extend full anti-discrimination protections to the disabled, AIDS victims and HIV carriers*

A two-decade effort to secure for the disabled the same protections against discrimination enjoyed by women, minorities and the elderly took a major step toward realization Aug. 2.

With backing from President Bush, the Senate Labor and Human Resources Committee approved S 933, the Americans with Disabilities Act (ADA). It would apply not only to the disabled but also to those afflicted by AIDS or the HIV virus that causes the deadly disease.

The 16-0 vote came only hours after sponsors of the measure reached a compromise with administration officials. Markup of the ADA bill, on the committee's agenda since June, had been delayed for several weeks while negotiations were under way.

"The president endorses this legislation as the vehicle to fulfill the challenge he offered in his Feb. 9 address to the nation: 'Disabled Americans must become full partners in America's opportunity society,'" said a White House statement distributed during the markup.

"For 25 years our handicapped citizens have been outside the umbrella of basic civil rights," said Tom Harkin, D-Iowa, chairman of the Labor Subcommittee on the Handicapped and sponsor of S 933. "Today we bring them in."

## Major Provisions

S 933, as approved by the committee, would bar both public- and private-sector discrimination in employment and access to public accommodations, services, transportation and telecommunications.

Although the 1973 Rehabilitation Act (PL 93-112) bars discrimination against the disabled in federal jobs and federally funded programs, the handicapped were not among the groups protected under the landmark



## BOXSCORE

**Bill:** S 933 — Americans with Disabilities Act, to prohibit discrimination against the handicapped.

**Latest action:** Senate Labor and Human Resources Committee approved 16-0, Aug. 2.

**Next likely action:** Senate floor.

**Background:** President Bush endorsed bill during his 1988 campaign; civil rights groups, AIDS activists, groups representing the disabled lobbied hard for it.

**Reference:** Weekly Report p. 1121.

1964 Civil Rights Act (PL 88-352). (*Background, Weekly Report p. 1121*)

Many of the provisions of the legislation parallel those in the 1964 act. For example, employers (defined as those with 25 or more employees for the first two years after enactment, dropping to 15 or more workers thereafter) would be barred from discriminating on the basis of disability.

Discrimination would also be barred in the provision of public accommodations and services operated by private entities, including restaurants, hotels, doctors' offices, grocery stores and museums. Additionally,

state and local governments would be barred from discriminating in the provision of public services.

But many of the legislation's provisions go beyond those applicable to the able-bodied who have suffered discrimination on the basis of race, religion, sex or national origin.

The bill would require, for instance, that new buses, trains and subways be accessible to and usable by those with disabilities (including those in wheelchairs). New bus and train stations and so on must be accessible and usable by the handicapped, and existing facilities must be modified when alterations are otherwise made.

Similarly, new construction of places of public accommodation and potential job sites must be "readily accessible and usable" by the disabled, and existing facilities so modified when major structural changes are undertaken.

Under one of the compromises reached during the negotiations with administration officials, buildings would not be required to have elevators if they are less than three stories high and have fewer than 3,000 square feet per floor unless the building is a shopping mall, shopping center or the professional office of a health-care provider. The attorney general could require elevators if he deems them necessary in other cases.

Finally, the bill would require telecommunications providers to operate relay services for the hearing-impaired as part of universal telephone services.

## Broad Coalition

The depth of interest in the measure was demonstrated by the fact that people began lining up at 7:30 a.m. to get into the committee's meeting room in the Capitol for the scheduled 9:30 a.m. session. Many were in wheelchairs, some used crutches or canes, but all were anxious to witness the approval of what virtually everyone involved describes as a landmark

*By Julie Rorner*



civil rights measure.

The bill drew support from a broad range of organizations — those representing the handicapped, the 180 groups in the Leadership Conference on Civil Rights, gay rights activists and public-health groups concerned about AIDS.

Based on court interpretations of the Rehabilitation Act, both those with AIDS and those infected with HIV are considered covered under the new measure. It permits discrimination in employment only if a person has "a currently contagious disease or infection that poses a direct threat to the health or safety of other individuals in the work place."

Groups working on ways to stem the spread of the AIDS epidemic, including President Reagan's own AIDS commission, have vigorously advocated anti-discrimination protections for those with HIV in order to encourage the infected to come forward for testing and treatment.

"We recognize that people will not volunteer for HIV testing, will not come forward for crucial medical treatment until their basic human rights have been protected," said committee Chairman Edward M. Kennedy, D-Mass. "This legislation is the first essential step in that process."

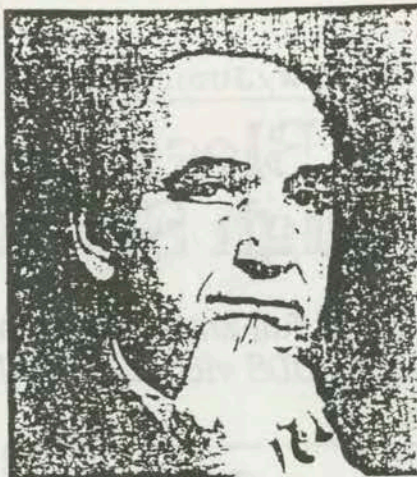
#### Official Blessing Slow

Bush has been a longtime supporter of both the anti-discrimination protections for AIDS victims and of the ADA bill, mentioning it frequently on the campaign trail in 1988. But administration officials were slow to bestow an official blessing on the 1989 version of the legislation, in part because business groups were concerned about the cost of modifications and accommodations required under the bill.

In the end, according to those who participated in the negotiations, the administration gave in on the wide scope of the bill in exchange for some reduction in the penalties for violators.

The compromise measure offers the same remedies available under the 1964 act — essentially injunctive relief and back pay, in the case of employment bias. Dropped from the original version were provisions that would have allowed victims of intentional discrimination to seek compensatory and punitive damages.

The compromise also clarifies that employers may prohibit the use of alcohol or illegal drugs at the work place



PAUL CONKLIN

**"For 25 years our  
handicapped citizens have  
been outside the umbrella  
of basic civil rights. Today  
we bring them in."**

**—Sen. Tom Harkin, D-Iowa**

by all employees. They may require that employees not be under the influence of alcohol or illegal drugs while on the job, and may hold a drug-user or alcoholic to the same qualification standards for employment or job performance as other individuals, even if any unsatisfactory performance or behavior is related to the individual's drug use or alcoholism.

#### Business Still Worried

Despite the changes, representatives of the business community remain wary.

"This bill is going to impose major obligations and costs on the business community," said Fred Krebs of the U.S. Chamber of Commerce. "There have been substantial improvements, but there's still uncertainty that has the business community worried."

Some Labor Committee Republicans said they still have reservations, too.

"In its substitute form, S 933 has been dramatically improved," said Orrin G. Hatch, Utah, the panel's ranking Republican. Still, he added, even the substitute "inadequately pro-

pects small businesses." Under the bill, he complained, "a mom and pop grocery store is subject to all the requirements of the public-accommodation section of the bill."

Hatch offered the only amendments to the bill. One, approved by voice vote, would require the attorney general and other federal agencies to develop materials to help those affected by the bill understand their new obligations.

Hatch ultimately withdrew the other amendment he offered, which would have brought Congress under the bill's requirements.

"It's time we stopped being the last plantation around here," he said. "We ought to impose on ourselves what we impose on everybody else."

Hatch relented when Kennedy and Harkin pleaded that inclusion of the amendment would get the bill referred to another committee. Kennedy pledged to support the amendment when the bill comes before the full Senate.

#### House Moving Slower

In the House, the companion bill, HR 2273, is not on nearly as fast a track as S 933.

One problem has been the departure of bill sponsor and leading advocate Tony Coelho, D-Calif., who overcame epilepsy to become a member of Congress and rose to the position of House majority whip. Coelho resigned his seat in June following allegations of questionable financial dealings. (*Coelho, Weekly Report* pp. 1295, 560)

Coelho turned the stewardship of his bill over to one of his closest friends in the House, Democratic Caucus Chairman Steny H. Hoyer, D-Md.

Further complicating matters is that unlike the Senate, where only the Labor Committee considered the legislation, in the House the measure has been referred to four committees — Judiciary, Education and Labor, Energy and Commerce, and Public Works and Transportation.

While earlier scenarios called for at least some of the committees to waive their right to consider the bill, Hoyer said Aug. 2 that now seems unlikely.

Still, Hoyer said he hopes various subcommittees will begin deliberations as soon as the House returns from its August recess. The Senate action and the White House endorsement, he said, while not binding on the House, "gives us some good parameters as to what's doable. I'm encouraged."



## THE WASHINGTON POST

MONDAY, AUGUST 7, 1989

# Tedious Meetings, Testy Exchanges Produced Disability-Rights Bill

By Paula Yost  
Washington Post Staff Writer

When White House officials and Democratic strategists from the Senate recently got together to draft legislation to benefit Americans with disabilities, the success of the uncommon union came down to one thing: How much would each side give up in the quest for a bipartisan civil rights bill?

Enough.

The union bore fruit Wednesday when the Americans with Disabilities Act of 1989 secured President Bush's endorsement before sailing through committee and moving towards a congressional vote.

The legislation, which was passed 16 to 0 by the Senate Labor and Human Resources Committee, is expected to be approved by an overwhelming margin this fall when it reaches the Senate floor. Strong support exists for the disability-rights bill among House Republicans and Democrats, who are expected to pass similar, if not identical, legislation this fall.

The Senate bill, lauded as landmark civil rights legislation, would prohibit disability-based discrimination in the workplace and require

most existing businesses to provide reasonable physical access to the disabled. If the measure becomes law, commercial buildings constructed in the future would have to provide access, and new buses would have to come equipped with wheelchair lifts.

"This is the way legislation ought to work," said committee Chairman Edward M. Kennedy (D-Mass.), who ironed out the last details over the telephone with White House Chief of Staff John H. Sununu moments before last week's mark-up. "We found we could work with the White House."

But the bipartisan union was a bumpy one, characterized by testy exchanges between White House and Senate aides and a series of tedious meetings that went nowhere, according to a White House source. Negotiations reached an impasse at one point because Senate negotiators "weren't giving up anything," a member of the White House team said.

The main point of contention between the White House and the Labor Committee, and the ultimate area of compromise, was what types and numbers of businesses would be required to accommodate people with disabilities, according

to a Kennedy staff member and White House negotiator.

The White House, bargaining for business interests, wanted to limit the scope of organizations governed by the bill, while the committee, bargaining for disability rights groups, wanted to broaden it.

Pressing to mimic the limited number of businesses covered by the public accommodation section of the Civil Rights Act of 1964, the

*"I wanted a bipartisan bill because I think it's a bipartisan issue."*

— Sen. Tom Harkin

White House pushed for legislation covering only restaurants, gas stations, hotels, motels, theaters and other places of entertainment, but not pharmacies and other small businesses.

The category came to be known as "pastrami sandwiches but not prescriptions" among Senate negotiators and disability-rights groups.

A White House negotiator said Bush strategists coined their own

phrase for what they saw as an unlimited number of places the committee would draw in: "everything but a duckblind."

When things had reached a standstill in mid-July, it was a letter from Attorney General Dick Thornburgh to Kennedy that showed the White House was committed to a disability-rights bill this year and willing to compromise, the White House negotiator said. The Justice Department, he said, had realized that refusal to bargain now would leave the White House with legislation it did not want and could not override with a presidential veto.

White House officials bargained away some scope for something else they wanted: no punitive damages for people with disabilities against violators. Injunctive relief would be the primary remedy, plus back pay for employment discrimination violations.

The committee agreed to make a few exemptions for small businesses: Two-story buildings or those with fewer than 3,000 square feet per floor would not have to install elevators unless those businesses fell within an extremely limited category.

"The essence of the final deal was us trading off on the scope of public

accommodations for them cutting back on the scope of the remedies," said Hanns Kuttner, deputy associate director for health and social services policy and White House negotiator.

Ironically, the seed for the disability-rights legislation was planted by a president who has been criticized for his record on civil rights.

"Ronald Reagan. Remember him? Fifteen Reagan appointees are the ones who came up with the idea of an omnibus civil rights bill," said Bob Silverstein, chief counsel of the labor subcommittee chaired by Sen. Tom Harkin (D-Iowa), the lead sponsor of the 1989 legislation. "We're not talking leftwing crazies here."

The National Council on Disability crafted the initial legislation, introduced last April. Dubbed "the make-the-world-flat bill," it was doomed to fail, according to one disability-rights lobbyist. It proposed to require existing buildings to remove all barriers and provide physical access to people with disabilities within five years unless doing so would threaten the business's existence. "That's a pretty harsh standard," Silverstein said.

Harkin, realizing the bill would cost business interests millions of



SEN. EDWARD M. KENNEDY  
... found White House cooperative

dollars and consequently would never pass congressional muster, revamped it, balancing disability rights against business concerns.

Harkin said his bill, with 53 Senate co-sponsors and 203 from the House before gaining presidential endorsement, could have been able to become law without Bush stamp of approval. But he said he was willing to endure months-long negotiations to get it. "I wanted bipartisan bill because I think it's bipartisan issue," Harkin said.



# Bush and Senate Leaders Support Sweeping Protection for Disabled

By NATHANIEL C. NASH

Special to The New York Times

WASHINGTON, Aug. 2 — President Bush and leading members of the Senate agreed today to support legislation that would extend Federal civil rights protection to 37 million handicapped Americans and people ill with AIDS or infected with its virus.

The measure, adopted unanimously today by the Senate Labor and Human Resources Committee, would prohibit discrimination against the disabled in

private employment, accommodations and transportation. The definition of "disabled" would include people who have AIDS and those who are carriers of the virus. And the bill would require the installation of ramps, elevators and other aids in new private and as public buildings, and hearing devices on telephone equipment.

Supporters said the agreement between Mr. Bush and Senate leaders like Edward M. Kennedy, the Massachusetts Democrat who is chairman of the Labor and Human Resources Committee, made enactment of the legislation likely.

Kennedy. "We are not only striking down physical barriers, but psychological barriers as well."

Mr. Kennedy's bill was also sponsored by Tom Harkin, Democrat of Iowa, and Dave Durenberger, Republican of Minnesota. Mr. Kennedy said that after several days of "long, tough, hard bargaining" with John H. Sununu, the White House chief of staff, and with Attorney General Dick Richard Thornburgh, the legislation had gained the Administration's full support. He predicted that both the Senate and House would pass the bill and that the President would sign it by the end of the year.

The Administration had earlier wanted the law to guarantee the disabled access to hotels, motels, restaurants and theaters. Under the bill, it would be expanded to barber shops, banks, bars, grocery stores and almost every other kind of retail establishment.

Mr. Bush's spokesman, Marlin Fitzwater, said, "The President is committed to bringing persons with disabilities into the mainstream, including full participation and access to all aspects of society."

In supporting for the measure, Mr. Bush is following through on a campaign promise to extend the protections of Federal civil rights laws to AIDS victims, as recommended last year by a task force established by Ronald Reagan. The Reagan Adminis-

tration rejected the recommendation, but Mr. Bush, who had said that helping the handicapped would be a priority in his Administration, indicated that he supported it.

## 'Respect, Dignity, Compassion'

"President Bush appears to be making good on his commitment to ending discrimination against those in our society who deserve respect, dignity and compassion," said Tim McFeeley, executive director of the Human Rights Campaign Fund, a civil rights group for homosexuals and people with AIDS.

Disabled people are now covered under the Rehabilitation Act of 1973, which bars discrimination by Federal agencies and by employers receiving Federal money.

In the past, this had applied to most state governments. But since the Federal Government has reduced aid to the states, Senate aides noted that many states had uneven records of providing services and employment for the disabled.

Advocates for people with AIDS say the anti-discrimination provisions of the 1973 law fall far short of protecting those with AIDS or those who test positive for human immunodeficiency virus, which causes it. These people have no recourse when they are dismissed from their jobs or refused housing and employment, the advocates said, adding that the fear of discrimi-

nation has led many to refuse to be tested for the disease.

## Provisions of the Bill

If passed, the anti-discrimination provisions of the bill would apply to all private companies, except those with fewer than 25 employees. Over time it would cover smaller and smaller companies, finally exempting only those with fewer than 15 employees. These employers could not dismiss or refuse employment to qualified people because of their disabilities, and they would have to provide accommodations like special devices that permit the deaf to use telephones.

The law would also extend to most new private and public services, including buses and trains, restaurants and shopping centers, mandating aids like elevators and ramps.

It would require that local governments provide transportation to the disabled and that existing rail lines be made accessible to the disabled within 20 years.

Any new building of more than two stories or more than 3,000 square feet per floor would be required to have elevators; so would all new shopping malls, shopping centers and professional offices with health care services.

Because the law primarily applies to new construction, supporters said it would require only minimal refitting of public establishments like stores and restaurants.

## 'Most Comprehensive' in 25 Years

"This is the most comprehensive civil rights measure in the past two and a half decades," said Ralph G. Neas, executive director of the Leadership Conference on Civil Rights, a national coalition of 180 organizations. "It's basically the Civil Rights Act of 1964 with respect to persons with disabilities."

The proposed law would make it illegal for businesses with more than 25 employees to refuse to hire people because of their disabilities and would give strong legal recourse to those who believe they were discriminated against.

It would require that any new buses and trains built 30 days after enactment have lifts or other ways to make

THE NEW YORK TIMES,

THURSDAY, AUGUST 3, 1989

them accessible to people in wheelchairs; that new buildings of more than two stories have elevators, and that listening devices for the deaf be made widely available on office telephone systems.

Such aids are now required on buses, trains and public buildings financed with Federal funds. But the law would extend the requirement to private establishments as well.

There is no estimate of the nationwide cost of the legislation. Because the provisions on easier access for the disabled apply mainly to new construction, they would require minimal refitting of existing buildings. Senate staff members said experts had projected that the bill would add about 1 percent to the cost of new construction to make wider doors to fit wheelchairs. In the case of the provision that requires buses to have lifts for the disabled, such a requirement might add \$11,000 to the cost of a \$250,000 bus, they said.

The Senate aides said the anti-discrimination provisions of the bill might save the Government billions of dollars by putting disabled people on the job rolls, thereby reducing dependency and disability payments.

"Far too long, America has set artificial barriers for the disabled," said Mr.





NATIONAL ASSOCIATION OF REHABILITATION FACILITIES

Edmund S. McLaughlin  
President

John A. Doyle  
Executive Director

April 28, 1989

Ms. Maureen West  
Legislative Assistant  
Office of Honorable Robert J. Dole  
United States Senate  
141 Hart Senate Office Building  
Washington, DC 20510

Dear Mo:

I cannot tell you how much I appreciate your offer to encourage the Leader to speak at our upcoming Annual Conference. This is very important to me and NARF and I am in your debt for your efforts.

Enclosed is a copy of the original letter sent to the Senator. Our staff will be in contact with you today with other times should they be more convenient.

Jane also filled me in on the ADA status. Some thoughts:

- 1) The NCIL speech would be an excellent time for the Leader to get "out front" on this and recruit a constituency that has apparently been cut out of the loop.
- 2) As to the substance of ADA, virtually all of the advocate press I've seen details employment discrimination. Why not draft this as the core of the Leader's bill and patch on other sections, e.g., transportation, accommodations, etc. as you can achieve consensus on language. After all, an enacted bill is better than no bill at all.
- 3) Make it clear that legislators and their aides draft bills not lobbyists, however well intentioned. Do this. Part of the problem apparently is that certain groups have cut out others and some Hill staff. This is bad practice for Hill staff; unconscionable that outsiders be allowed to function this way.
- 4) Spoke with Nancy Johnson (R-CT) yesterday afternoon. She'd like to be part of the Republican alternative ADA. Her LA is Kathy Ceja and you might want to call her and effect a liaison.



Ms. Mo West

- 2 -

Mo, thanks again. Call me as/if I can be of any help.

Best,

Sincerely,

A handwritten signature in blue ink, appearing to be "John A. Doyle", written over the typed name.

John A. Doyle  
Executive Director

Enclosure





NATIONAL ASSOCIATION OF REHABILITATION FACILITIES

Edmund S. McLaughlin  
*President*

John A. Doyle  
*Executive Director*

February 17, 1989

Honorable Robert Dole  
United States Senate  
141 Russell Senate Office Building  
Washington, D.C. 20510-22101

Dear Senator Dole:

It is with great personal and professional pleasure that I invite you to present the Keynote Address for the Saturday General Session of the 20th Annual Rehabilitation Conference, "Rehabilitation Policy: Thriving or Surviving". The General Session is to be held on Saturday, July 1, 1989, at 8:00 a.m. in the Mayflower Hotel here in Washington, D.C. We would specifically like you to address the Policy on Disability and Rehabilitation and What to Expect from the 101st Congress in this Area. We will of course provide your normal honorarium and transportation.

Having had the opportunity to observe first hand your critical support of programs serving persons with disabilities and to work closely with your staff, it would be an honor to introduce you to our membership who themselves are committed to serving persons with disabilities. Introducing you will be the Chairman of our Supported Employment Task Force, member of our National Board of Directors and Executive Committee and fellow Kansan, Gary C. Cook, of the Occupational Center of Central Kansas in Salina, Kansas. We expect 400-500 persons to be in attendance.

I most sincerely hope you will accept this invitation, Senator, and I and my staff stand ready to provide whatever assistance may be required to you and/or your staff in this regard.

Thank you for your consideration.

Continued best personal regards,

Sincerely,

  
John A. Doyle  
Executive Director



MOE WEST:

PER OUR PHONE CONVERSATION, WE WOULD  
APPRECIATE THE SENATORS SUPPORT IN  
OUR EFFORT TO MEET WITH THE PRESIDENT  
ON THE ADA BILL.

SANDRA S. PARRINO



## National Council on the Handicapped

800 Independence Avenue, S.W.  
Suite 814  
Washington, D.C. 20591

202-267-3846 voice  
202-267-3232 TDD

An Independent  
Federal Agency

May 18, 1989

The Honorable George Bush  
President  
The White House  
Washington, D.C. 20500

Dear President Bush:

As you may know, the National Council on Disability is an independent Federal agency comprised of fifteen members appointed by the President and confirmed by the Senate. As such, the Council has the mandate to review all Federal laws, programs and policies pertaining to persons with disabilities.

The Americans with Disabilities Act stems from recommendations made by this Council in its 1986 report, Toward Independence, which we were honored to present to you personally on January 30, 1986. We know that on several occasions that you have endorsed the concepts embodied in this legislation and is supportive of an anti-discrimination law for persons with disabilities.

The Vice Chairperson, A. Kent Waldrep, Jr., and I as Chairperson would like to request a meeting with you as representatives of the National Council on Disability to discuss the Americans with Disabilities Act and to share with you our perspectives as the group who originally recommended an equal opportunity law for persons with disabilities.

The Council understands that the introduction of this Act is only the first step in the process of achieving our goal of ensuring equal opportunity and protection against discrimination for 43 million people with disabilities in this country. The Council like you, would like to see an anti-discrimination law enacted.

We pledge to you our unequivocal support for your commitment to establish comprehensive equal rights for persons with disabilities. We are willing to work with you in any capacity you deem necessary. We would like to meet with you at your earliest convenience, however, we would appreciate it, if we could meet with you prior to your scheduled announcement regarding the Americans with Disabilities Act on June 19, 1989.

I look forward to hearing from you.

Sincerely,

A handwritten signature in cursive script that reads "Sandra Swift Parrino".

Sandra Swift Parrino  
Chairperson



**JUSTIN DART, JR.**

907 6TH STREET, S.W., APT. 516C  
WASHINGTON, D.C. 20024  
202-488-7684 (H)

*For  
video on  
Dart*

**WE THE PEOPLE OF THE UNITED STATES, IN ORDER . . . TO ESTABLISH JUSTICE.**

**200 YEARS IS LONG ENOUGH FOR PEOPLE WITH DISABILITIES TO WAIT FOR JUSTICE.**

**WE MUST DEMAND FEDERAL, STATE AND LOCAL LEGISLATION THAT PROVIDES FULL CIVIL RIGHTS COVERAGE FOR PEOPLE WITH DISABILITIES.**

**EQUAL RIGHTS, NOW.**

San Francisco, September 27, 1987

*Joe -*

*I appreciate your contributions*

January 20, 1988

*and cooperation.*

*Justin*

Dear Colleague:

I have resigned as Commissioner of the Rehabilitation Services Administration, effective December 15.

GREAT AMERICANS AT THE GREAT FRONTIER. Yoshiko and I want to thank you - my fellow employees in OSERS-RSA; the many good friends of people with disabilities among the members and staff of the administration and the Congress; the dedicated human beings who are associated with RSA's state agency, independent living, and other grantee partners; and all of our magnificent colleagues in the disability advocacy community, the disability professions, and the private sector - for your support and guidance while I have been Commissioner of RSA. And we thank you especially for your truly historic contributions over the years. Through your sacrifices, your time, your advocacy, your dedicated professional services, you have created miracles of opportunity in thousands of lives like mine. You are marching in the footsteps of Washington, Jefferson, Abraham Lincoln, Mary Switzer, Martin Luther King and thousands of other pioneers of independence who have struggled for 211 years through the wilderness of ancient prejudice to make the magnificent dream of 1776 come true for all people. You are great Americans at the greatest of all frontiers - human justice and human development. You are America the Beautiful. Working with you is the most profound happiness of our lives. We love you.

STATEMENT OF CONSCIENCE - RESIGNATION. After more than a year of attempting unsuccessfully to address the very serious, long standing problems of OSERS-RSA through the regular channels, faced with the possibility that those problems would be institutionalized for years to come through current revisions of organization and policy, and after much soul searching, I made a statement of conscience to a November 18 oversight hearing held by the House Select Education Subcommittee. I appealed to the Congress and to the disability community for assistance in resolving profound difficulties in the areas of management, personnel, resource utilization, communication and disability rights which have accumulated and escalated for almost a decade. I told the Subcommittee that literally hundreds of my fellow employees, service provider professionals and advocates throughout the nation had detailed these situations to me, and had expressed deep concern that they were having a severely negative impact on the quality of services to Americans with disabilities. I stated that obsolete, paternalistic attitudes and practices in the federal bureaucracy prevented people with disabilities and their legitimate representatives from exercising their right to full and equal participation in the



processes of government. I pointed out that I had virtually none of the authority to make management decisions - and therefore to effect solutions - that is usually associated with being principal officer of a public or private agency, and that the major proportion of my significant actions had been overruled, obstructed, delayed or otherwise hampered. I particularly appealed for leadership to help us eliminate the devastating disunity and hostility which ravages the internal and external relationships of OSERS-RSA.

The content of my statement to the Congress had not been authorized according to the rules of the Department of Education. After conversations with representatives of the Secretary and the President, I submitted my resignation on November 25.

15 MONTHS AT RSA. During my 15 months tenure as Commissioner my valiant, undermanned, undersupported RSA colleagues struggled to overcome the above cited problems, and to carry a greatly increased workload imposed by the 1986 amendments to the Rehabilitation Act. They accomplished much that is commendable. Regulations were written; new and ongoing Congressionally mandated programs and projects were implemented; funds were distributed and most technical requirements were met in a manner that, if not optimally efficient, at least allowed the flow of services to be maintained. Progress was recorded in areas such as improved positive communications, the employment of authentic advocates for the rights of people with disabilities, and foundational planning.

While I am proud of the hard work and sacrifices necessary to achieve these results under extremely difficult circumstances, too many of our best efforts to solve RSA's long standing problems have been frustrated. Our overall results have fallen far short of the standards of quality which most of us feel are possible, and which would reflect responsible execution of our statutory and moral obligations.

I have already referred briefly to the types of problems which I encountered in OSERS-RSA and the Federal system. This very serious situation was outlined somewhat more fully in my statement of conscience to the House of Representatives, and in much greater detail in material which was forwarded last December, at his request, to Representative Major Owens, Chairman of the House Select Education Subcommittee. Following are some selected highlights of the many positive aspects of my association with RSA, and some notes on my personal participation as Commissioner.

CONSTRUCTING A CONCENSUS AGENDA. I have made a special effort to implement participatory democracy by establishing positive communication and ongoing cooperation among RSA, its state agency, grantee and other professional partners, people with disabilities, their parents and advocates, and all who are seriously concerned with the problems and opportunities of disability. Thanks to your cooperation, this has been the most successful and personally rewarding aspect of my administration.

— Before being sworn in as Commissioner September 3, 1986, I visited my colleague advocates and service providers in each of the 50 states to learn as much as possible about rehabilitation services, and to ask for guidance. That fall I cooperated with RSA staff in planning and holding disability issue public forums in every federal region, and I have continued to reach out to the community through all communicative means available in the context of severely limited staff and other resources. Last year I consulted with our colleagues during trips to more than 20 states and to five of the largest Native American Nations and tribal groups. In addition, I have met almost every RSA staff member personally at least once, sometimes in small groups, to ask for their experience, priorities and advice.

Thanks to the more than 2000 outstanding professionals and advocates who took their valuable time, sometimes traveling long distances at their own expense, to advise me on those occasions. Special thanks to those who organized more than a hundred meetings in all of the states, to RSA regional staff, who did an outstanding job coordinating ten large public forums on short notice, and to those who took personal risks to be candid about serious problems.

YOUR AGENDA. I received a great deal of up-to-the-minute information and an almost unanimously agreed upon agenda for action during my tenure as Commissioner of RSA:

Providing leadership in support of unified national action to create quality services for all people with disabilities and to implement their civil and human rights;

Securing the full involvement of the disability community in decision-making and implementation;

And taking vigorous action to resolve the grave problems of OSERS-RSA.



**IMPLEMENTING THE AGENDA: ADVOCACY ROLE.** In the absence of appropriate authority, I have done my very best to implement this basic, common sense agenda by taking those actions which are within my power as an individual - to address problems through persuasion and to raise the issues involved inside the administration, with the Congress, and with our professional and advocacy colleagues. I have devoted myself especially to what I believe is a primary responsibility of government - advocacy for united government and citizen action to implement the great principles of democracy and disability rights which are foundational to the agenda which you presented to me, and which are endorsed by the President, the Congress, the leaders of both political parties, the vast majority of the American people, and the entire disability community:

Participatory democracy based on true federal-state-community-citizen partnerships;

Responsible and professional administration of public services, in faithful pursuance of the law;

The fundamental obligation of society to create attitudes and environments, and a continuum of public and private services which will enable all of its members to fulfill their productive and lifequality potential;

And, most important, the civil and basic human rights of people with disabilities to have more than rubber stamp, figurehead representation in government, to liberate themselves finally from the subservient dependency produced by millenia of prejudice and authoritarian paternalism, and to participate in the productive mainstream of society as fully independent, fully equal citizens of the first class.

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## **GOVERNMENT BY THE PEOPLE, FOR THE PEOPLE AND OF THE PEOPLE INCLUDES PEOPLE WITH DISABILITIES.**

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### **EQUAL RIGHTS NOW.**

**EMPOWERMENT.** We have made a special effort to involve disability rights advocates in the processes of RSA, as advisers, and as permanent staff. Many of our nation's leading advocates have given generously of their time to participate in regulation writing and policy making, often paying their own way to meetings. During my tenure as Commissioner, the agency has employed several persons with disabilities who are authentic advocates for our rights: Howard Moses, formerly with Congressman Slattery of Kansas; John Nelson, a federal personnel expert, who previously worked at Tufts with Gerben DeJong and Fred Fay; Deidre Davis, National Secretary of NCIL; Roseann Godfrey, of the C-Sail independent living center in Miami; and David Myers, two term member of ATBCB. And, after seven months of advocacy by myself, the disability rights community and members of Congress, we finally secured approval in October of my March appointment as RSA regional commissioner in New York of internationally acclaimed disability movement author and communicator, Dr. Frank Bowe, who is currently Chairman of the National Commission on Education for the Deaf. I have signed and submitted to OSERS a contract to employ former NAPAS President Ethan Ellis to serve as a full-time consultant for one year. Phil Calkins of Disabled But Able to Vote and the Democratic National Committee was offered a position, but he was simultaneously offered and, quite appropriately accepted, a higher level post with the President's Committee on Employment of the Handicapped. Given RSA's almost complete lack of authority in the area of personnel, and the reality of the paternalistic federal bureaucracy, this is an extraordinary record of affirmative action. Much credit must go to personnel specialist John Nelson, and to former Director of Management Services, Hubert Davis.

**INDEPENDENT LIVING CENTER BOARDS.** Advocating together for almost a year, and with the magnificent support and leadership of Marca Bristo, her colleagues throughout the independent living community and our good friends in the U.S. Senate, we have apparently obtained a decision that Part B independent living centers will be governed - not advised, but indeed governed - by boards composed of a majority of people with disabilities.

**OKLAHOMA.** We have joined with our colleague service providers and rights advocates in Oklahoma to successfully encourage the reversal of announced decisions to subordinate vocational rehabilitation and independent living to welfare services, and to effectively remove many authentic disability rights advocates from governance of the CAP program. Thanks to Bob Davis, Steve Brown, Roland Sykes, Sandy Beasley, Woody Osborne, Joe and Pat Fallin and many others. And I have participated in similar advocacy in several other states and on the federal level.



**ACCESS AND HUMAN RIGHTS IN RSA.** We have established a top priority task force under the leadership of disability rights pioneer Eunice Fiorito to make RSA a model for the nation of accessibility and human rights attitudes in action.

**EQUAL RIGHTS, NOW.** I have, beginning with an address on February 12 last year at Howard University, spoken out consistently for federal legislation extending full civil rights coverage to Americans with disabilities, and for the quality support services, empowerment, education and united advocacy necessary to make those rights effective. This has been the theme of almost all my major presentations for the last ten months, made at national meetings of NCIL, NAMI, ACB, NFB, NAPAS-CAP, ARC, TASH, NRA, CSAVR, NCSAB, NCRE, PCEH, I-NABIR, PCMR, ADAPT and in the UN, the White House and many other places.

**PUBLIC TRANSPORTATION.** I was proud to march with Bob Kafka, Judy Heumann, Ed Roberts, Wade Blank, Mark Johnson, Stephanie Thomas, Michael Winter, June Kailes, Cyndi Jones, Brenda Premo and many of my other movement heroes in the September 27 ADAPT demonstration in San Francisco. And I have worn my ADAPT sticker everywhere, including occasions when I had the privilege of meeting the President, the Vice-President, members of Congress and other significant national leaders. I firmly believe that equal access to public transportation is an important symbol of our fundamental right to participate equally in all aspects of the social mainstream.

**STRENGTHENING THE STATE-FEDERAL PARTNERSHIP.** I have acted to reinforce RSA's relationships with its state vocational rehabilitation, grantee and other professional partners - and they have responded magnificently. They have welcomed me at their meetings, and given their valuable time to advise me by telephone and in person. They have never asked me to compromise one millimeter on any principle of ethics, government procedure, quality services or disability rights - including the independent living governing board issue. They have provided numerous occasions for me to speak out on issues such as comprehensive civil rights legislation. They have given complete support to our insistence that people with disabilities must have equal representation in government, and they have advocated for the employment in RSA of authentic advocates like Frank Bowe. Profound thanks to all of RSA's thousands of great professional partners. Among those many who gave outstanding leadership and support are Paul Dziedzic, Joe Owens, Jack Duncan, Joan Barker, Marca Bristo, Max Arrell, Joe Dusenbury, Al Dickerson, Elmer Bartels, Judy Buffmire, Lamona Lucas, Tom Gains, Del Frost, Jay Snyder, Sue Suter, Charles Young, Fred McFarland, Mike Morgan, Bob Brabham, Charles LaRosa, Jerry Mindes, Joan Holleran and Paul Pollard.

**TOWARD A CONTINUUM OF QUALITY SERVICES: PROFITABLE FOR ALL, ESSENTIAL TO IMPLEMENT RIGHTS.** I have spoken out on every possible occasion, including in the U.S. Senate, the House of Representatives and the White House, for the proven profitability of public and private investments in well executed rehabilitation and independent living services. And I have advocated vigorously for the expansion of such investments to establish a continuum of rehabilitation and other productivity and independence oriented life support services, including education, social security, vocational rehabilitation, independent living, supported employment, Projects With Industry, rehabilitation technology, protection and advocacy, health and attendant care, housing, communication, and transportation. An efficient, computer-connected service system of this nature would be immediately profitable in terms of both money and quality of life to every citizen in this nation. It would enable millions to implement their rights and fulfill their responsibilities as members of a complex, interdependent technological society. It would contribute to the reduction of the national deficit, and usher in a new era of explosive economic and cultural growth.

**TASK FORCES.** We have helped to organize and have been assisted by free standing task forces in the areas of mental health and facilities, which involve some of the top authorities in the nation in our decision making processes. And I have advocated for similar relationships with other segments of the disability community. Thanks to all who give their valuable time and guidance at no expense to the government, including John Doyle, chair of the facilities group, and Dr. Irvin Rutman, chair of the mental health panel. Barbara Sweeney of RSA deserves particular recognition for her very effective efforts to bring together and maintain the latter group.

**NATIVE AMERICANS.** RSA has initiated a top priority focus on services to Native American with disabilities, many of whom are forced to exist in conditions so bad that their actual life expectancy is significantly shorter than the national average. I have spent several days meeting individuals with disabilities, parents, service providers, advocates and tribal leaders in a number of Pueblo Indian villages in New Mexico, in the Upper Skagit Tribal Group area of Washington and in the Navajo, Oglala Sioux, and Rosebud Sioux Nations. Thanks to all who cooperated, including Jamil Toubbeh, Sam Cata, Elmer Guy and Bill Bean.



**SUPPORTED EMPLOYMENT.** My RSA colleagues and I have given particular emphasis to the implementation of supported employment, which I believe holds the potential to contribute to a revolution in the productivity and the quality of the lives of hundreds of thousands of persons with very severe disabilities who have been segregated from the mainstream of society. I have spoken out for supported employment in almost every public presentation I have made in each of the fifty states, and have participated - not always successfully - in advocating for strong regulations that would guarantee the delivery of appropriate supported employment services to persons with very severe disabilities. I have advocated for increased emphasis on national orientation and training, and was instrumental in the planning of ten RSA regional training forums scheduled to be held during the next few months. It has been a privilege to be associated in this venture with dynamic pioneers like Tom Bellamy, Paul Wehman, Lou Brown, Rob McDaniel and many others.

**1988 RSA WORKPLAN.** The 1988 workplan presented by RSA to OSERS (not all of which has been approved by OSERS) is addressed, as the administration, the Congress and almost all of our professional and advocacy colleagues have recommended, to solving fundamental problems, and to building, in full partnership with the disability community, a firm foundation for quality services in the future: the basic revision of RSA's management, systems and policy, including initiating state-of-the-art computerization; planning RSA's contribution to a continuum of productivity and independence oriented public and private services; effecting the physical, technological and attitudinal accessibility of the agency; and of course creating the processes necessary to implement our new responsibilities mandated by the 1986 amendments to the Rehabilitation Act. Special thanks to all who cooperated to create this outstanding, foundation building workplan, including Doug Burleigh, Ralph Pacinelli, Terry Conour and Al Rotundo, who played leadership roles.

**PERSONAL PARTICIPATION.** During the last 19 months as Commissioner designate and Commissioner I have, in the context of a significant shortage of qualified staff and other resources, worked seven days a week, including holidays, and I have traveled widely at my own expense. Mrs. Dart, a former business executive and a 24 year veteran of the disability movement, has worked the same schedule as a full time volunteer. As many of you know, she was hospitalized January 1-7, and again briefly on January 15, with serious heart symptoms, which were diagnosed as probably having been exacerbated by a thyroid condition. Although certain modifications in her schedule have obviously been necessary, she continues to make her usual magnificent contributions as a full partner and decision maker in everything we do. She very much appreciates the love and good wishes which many of you have communicated.

— During my tenure as Commissioner Yoshiko and I have spent more than the amount of my salary on travel, telephone, office and other expenses related directly to our duties, and on our contributions to and participation in the disability rights movement. We have not applied for or accepted any expense for any purpose from RSA or any non-governmental entity.

— We have donated a new IDS AT class computer to RSA, along with considerable software and other computer services - and we have loaned two other computers to agency staff. We have also donated a TDD to the Commissioner's office, and a new full size refrigerator for use by the employees.

— I have, as an individual citizen, participated as fully as time and ethics would allow in the democratic process, including activities of the political party of which I am a member. I urge all to do the same.

**SUMMARY.** I have done my best. I deeply regret that I have not been able to contribute more to the resolution of RSA's long standing problems. Failing complete solutions, I have made every effort to establish full communication with the disability community, and to raise relevant issues inside the administration, in the disability community, and finally in the Congress and through the democratic process.

I particularly regret that I have not been able to achieve the atmosphere of positive, unified teamwork that I believe has characterized all of my previous state and federal government assignments, and which will be absolutely necessary to enable RSA to provide quality services to all people with disabilities in the nineties and the beginning of the 21st century.

If, in my passion to advocate for principles in which I deeply believe, I have in any way contributed to the tragic hostility that exists in OSERS-RSA and in the disability community, I must apologize to you, and to my fellow citizens with disabilities, their parents, advocates and service providers throughout the nation.

I would like to emphasize that in making this report, or my recent statements to the Congress and the disability community, I had absolutely no intention to cast sole blame for the problems of RSA on our present government or any particular individuals in it. The attitudes and practices which cause the problems of people



with disabilities are deeply rooted in prehistory, and are perpetuated by all of us. While government has an inescapable responsibility to provide leadership that will result in solutions, final solutions cannot be effected by Presidents, Secretaries or Commissioners alone. Such solutions can only occur through personal decisions and actions by all members of government and the general public.

Profound, society-wide progress in the cause of human justice, has never been made quickly or easily, and has always demanded long, frustrating struggle and painful sacrifices. In a world where the majority of the population still suffers under the domination of authoritarian paternalism, it is always a magnificent privilege to serve the United States of America in history's greatest experiment in the productive independence, dignity, equality and freedom of the individual.

It has been an honor to serve in the administration of President Reagan, who has personally endorsed the human rights goals of Americans with disabilities as set out in *Toward Independence* and *The National Policy for Persons With Disabilities*, and who has given many leading members of the disability community an opportunity to advocate for those goals as members of his administration. And it has been a privilege to serve under the leadership of Secretary of Education William J. Bennett, and Assistant Secretary of Education Madeleine Will, who has made very significant contributions as a tireless advocate for persons with very severe disabilities. As a private citizen I will continue to encourage and support the administration's efforts, and those of future administrations, to cooperate with us in our struggle for justice.

I would like to express my gratitude and respect for the cooperation and support of many distinguished members and staff of the administration and of the Congress, among them, Vice-President George Bush; Senators Robert Dole, Lowell Weicker, Edward Kennedy, Tom Harkin, Paul Simon, Strom Thurmond, Brock Adams, Orrin Hatch, Thad Cochran, John Kerry, Howard Metzenbaum, Robert Stafford, and Tom McCain; Representatives Major Owens, Steve Bartlett, Ted Weiss, Pat Williams, Tony Coelho, Richard Gephardt, Butler Derrick, Barney Frank and Owen Pickett; administration members Robert Tuttle, Robert Sweet, Boyden Gray, Bradford Reynolds, Harold Russell, Evan Kemp, Jean Elder, Joe Dusenbury, Sandra Parrino, Kent Waldrep, Jerry Milbank and all of the my distinguished colleague members of the National Council on the Handicapped; Congressional staff members Maria Cuprill, Bob Tate, Bob Silverstein, Pat Morrissey, Terry Muilenberg, Gray Garwood, Judy Wagner, Chris Lord, Sue Ellen Walbridge, Chris Button, Jane West, Joe Faha, and Pat Laird.

While it would be impractical in this brief report to attempt to mention all of the hundreds of individuals throughout the nation who did outstanding work during my administration as RSA Commissioner, I would like to recognize a very few with whose contributions I happen to be more familiar. In addition to those mentioned previously - Tom Backer, Elizabeth Boggs, Judy Brotman, Phil Calkins, John Chappel, Curt Decker, John Doyle, Lex Frieden, Jim Gashell, Dick Greer, Eric Griffin, Barbara Holmes, Gordon Mansfield, Paul Marchand, Durward McDaniel, Howard Moses, Peg Nosek, Ralph Pacinelli, Jay Rochlin, Mark Shoob, Marilyn Spivack, Max and Colleen Starkloff, Hisako Takei, Barbara Unrath, Mary Vest and Magee Whelan.

**TOWARD THE FUTURE - THE ESSENTIAL AGENDA: CIVIL RIGHTS, SERVICES FOR ALL, EMPOWERMENT, UNITED ADVOCACY.** With whatever titles or none, Yoshiko and I will be with you in the struggle for productive independence and equality. We believe that in the present period of deep concern over volatile social and economic factors, including large public deficits, people with disabilities have reached the limits of charity and of liberal, but still essentially paternalistic indulgence to grant partial equality. We believe with most of you that further significant progress toward the total achievement of almost all of our legitimate goals will require certain foundational actions by our movement. We plan to devote a maximum of our time, energy and resources to working with you to implement that great agenda:

- I. ESTABLISHING THE CIVIL AND HUMAN RIGHTS OF PEOPLE WITH DISABILITIES IN THE CONSCIOUSNESS, THE LAW AND THE LIFE OF THIS NATION, INCLUDING THE PASSAGE OF FEDERAL LEGISLATION WHICH EXTENDS FULL AND EFFECTIVE CIVIL RIGHTS COVERAGE AND FIRST CLASS CITIZENSHIP TO ALL AMERICANS WITH DISABILITIES NOW.
- II. ESTABLISHING ATTITUDES, ENVIRONMENTS AND A COMPREHENSIVE SPECTRUM OF PUBLIC AND PRIVATE SERVICES WHICH WILL ENABLE ALL PEOPLE WITH DISABILITIES TO IMPLEMENT THEIR FUNDAMENTAL RIGHT AND RESPONSIBILITY TO FULFILL THEIR PERSONAL POTENTIAL FOR PRODUCTIVITY, INDEPENDENCE AND QUALITY OF LIFE IN THE MAINSTREAM OF SOCIETY.
- III. EMPOWERING PEOPLE WITH DISABILITIES TO EXERCISE RESPONSIBLE SELF-DETERMINATION, INCLUDING FULL AND EQUAL PARTICIPATION IN GOVERNMENT AND IN ALL THE PROCESSES OF SOCIETY THAT IMPACT THEIR LIVES.



**IV. ABOVE ALL, OVERCOMING THE TRAGIC FRAGMENTATION, DISUNITY, APATHY AND HOSTILITY WHICH PREVENTS THE DISABILITY COMMUNITY FROM FULLY ACHIEVING THE HISTORIC GOALS ON WHICH WE ALL AGREE, AND ESTABLISHING A GREATLY EXPANDED UNITED ADVOCACY WHICH WILL BECOME AN IRRESISTIBLE TIDAL WAVE OF POSITIVE REASON AND POSITIVE PASSION FOR JUSTICE.**

Reaching these goals will require increased, often sacrificial commitments by all of us, and the recruitment of thousands not yet involved. Martin Luther King stated that, "Freedom has always been an expensive thing." Others before us - and many of you - have paid a high price for our progress toward freedom. Each one of us is inescapably responsible to maintain and expand that progress for our brothers and sisters to come.

We are responsible to millions of Americans, and because of the extraordinary influence of our culture, to hundreds of millions of people with disabilities throughout the world in this and future generations. We are responsible to human beings who are forced to exist in conditions to which we would not subject our pet dogs and cats. We are responsible to potentially proud, productive people who are jobless, homeless, penniless and hopeless. We are responsible to thousands who die years and decades before their time.

Available to us are the vast economic, technological and human assets of the richest culture in the history of mankind. We have millions of potential supporters.

We have no excuse to fail. We cannot afford to fail.

Like the founders of our independence and our constitutional government, we must transcend politics, personality, turf and the corruption of power. We must join together in complementary unity, all people with disabilities, their families, advocates, service providers and all who love justice. We must establish the civil and human rights of people with disabilities. We must build on the firm foundation which you have laid to create a continuum of services, attitudes and environments which will enable all of our children's children in every nation to live lives of productivity, dignity and quality in the mainstream of society.

Yoshiko and I will do anything to cooperate with you as we strive together to fulfill this sacred responsibility.

Together, we shall overcome.

Justin Dart

**1988 - REGISTER - VOTE - CAMPAIGN - RUN FOR OFFICE.**

**PARTICIPATE IN THE DEMOCRATIC PROCESS AS IF YOUR LIFE DEPENDED ON IT.**

**IT DOES.**

**EQUAL RIGHTS NOW.**





# Leadership Conference on Civil Rights

2027 Massachusetts Ave., N.W.  
Washington, D.C. 20036  
202 667-1780

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A. Philip Randolph\*  
Roy Wilkins\*

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Leon Lynch  
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League of Women Voters of the U.S.

Melanne Verveer  
People For The American Way

Alexander Schindler  
Union of American Hebrew Congregations

Molly Yard  
National Organization for Women

Patrishia Wright  
Disability Rights Education and Defense Fund

Kenneth Young  
AFL-CIO

Raul Yzaguirre  
National Council of La Raza

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William Taylor, *Chairperson*

## STAFF

EXECUTIVE DIRECTOR  
Ralph G. Neas

ADMINISTRATIVE ASSISTANT  
Lisa M. Haywood

\* Deceased

August 16, 1989

Dear Senator:

On August 2, 1989, the Senate Labor and Human Resources Committee, by a 16-0 vote, reported out the Americans with Disabilities Act. Just prior to the committee vote, the Busn Administration and the Democratic and Republican Senate sponsors, after weeks of intense negotiations, worked out a compromise with respect to key provisions of the bill. The White House issued a statement that "[t]he President endorses this legislation as the vehicle to fulfill the challenge he offered in his February 9 address to the nation: 'Disabled Americans must become full partners in America's opportunity society.'" An overview of the substitute bill is enclosed.

The Americans with Disabilities Act, introduced by Senators Tom Harkin (D-IA), David Durenberger (R-MN), Edward Kennedy (D-MA), John McCain (R-AZ), Paul Simon (D-ILL), and Jim Jeffords (R-VT), now has 57 cosponsors, including Senators Bob Dole (R-KS), Orrin Hatch (R-UT), Ernest Hollings (D-SC), and Lloyd Bentsen (D-TX).

The House version of the bill, under the leadership of Representatives Steny Hoyer (D-MD), Chair of the House Democratic Caucus, and Hamilton Fish (R-NY), Ranking Republican Member of the House Judiciary Committee, now has 222 cosponsors. They include Representatives Richard Gephardt (D-MO), Vin Weber (R-MN), David Bonior (D-MI), Steve Gunderson (R-WI), Norm Mineta (D-CA), and Tom Campbell (R-CA).

The Senate is planning to vote on this bill shortly after its August recess. House action is expected in the fall. We are confident that overwhelming bipartisan majorities in both Houses will pass this historic measure.

The Americans with Disabilities Act is a top legislative priority of the Leadership Conference on Civil Rights. This landmark legislation is supported by over 200 national disability, civil rights, religious, and civic organizations.



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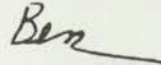
On behalf of the Leadership Conference, we urge you to cosponsor the Americans with Disabilities Act. To cosponsor, please contact Bobby Silverstein, Senate Subcommittee on the Handicapped at 224-6265.

With warmest personal regards,

Sincerely,



Ralph G. Neas  
Executive Director



Benjamin L. Hooks  
Chairperson

Enclosures



OVERVIEW OF THE SUBSTITUTE AMENDMENT TO S. 933, THE AMERICANS  
WITH DISABILITIES ACT OF 1989  
August 2, 1989

The ADA prohibits discrimination against individuals with disabilities in employment (in the private sector); all public services; public accommodations; transportation; and telecommunications.

The ADA's definition of "disability" is comparable to the definition used for purposes of section 504 of the Rehabilitation Act of 1973 (which prohibits discrimination against persons with disabilities by recipients of Federal financial assistance).

Employment

An employer, employment agency, labor organization, or joint labor-management committee may not discriminate against any qualified individual with a disability in regard to any term, condition or privilege of employment. The ADA incorporates many of the standards of discrimination set out in regulations implementing section 504, including the obligation to provide reasonable accommodations unless it would result in an undue hardship on the operation of the business.

The ADA incorporates by reference the enforcement provisions under title VII of the Civil Rights Act of 1964 (injunctive relief and back pay). For the first two years after the effective date of the Act, only employers with 25 or more employees are covered. Thereafter, employers with 15 or more employees are covered.

Public Services/Public Transportation

No qualified individual with a disability may be discriminated against by a department, agency, special purpose district, or other instrumentality of a State or a local government.

With respect to public transportation, all new fixed route buses must be accessible unless a transit authority can demonstrate that no lifts are available anywhere from qualified manufacturers. A public transit authority must also provide paratransit for those individuals who cannot use mainline accessible transportation up to the point where the provision of such supplementary services would pose an undue financial burden on the transit authority.

This section takes effect 18 months after the date of enactment, with the exception of the obligation to ensure that new buses are accessible, which takes effect 30 days after the date of enactment.



## Public Accommodations

No individual shall be discriminated against in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation operated by a private entity on the basis of a disability. Public accommodations include: restaurants, hotels, doctors offices, banks, theaters, pharmacies, grocery stores, and shopping centers. Existing facilities must be made accessible if the changes are "readily achievable" i.e., easily accomplishable without much difficulty or expense. Auxiliary aids and services must be provided unless it would cause an undue burden.

New construction and major renovations must be designed and constructed to be readily accessible to and useable by people with disabilities. Elevators need not be installed if the building has less than three stories or has less than 3000 square feet per floor except if the building is a shopping center, shopping mall, offices for health care providers or if the Attorney General decides that other categories of buildings require the installation of elevators.

This section also includes specific prohibitions on discrimination in public transportation services provided by private entities, including the failure to make new over-the-road busess accessible five years from the date of enactment.

The provisions in this section go into effect 18 months after the date of enactment. It incorporates provisions comparable to the applicable enforcement provisions in title II of the Civil Rights Act of 1964 (injunctive relief) and provides for pattern and practice cases by the Attorney General and civil penalties.

## Telecommunication Relay Services

Telephone services offered to the general public must include interstate and intrastate telecommunication relay services so that such services provide individuals who use nonvoice terminal devices because of disabilities with opportunities for communications that are equivalent to those provided to individuals able to use voice telephone services.





# Leadership Conference on Civil Rights

2027 Massachusetts Ave., N.W.  
Washington, D.C. 20036  
202 667-1780

August 16, 1989

Dear Senator:

Once again we want to thank you for your cosponsorship of the Americans with Disabilities Act. As you know, the Senate Labor and Human Resources Committee, by a 16-0 vote, reported out the ADA on August 2 to the full Senate.

Just prior to the committee vote, the Bush Administration and the Democratic and Republican Senate sponsors, after weeks of intense negotiations, worked out a compromise with respect to key provisions of the bill. The White House issued a statement that "[t]he President endorses this legislation as the vehicle to fulfill the challenge he offered in his February 9 address to the nation: 'Disabled Americans must become full partners in America's opportunity society.'" An overview of the substitute bill is enclosed.

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The Senate is planning to vote on this bill shortly after its August recess. House action is expected in the fall. We are confident that overwhelming bipartisan majorities in both Houses will pass this historic measure.

The Americans with Disabilities Act is a top legislative priority of the Leadership Conference on Civil Rights. This landmark legislation is supported by over 200 national disability, civil rights, religious, and civic organizations.

With warmest personal regards,

Ralph G. Neas  
Executive Director

Sincerely,

Benjamin L. Hooks  
Chairperson

\*Deceased

Enclosures

39th ANNUAL MEETING • MAY 9, 1989 • WASHINGTON, D.C.

"Equality In a Free, Plural, Democratic Society"



**WE THE PEOPLE OF THE UNITED STATES, IN ORDER . . . TO ESTABLISH JUSTICE.**

**A PETITION FOR EQUAL RIGHTS  
FOR MORE THAN 36 MILLION AMERICANS WITH DISABILITIES.**

Whereas there are more than 36 million individuals in this nation whose basic life activities are limited in some significant way by physical disabilities, mental impairments and/or the effects of age,

Whereas millions of these potentially productive persons are forced by traditional discriminatory, paternalistic attitudes and systems to exist in situations of unjust, unwanted dependency, segregation, extreme deprivation and second class citizenship,

Whereas disability is a universally common characteristic of the human condition, and there is a substantial probability that most human beings will experience significant disability at some point in their lifetime,

Whereas people with disabilities have the same inalienable rights and responsibilities as other people,

Whereas the forced segregation and dependency of millions of individuals with disabilities in this country constitutes a gross violation of their constitutional and basic human rights, a devastating waste of productive potential, a totally unnecessary and increasingly unaffordable drain on public and private budgets, and a significant failure of the great American promise of liberty and justice for all,

And whereas individuals with disabilities form the nation's largest severely disadvantaged minority not specifically covered by federal legislation guaranteeing comprehensive civil rights protection and equal opportunities to participate in society,

Therefore, be it resolved that the undersigned advocates for justice in each of the fifty states, the District of Columbia, the U.S. territories and the Native American nations urge the Congress to immediately enact, and the President to sign, legislation, such as the Americans With Disabilities Act of 1988, which will effectively guarantee all persons with disabilities against discrimination on the basis of handicap.

**EQUAL ACCESS TO THE AMERICAN DREAM**



### Suggestions.

The petition may be duplicated or reprinted according to your needs, or we can provide additional copies.

Any number of 8 1/2 x 11 sheets bearing signatures can be attached to one petition, so that the petition could be read at a large meeting, and participants could simultaneously sign separate blank signature pages already distributed.

Please ask endorsers to write their addresses and telephone numbers along with their signatures, and any brief message (phrase or one sentence) they may wish to convey to the Congress, the President and the candidates for national office.

Please send signed petitions to:

Justin Dart  
907 6th Street, S.W., Apt. 516C  
Washington, D.C. 20024  
(202) 488-7684

**EQUAL ACCESS TO THE AMERICAN DREAM**



## SHOPPING WITH THE PHYSICALLY CHALLENGED

5124 N. WOODBURN ST. • MILWAUKEE, WI 53217  
(414) 332-3735 • FAX (414) 332-3735-33

Maureen West  
Legislative Assistant to Senator Robert Dole  
141 Hart Senate Office Building  
Washington, D.C. 20510

April 9, 1990

Dear Maureen,

Thank you for spending some time with Myrna and me last Tuesday morning, April 3, 1990, to hear about the program, Shopping With The Physically Challenged (SWPC).

We appreciate your acknowledgement of the importance of this program, and the positive impact it will have upon both the retail/shopping center industries and the physically challenged of America.

We look forward to receiving information regarding the capacity in which Senator Dole would like to participate in the SWPC program, the status of this "technical assistance program", and, resources for government grants. Providing a grant and/or a personal endorsement would reflect Senator Dole's concern for this bipartisan program, as well as, help develop and manage a course of action for the program so national goals can be realized.

Thank you again for your time and your concern.

Sincerely,



Lyn H.-Falk, for the Shopping With The Physically Challenged

P.S. Good luck with your Master's!



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05-04 0941P EST

THE HONORABLE ROBERT DOLE  
S-230 CAPITOL BLDG.  
WASHINGTON DC 20510

URGE YOUR IMMEDIATE SUPPORT OF AMERICANS WITH DISABILITIES ACT. IT IS  
TIME TO PROVIDE EQUAL OPPORTUNITY TO THOSE WITH DISABILITIES. PLEASE  
DON'T DELAY ANY LONGER. AWAIT WORD OF YOUR DECISION.

MAX R. CALVERT  
8657 WAKEFIELD AVE  
PANORAMA CITY CA 91402

21:37 EST

MGMCOMP



FR. RICHARD CARDARELLI  
310 WESTFIELD ST  
MIDDLETOWN CT 06457 04PM

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THE HONORABLE ROBERT DOLE  
S-230 CAPITOL BLDG.  
WASHINGTON DC 20510

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FR. RICHARD CARDARELLI  
310 WESTFIELD ST  
MIDDLETOWN CT 06457

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WASHINGTON DC 20510

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# NEWS

SENATOR LOWELL WEICKER, JR.  
CONNECTICUT

225 RUSSELL SENATE OFFICE BUILDING • WASHINGTON, D.C. 20510

FOR IMMEDIATE RELEASE  
CONTACT: STEVE SNIDER  
HANK PRICE  
202-224-9092  
301-891-3926

Opening Statement  
Senator Lowell Weicker, Jr.  
September 27, 1988

I am very pleased to join my colleagues this morning in convening a joint hearing on a subject of deep concern to me: discrimination on the basis of disability.

In its 1986 report, Toward Independence, the National Council on the Handicapped noted: "People with disabilities have been saying for years that their major obstacles are not inherent in their disabilities, but arise from barriers that have been imposed externally and unnecessarily." That report went on to recommend that "Congress... 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."

Earlier this year, in direct response to the Council's recommendation, Senator Harkin and I introduced S.2345, the Americans with Disabilities Act. Drafted principally by the Council, this legislation would prohibit discrimination against people with disabilities in employment, public accommodations, transportation, communication and public services. And it goes a step further in describing specific methods by which such discrimination is to be eliminated.

The bill has strong, bipartisan backing in both houses of Congress, including 25 cosponsors in the Senate and 114 in the House. It has been endorsed by more than 50 national organizations representing people with a wide variety of disabilities. It is also supported by the Leadership Conference on Civil Rights, an umbrella group of 185 organizations active in the area of civil rights.

As a prelude to further Congressional action on S.2345, we look forward this morning to hearing expert testimony on the types of discrimination experienced by people with disabilities. Most of our witnesses came by their expertise the hard way. They know first-hand what it is like to be shunned in the mainstream and shunted off into the margins of American life. They know first-hand that a disease like AIDS or a condition such as cerebral palsy can not only rob individuals of their health but also be used to deny them a table in a restaurant, a job, a home, and -- finally -- any shred of human dignity.



This hearing is also about fighting back and the rewards reaped as a consequence. We will learn of the difference early intervention has made in the life of a mentally retarded youth. We will revisit the triumph experienced by the students at Gallaudet when they succeeded in their battle for a deaf university president.

Their stories offer us a glimpse of a nation changing for the better. But the transformation has been much too long in coming and is proceeding at too slow a pace. It took the Civil Rights Act of 1964 and subsequent statutes to make plain this nation's opposition to racism, sexism and discrimination based on a person's age. It will take the Americans with Disabilities Act to set the record straight as to where we stand on discrimination based on disability.



May 8, 1989

Dear Senators Harkin and Kennedy:

We, the undersigned representatives of denominations and faith groups in the United States, are deeply concerned about the discrimination daily faced by individuals with physical or mental disabilities. Such discrimination can be found in every segment of life in this society. Although there have been some improvements in the last few years, largely due to protections afforded by section 504 of the Rehabilitation Act of 1973, such discrimination remains a pervasive problem for over 42 million disabled Americans.

As members of faith groups, it is our responsibility to strengthen and heal one another within the human family. The unity of the family is broken where any are left out or are subject to unequal treatment or discrimination. "If one member suffers, all suffer together; if one member is honored, all rejoice together" (1 Corinthians 12:26). Those with physical and mental disabilities have for too long been the target of such suffering, prejudice and discrimination effectively denying them the opportunity to compete on an equal basis for all of the rights, privileges and opportunities that are afforded to others as members of this society.

We write today to express our support for strong federal legislation addressing these issues, particularly in the private sector where much of that discrimination now takes place. We urge that you support legislation to protect the rights of persons with disabilities including particular attention to the problem of discrimination in employment, communications, access to public services, and public accommodations. One such piece of legislation introduced in Congress which appears to us to meet our principles is the Americans with Disabilities Act of 1989. This legislation provides protection against discrimination for individuals with disabilities similar to protection provided other minorities in current civil rights law.

We also want to make clear our support for inclusion of those infected by the Human Immunodeficiency Virus and people living with AIDS. We concur with the *Report of the Presidential Commission on the HIV Epidemic*:

As long as discrimination occurs, and no strong national policy with rapid and effective remedies against discrimination is established, individuals who are infected with HIV will be reluctant to come forward for testing, counseling, and care. This fear of potential discrimination will limit the public's willingness to comply with the collection of epidemiological data and other public health strategies, will undermine our efforts to contain the HIV epidemic, and will leave HIV-infected individuals isolated and alone. Discrimination against persons with HIV infection in the workplace setting, or in areas of housing, schools, and public accommodations is unwarranted because it has no public health basis. Nor is there any basis to discriminate against those who care for or associate with such individuals.



The American with Disabilities Act provides that an individual with a disability must be given equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement in the most integrated setting appropriate to the individual's needs. We urge you to support this bill, or similar legislation, that protects the rights of the disabled by helping to insure that all members of this society are allowed to participate on an equal basis.

Thank you for your consideration of this important issue.

Sincerely,

Dr. Daniel E. Weiss  
General Secretary  
American Baptist Churches, USA

The Reverend Arie R. Brouwer  
General Secretary  
National Council of Churches

Dr. John O. Humbert  
General Minister and President  
Christian Church (Disciples of Christ)

Rabbi Irwin M. Blank  
Past President  
Synagogue Council of America

Dr. Donald E. Miller  
General Secretary  
Church of the Brethren

Rabbi Alexander Schindler  
President  
Union of American Hebrew Congregations

Dr. Claire Randall  
President  
Church Women United

Dr. William F. Schultz  
President  
Unitarian Universalist Association

The Most Reverend Edmond L. Browning  
Presiding Bishop  
The Episcopal Church

Dr. Avery D. Post  
President  
United Church of Christ

The Reverend Dr. Herbert W. Chilstrom  
Bishop  
Evangelical Lutheran Church in America

Bishop Robert C. Morgan  
President  
General Board of Church and Society  
The United Methodist Church

Edward F. Snyder  
Executive Secretary  
Friends Committee on National Legislation





Office of the Assistant Attorney General

Washington, D.C. 20035

JAN 10 1995

The Honorable Bob Dole  
Majority Leader  
United States Senate  
Washington, D.C. 20510

Dear Senator Dole:

As one of the chief sponsors of the Americans with Disabilities Act, you have no doubt seen or heard recent news reports about the law's requirements for public buildings and facilities. Unfortunately many of these reports, coming on the third anniversary of the effective date of the Act, have been inaccurate. I want to provide you and your staff with background information on the Act's requirements and our efforts to implement them.

Recent press reports, including a January 6, Wall St. Journal editorial, have noted that by January 26, 1995, "all public buildings and facilities must be accessible" or be in the process of becoming accessible. This statement has generated much confusion and anxiety among State and local government entities about the expense of compliance. We believe both the confusion and the anxiety to be unwarranted.

With your leadership, the ADA was carefully crafted to include fair and balanced provisions with specific safeguards for State and local governments on costs. With regard to existing buildings, the Congress chose to adopt the standard in place under the Rehabilitation Act of 1973 -- the standard of program accessibility. The ADA requires that State and local governments make their programs, not their buildings, accessible to people with disabilities. This flexible standard allows for practical solutions. The ADA does not require a State or local government to make each of its existing buildings accessible under the ADA. In fact, compliance with the ADA may be achieved without structural solutions.

For example, a town may relocate a public hearing from an inaccessible building to a local high school auditorium or other such site that is already accessible. Or, where a city has several offices where drivers can renew their licenses, and only one of the offices is accessible, the city can provide notice of the accessible site and require drivers who have mobility impairments to use that site. Or, where a public library has open stacks on upper floors with no elevator access, it can



comply with the ADA by having library staff retrieve books for patrons who use wheelchairs, rather than by installing a lift or elevator.

There is a further statutory safeguard on costs for retrofitting existing buildings. A State or local government does not have to take any action that results in a fundamental alteration in the nature of its programs or activities or that results in undue financial and administrative burdens. Together, the program accessibility standard and the "undue burden" limitation ensure significant protections for State and local governments from unreasonable compliance costs and provide flexibility for State and local government decision-making on accessibility. The ADA simply guarantees to persons with disabilities what other citizens have -- the opportunity to participate in civic life.

In addition, many localities are not aware that Community Development Block Grant (CDBG) funds, awarded to individual communities by the Department of Housing and Urban Development, can be used for the removal of architectural barriers that restrict the mobility of persons with disabilities.

Our experience with enforcement of the ADA belies the distorted picture painted by some. In the past three years we have investigated hundreds of complaints against State and local governments and have been able to use less formal and less costly alternative dispute resolution techniques to bring about voluntary compliance in virtually all cases. We have found that once public entities learn what is actually required and how easy it can be to comply, they are more than willing to take the necessary actions to do so. For example:

- \*A small Montana town agreed to make its town programs accessible through a combination of town hall renovations and alternative nonstructural measures, including moving town council meetings to the first floor.

- \*A city in Iowa agreed to relocate one of its polling places to a facility with an accessible ground floor entrance.

- \*A Kentucky county court agreed to adopt and publicize a policy requiring court proceedings to be relocated to an accessible location upon reasonable notice from a person with a mobility impairment.

- \*A Missouri city with an old city hall agreed to deliver its services and programs through alternative methods, including sidewalk and mail service, and to move public meetings to accessible locations.

As your amendment envisioned, providing accurate information about the ADA to State and local governments has been one of our top priorities. We have established a comprehensive ADA technical assistance program for government entities and



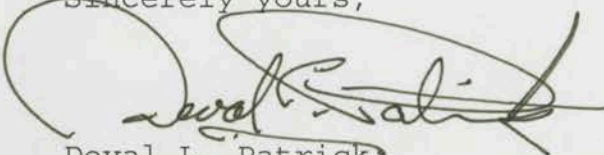
businesses. Through our toll-free ADA Information Line (see enclosed list) and Speaker's Bureau we have worked with State and local governments throughout the country. Our grant program has funded the U.S. Conference of Mayors, the National Association of Towns and Townships, and the Police Executive Research Forum -- to name a few -- to produce accurate materials for State and local government entities on cost-effective ways to comply with the ADA.

In the last two months, I have sent the mayors of municipalities with a population of 30,000 or more a description of the ADA's requirements, a practical manual and workbook designed to assist in the compliance process, as well as the enclosed document, "Common Questions About Title II of the Americans with Disabilities Act." Similar technical assistance documents have been included in an ADA Information File which has been distributed to 15,000 public libraries across the country.

State and local governments are, in fact, making significant progress in complying with the ADA. All public entities have been opening up their programs to persons with disabilities since the 1970's when the Rehabilitation Act of 1973 first applied to State and local governments. In addition, many State and local governments now comply with local laws that mirror and, in some respects, exceed the ADA's requirements. Some media reports have neglected the compliance efforts of public entities, misstated the ADA's requirements, and overstated ADA compliance costs. These reports distort the genuine, cost-effective progress toward inclusiveness for which the ADA is responsible.

We look forward to working with you to educate new members of Congress about the ADA and its provisions you effectively tailored to meet both the needs of State and local government entities and persons with disabilities. We have shared this information with your colleagues, Senators Hatch, Kennedy, Harkin and McCain. Please do not hesitate to contact us if you have any questions about the ADA or our implementation program, or if we can help in your efforts to educate your colleagues and the American public.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Deval L. Patrick", is written over a large, loopy circular flourish.

Deval L. Patrick  
Assistant Attorney General  
Civil Rights Division

Enclosures





May 5, 1995

Mr. Alexander Vachon, Ph.D.  
Office of Senator Robert Dole  
141 S-HOB  
Constitution Avenue  
Washington, D.C. 20510-1601

Dear Alexander,

Good to speak with you at length May 3. I remain concerned about what solutions will emerge with respect to "fixing" the Social Security Childhood Disability regulation. The "fix" is regulatory, not statutory, in my opinion. Tossing out the IFA mechanism throws the tool away. The problem is the application of the tool - hence, the regulatory "fix." Need to tighten up the evaluative procedures with regard to measuring/charting behaviors. I would be pleased to view any draft language. You and I both agree that solutions are necessary.

I enclose with this letter by mail a copy of the Standard Rules on the Equalization of Opportunity for People with Disabilities, published and distributed by the United Nations in 1994. Enclosed is also the just published **RI Policy Guide to Standard Rules and the Copenhagen Declaration and Programme of Action**, along with a summary report of RI activity vis a vis the preparation of the agenda of the World summit for Social Development Copenhagen, March 6-12, 1995. I view the product coming out of the Summit to be a very positive and far-reaching document dedicated to action. The effort must now be directed by the family of nations to implementation. Talk is cheap, no matter from whence it comes. I was very impressed with the quality of participation throughout the Summit process by the U.S. State Department. You know that I do not always feel so positive about agency behaviors.

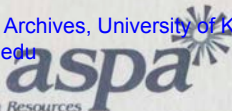
I am faxing you this letter to be followed by hard copy in order to remind you that I very much enjoyed talking with you. Let's do so again in June when I am back in New York.

With personal warm regards,

Yours sincerely,

Susan B. Parker  
Secretary General





*Managing Human Resources*

**Susan R. Meisinger**

**Vice President**

**Government Affairs**



*American Society for Personnel Administration*

**606 North Washington Street**

**Alexandria, VA 22314 • (703) 548-3440**





July 21, 1989

The Honorable Robert Dole  
U.S. Senate  
141 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Dole:

On behalf of the American Society for Personnel Administration (ASPA), I would like to express our grave concerns regarding S. 933, the Americans with Disabilities Act (ADA), and ask that you keep these concerns in mind during your deliberations on the bill.

With over 40,000 members nationwide, ASPA is the world's largest professional society dedicated to excellence in human resource management. ASPA members will be charged with administration of the ADA, and we therefore have a direct and substantial interest in ensuring that the legislation protects the rights of the disabled but does not create unnecessary costs and burdens for employers. I have attached a summary of some of our concerns with S. 933 for your review.

Earlier this year, the ASPA Board of Directors adopted a position supporting federal legislation which would protect the rights of qualified individuals from being discriminated against in employment based solely on their disability. However, at the same time, the Board noted that any legislation should be carefully drawn and parallel existing civil rights laws to avoid unnecessary confusion and costs for employers. Furthermore, the Board felt strongly that any new legislation should not create a new right to jury trials, or entitle individuals to punitive or compensatory relief, but should permit make whole remedies as provided under Title VII of the Civil Rights Act.

As currently drafted, the ADA does not clearly define obligations of employers, and contains substantial ambiguities which will make compliance difficult. The bill also dramatically expands the reach of the federal government into areas historically left to local control.

Of greatest concern to ASPA, however, are the multiple remedies provided in the legislation. ASPA supports the ADA's inclusion of remedies provided under Title VII of the Civil Rights Act,



*American Society For Personnel Administration*

National Headquarters • 606 N. Washington Street • Alexandria, Virginia 22314 • Phone: 703/548-3440



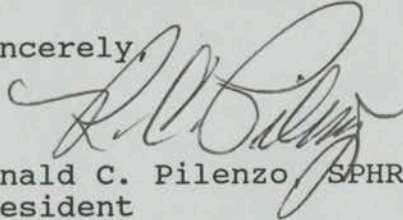
The Honorable Robert Dole  
July 21, 1989  
Page Two

which encourages conciliation and guarantees that victims of discrimination are made whole. However, the ADA provides an additional remedy of jury trials and punitive and compensatory damages. This will encourage litigation, and is unacceptable.

ASPA is committed to legislation which responds to the legitimate needs of the disabled and does not impose unreasonable burdens and liabilities on employers. Unfortunately, the multiple remedies provided by the ADA impose such unreasonable burdens and liabilities. If not removed, ASPA will be unable to support the ADA, and instead will be forced to oppose the measure.

We ask that you keep these concerns in mind during your ongoing deliberations on this important piece of legislation.

Sincerely,

A handwritten signature in dark ink, appearing to read "R. C. Pilenzo", written over the typed name.

Ronald C. Pilenzo, SPHR  
President

Attachment



# DISABILITY RIGHTS WORKING GROUP

## Working Paper #1

### Concerns with the Americans With Disabilities Act

#### INTRODUCTION

The Americans with Disabilities Act, introduced on May 9, 1989, is comprehensive legislation whose expressed objective is to extend the same protections against discrimination enjoyed by other protected groups to those with disabilities.

Though supportive of many of the concepts embodied in the ADA, the Disability Rights Working Group -- a coalition of businesses and trade associations -- is opposed to the ADA in its present form. Discussions have been held with representatives of the disability community, Congress and the Administration in an effort to fashion legislation we can all embrace. However, unless changes are made, particularly in the area of remedies, the Group will seek to defeat S. 933/H.R. 2273.

#### CONCERNS WITH LEGISLATION

Listed below are summaries highlighting some of the Group's concerns with the ADA, all of which have been communicated to the parties. There are two levels of concern with the legislation: first, the issues relating to enforcement and remedies; and second, all others. We have made it clear that resolution of the former is absolutely essential to further negotiation, without which the Group will seek defeat of the bills. That should not, however, be interpreted to mean that resolving the threshold concerns alone would be acceptable.

#### THRESHOLD ISSUES

**Enforcement/Remedies.** In addition to the remedies, administrative procedures and defenses available under Title VII of the Civil Rights Act of 1964 -- for which there is an extensive body of law and successful experience regarding cases alleging discrimination based on race, sex, religion and national origin -- the ADA, in §205, provides a second, separate track of enforcement that would permit a jury trial, and punitive and compensatory damages, i.e., pain and suffering. The second track must be eliminated.

**Anticipatory Discrimination.** Section 205 of the ADA would also provide relief to individuals who believe they "are about to be" discriminated against. Such speculative complaints and attendant litigation are not permitted in any other civil rights in employment legislation and should be eliminated from the ADA.

#### GENERIC ISSUES

**Enforcement Duplication/Consistency with Rehabilitation Act.** A significant number of employers are currently subject to Sections 503 and/or 504 of the Rehabilitation Act of 1973, as amended, that prohibit discrimination against persons with disabilities. The ADA would impose additional, in some cases, conflicting obligations on these employers. The ADA is silent as to situations where employers are faced with inconsistent standards and duplicative enforcement by various federal agencies. Compliance with Section 503 or 504 standards should be deemed to be in compliance with the ADA.

**Failure versus Refusal to Act.** The lack of distinction between intentional and unintentional discrimination will penalize employers for inadvertent errors in their attempts to abide by new, affirmative obligations imposed by the ADA. Discrimination should be defined as "refusal" or "willful failure" to act.

**Reasonable Accommodation and Undue Burden.** As defined in §1, there is no limitation on the lengths to which one must go to provide reasonable accommodation, though it is limited in §101 (b) (Defenses) as not requiring an "undue burden," which itself is undefined. In the absence of the definition, does this connote that "undue burden" means anything that threatens a firm's existence? Further, under §202(b)(2), it would be discriminatory not to hire an individual on the basis of the need for reasonable accommodation, not limited in this context by a defense of "undue burden." Thus, an employer could not offer the defense of undue burden in response to an allegation of refusal of hire because of the need for reasonable accommodation. In order



and for which existing tax code provisions (§190) only allow a deduction of \$35,000 per year. Further, there is no indication to whom the liability for retrofitting accrues, *i.e.*, the lessee or lessor, and the time-frame of one year for changes is unrealistic. It is unreasonable to require the retrofit of structures that were originally built to code unless the requirement is limited to instances where renovations of a certain magnitude, *e.g.*, 50% of building value, are contemplated. Section 190 of the Internal Revenue Code should be revised, not only in terms of the dollar maximum but also expanded to include all expenditures associated with accommodating those with disabilities.. Finally, a realistic phase-in period must be established together with placing responsibility for retrofitting on the building owner.

**Transportation.** The requirement that all new vehicles with capacity in excess of 12 passengers be fully accessible ignores reality and fails to provide for paratransit. In most instances, the situations addressed are services such as hotel to airport limos which can readily accommodate the needs of the disabled through on-demand paratransit. Section 402(b)(7)(B) should be eliminated.

**Public Transportation.** The requirements of §403 to make all intercity transportation fully accessible are not based on any demonstrated need and are unwarranted. Rather than preordain the demise of this sector of the transportation industry, the Department of Transportation or some other agency of the executive or legislative branch of government should be directed to first determine if there is a need that is not currently being met.

**Standards.** Section 404(c) requires the Architectural and Transportation Barriers Compliance Board to establish minimum guidelines and requirements for accessibility standards. In the spirit of building on experience under Section 504, the standards should not impose greater obligations than those contained in standards issued by the American National Standards Institute (ANSI A117.1) and be consistent with Section 504 requirements at 45 CFR 84.23.

**Enforcement.** As with the enforcement mechanism under Title II, the remedies available under Title IV, §405, should be limited to those available to other protected classes, *i.e.*, Civil Rights Act of 1964 and Rehabilitation Act of 1973.

## TITLE VI -- MISCELLANEOUS PROVISIONS

**Effective Date.** As set forth in §606 of the ADA, the Act would become effective on date of enactment and provide no time for employers and other entities to familiarize themselves with its provisions. The Act should have a delay in the effective date of one year and provide for education and technical assistance programs.

**Insurance Underwriting.** In its present form, the ADA does not directly address insurance and questions or ambiguity may arise regarding its application to the insurance industry, particularly as it concerns employee benefit plans. Section 601 should be amended to make clear that the intent of Congress is not to disrupt the current nature of insurance underwriting. Specifically, the new subsection would (1) clarify that insurers could continue to sell to and underwrite individuals applying for life/health insurance on an individual basis, and (2) reflect, as does the Age Discrimination in Employment Act, the need for employers to establish and observe the terms of employee benefit plans so long as the plans are not a subterfuge to evade the terms of the ADA.

July 1989



**KELLEY DRYE & WARREN**

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May 26, 1989

LAWRENCE Z. LORBER  
DIRECT LINE (202) 955-9881

**HAND-DELIVERED**

Senator Tom Harkin  
Chairman  
Subcommittee on the Handicapped  
United States Senate  
Committee on Labor and Human Resources  
Washington, D. C. 20510-6300

Dear Senator Harkin:

On behalf of the American Society for Personnel Administration, I very much appreciate your comments about our testimony before the Senate Committee on Labor and Human Resources.

We have reviewed Senator Hatch's questions and offer the following responses. In some instances, we have had to answer in general terms as we have not had the opportunity to survey our members and gather specific data. Nonetheless, we believe that the responses to these questions, as well as our testimony before the Committee, set forth our concerns and suggestions for modification of the Americans With Disabilities Act of 1989 so as to address some of the concerns of American employers. We reemphasize again, as we did in our testimony, that the American Society for Personnel Administration is fully supportive of a national and workable statute affording full employment rights to the disabled.

Question 1. In the substantive standards in the employment section, the bill says the term "discrimination" includes the failure to make reasonable accommodations unless the employer "can demonstrate that the accommodation would impose an undue hardship on the operation of the business."

Is the EEOC's definition of undue hardship (29 CFR Section 1613.704(c)) your understanding of what "undue hardship" is?



KELLEY DRYE & WARREN

Senator Tom Harkin  
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Answer 1. As presently drafted, S.933 provides no guidance regarding how the term "undue hardship" is defined. The failure of the drafters to set forth the criteria for determining "undue hardship" leaves the term undefined and subject to wildly varying interpretations by the Courts and employers which will be unsettled for years. We are therefore unable to answer whether the EEOC's definition of undue hardship contained in 29 C.F.R. § 1613.704(c) spells out the criteria to be evaluated by employers and the courts in interpreting the American With Disabilities Act of 1989.

Although the criteria contained in the EEOC regulations (and in regulations interpreting Section 504 of the Rehabilitation Act) would provide employers and the Courts with some guidance, they would also create uncertainty for a great many employers. Specifically, employers who are federal contractors governed by Section 503 of the Rehabilitation Act are subject to regulations which lists business necessity and financial cost and expenses, as factors which may be considered in determining "undue hardship." Clarification that these latter factors are the factors to be used in determining "undue hardship" under the Americans With Disabilities Act would help to prevent unnecessary confusion and litigation for employers.

We would urge that the definition of undue hardship comport with existing standards found in the implementing regulations of §§ 503 and 504 of the Rehabilitation Act. We believe that the following criteria should be among those applied to the analysis necessary to determine when the requested accommodation constitutes an undue hardship for the employer:

- a. nature and cost of the requested accommodation;
- b. size of employer facility and capacity for structural change;
- c. size of workforce; impact on collective bargaining agreements;
- d. existence of suitable alternative accommodation available at less cost; and



KELLEY DRYE & WARREN

Senator Tom Harkin  
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- e. impact on employer productivity and competitiveness.

Question 2. The bill includes as discrimination the use of "qualification standards, tests, selection criteria or eligibility criteria that identify or limit, or tend to identify or limit, a qualified individual with a disability ..., unless such standards, tests, or criteria are shown by [the covered] entity to be necessary and substantially related to the ability of an individual to perform the essential functions" of the job. Section 202(b)(3).

(a) This language could be very onerous. Few employers may be able to show that this or that job related criterion is absolutely necessary. Could you comment on this?

(b) Do you have objections to the use of alternative language, currently found in EEOC regulations, which provides, with respect to criteria that disproportionately screen out persons with disabilities, (1) that criteria and tests be job-related to the position in question and (2) that alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not available? [29 CFR Section 1613.705(a)].

Answer 2. The language in Section 202(b)(3) is overly broad and goes far beyond the current requirements of equal employment law. The language of § 202(b)(3) would require employer review on an individual disability by disability basis of each qualification standard and then undertake a comparison of those to the identified "essential function" of each job in order to insure compliance. Particularly with regard to the proposed requirement to identify the "essential function" of each job, the statute will require extraordinary effort and expenditure of resources by employers without a discernible benefit for qualified disabled employees. Such a task would be so burdensome as to be impossible to many employers.

Further, the current state of employment test validation does not provide for the assurance of absolute necessity required by § 202(b)(3). The impact of § 202(b)(3) would be to significantly hinder the ability of employers to standardize their employment procedures. Such a result would inhibit compliance with the Americans With Disabilities Act as well as other equal employment



KELLEY DRYE & WARREN

Senator Tom Harkin  
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May 26, 1989

laws without any appreciable gain in employment opportunities for the disabled.

Indeed, employers would be placed in the untenable position of having to comply with the requirements of the Uniform Guidelines on Employee Selection Procedures, 29 C.F.R. Part 1607 with respect to compliance with Title VII and E.O. 11246, as amended, yet have a significantly different statutory obligation with respect to the same test or selection procedure for the same applicant or employee who might also be covered by the A.D.A. This type of statutory confusion should not be foisted on the employer community at a time when employment procedures are being reviewed to ensure maximum participation by our workforce.

The Department of Health and Human Services' interpretation of § 504, 45 C.F.R. § 84.13, and the EEOC's interpretation of § 501, 29 C.F.R. § 1613.705(a), adopt the accepted legal definition to deal with the impact of standardized tests or selection procedures for application to the disabled. As noted in your letter, those regulations provide, with respect to criteria that disproportionately screen out persons with disabilities, (1) that criteria and tests be job-related to the position in question and (2) that alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not available. The burden of demonstrating the existence of alternative criteria with less discriminatory impact was placed on the enforcement agency - or in the case of HHS, the Director of the Office of Civil Rights.

While still posing some problems for employers, this latter provision would, we believe, accomplish what the committee is seeking to accomplish, yet build on settled law. In short, it would provide more predictability to employers without any reduction in the protections afforded to persons with disabilities.

Question 3. The employment section's effective date is the date of enactment. Many employers are going to be confused about their responsibilities and many will need time to understand them, as well as to prepare to make the necessary accommodations for persons with disabilities. Title VII of the 1964 Civil Rights Act, banning employment discrimination based on race, color, national origin, religion, and gender was effective one year after



KELLEY DRYE & WARREN

Senator Tom Harkin

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date of enactment. Is there any reason not to have the same one year effective date we had in the parallel civil rights statute?

Answer 3. While many employers who are federal government contractors or federal grantees are already covered by § 503 or § 504 of the Rehabilitation Act, the broad scope of the Americans With Disabilities Act of 1989 and its application to the universe of employers ought to compel a reasonable period for employers to move to a compliance status. Litigation regarding failure to undertake reasonable accommodations as well as compliance with the other substantive requirements of the law can be avoided if employers are provided time to undertake the required restructuring of their work sites and work practices.

Question 4. Is the bill's definition of "reasonable accommodations" at Section 3(3) consistent with current Section 504 regulations? For example, under Section 504, if a person with a disability is no longer able to perform the job he or she is in, must the employer reassign the person a job he or she can do?

Does the employer under the bill have to bump an incumbent employee or create a new job to effectuate the reassignment?

Answer 4. As currently drafted, the bill's definition of "reasonable accommodations" are not consistent with current § 504 regulations. Furthermore, as presently drafted, we believe that an employer could indeed have to bump an incumbent employee or create a new job to effectuate the reassignment.

The jurisprudence under § 504 is settled that an employer does not have the obligation to create a new position for a qualified disabled employee who can no longer perform the work required of his or her job with reasonable accommodation. Carter v. Tisch, 44 FEP Cases 385 (4th Cir., July 1987); Jasany v. U.S. Postal Service, 755 F.2d 1244 (6th Cir. 1985). Similarly, there is no requirement under § 504, or indeed other statutory equal employment laws, for an employer to bump or remove an incumbent from a position in order to remedy an individual who has suffered employment discrimination. See Wygant v. Jackson Bd. of Education, 476 U.S. 267 (1986); Firefighters Local 1784 v. Stotts, 367 U.S. 561 (1984); United Steelworkers v. Weber, 443 U.S. 193 (1978); Title VII, Equal Protection Clause, Affirmative Action; Spagnulo v. Whirlpool Corp., 717 F.2d 114 (4th Cir. 1983), ADEA.



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In light of this commanding precedent, the language of § 3(3) ought to be reviewed. Specifically, the change in the requirements to implement reasonable accommodation from the discretionary "may" found in 29 C.F.R. 1613.704(b) to the mandatory "shall" found in § 3(3) will create extraordinary problems for employers and foster extensive unproductive litigation. The purpose of reasonable accommodation is to allow employers the flexibility to structure accommodations to the needs of the individual and the requirements of the job. Making mandatory the specific accommodations set forth in § 3(3) dramatically changes the nature of the requirement.

Further, we would note that the requirement of "adoption or modification of procedures or protocols" found in § 3(3) does not appear in 29 C.F.R. § 1613.704(b) or 45 C.F.R. § 84.12. This addition should be eliminated to insure that it not be used to impact on seniority provisions, policies regarding bumping or displacement of employees or requirements to redefine job requirements.

These questions regarding the scope of § 3(3) are particularly important due to the definition of discrimination found in § 202(b)(1) which defines discrimination as the failure to undertake reasonable accommodation. Thus, the mandatory requirement of § 3(3) and the use of the word "shall" ought to be revised consistent with established principles of equal employment law and interpretation of § 504.

Question 5. Do you have an estimate of the net dollars we can save by opening up employment opportunities on a fair basis to persons with disabilities and thereby reducing dependency?

Answer 5. We do not have the resources necessary to conduct the cost-benefit analysis of the impact of this bill for employees, the government, and the public at large by opening up employment opportunities on a fair basis to qualified persons with disabilities. We recognize that benefits are likely to be recognized to the federal government, through cost reductions in support payments of various types.

We also recognize that there will be benefits to employers, who will be broadening their pool of qualified workers, and thereby enriching and making their workforce more diverse. This may then translate into greater productivity and a healthier employer.



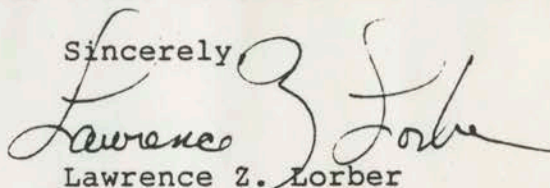
KELLEY DRYE & WARREN

Senator Tom Harkin  
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May 26, 1989

However, we also recognize that there will certainly be costs born by employers, which are also difficult to quantify. In analyzing the cost and benefits of implementing § 504 of the Rehabilitation Act of 1973, the Department of Labor estimated that the costs of modifications (accessible parking, toilet facilities, entrance ramps, entrances and doorways, drinking fountains, communications, etc.) of 17,945 of a possible 376,198 locations, at \$127,850,000. If the programs receiving financial assistance from the Department of Labor can be compared to other places of business, the potential cost would be enormous.

I hope these answers are responsive to your questions and we look forward to working with the Committee to address other provisions contained in S.933 which must be clarified or revised.

Sincerely

A handwritten signature in cursive script, appearing to read "Lawrence Z. Lorber".

Lawrence Z. Lorber

LZL/ih



## SEALRIGHT CO., INC.

2925 FAIRFAX ROAD, P.O. BOX 15219  
KANSAS CITY, KANSAS 66115  
913 - 321 - 5002

August 25, 1989

Honorable Robert Dole  
United States Senate  
141 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Dole:

The Americans with Disabilities Act (ADA), S.933/H.R.2273, has an admirable mission, in that it seeks to extend non-discrimination rights to disabled individuals. However, the bills contain a number of unprecedented provisions.

The bill would provide for immediate access to jury trials with compensatory and punitive damages - "pain and suffering" - for a charge of discrimination. This is far in excess of remedies available to other protected groups under the Civil Rights Act of 1964.

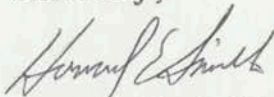
The bill would also permit lawsuits when an employee or job applicant believes he or she "is about to be discriminated against."

The bill would prohibit, in most cases, employers from maintaining drug-free or zero tolerance work places.

Although we condone the admirable mission of this bill, and we do support non-discrimination in general, we cannot tolerate the concept of lawsuits based on what a person believes is "about to" happen! Nor, in this day and age of concern over the drug problem, can we logically condone the prohibition of a drug-free work place.

Your support in defeating this legislation will be sincerely appreciated and noted at re-election time! I greatly encourage your vote against this bill if it reaches the floor!

Sincerely,



Howard E. Smith  
Vice President  
Central Division

hes/jra



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JUN-07-'89 12:52 ID:ASPA OMNIFAX G38 TEL NO:703/836-0367

334 ; # 2  
#776 P02

Dear Colleague:

I am writing to invite you and your staff to attend an informational briefing on the Americans with Disabilities Act, S. 933. The briefing will be held on Monday, June 12 at 11:00 a.m. (226 Dirksen Senate Office Building). The tentative agenda is as follows:

I. Introduction

Nancy Fulco, Assistant Manager, Small Business Center  
U.S. Chamber of Commerce

II. Regulatory and Legislative History

Susan R. Meisinger, Vice President, Government Affairs  
American Society for Personnel Administration

III. Employment

Larry Kessler, Attorney  
McGuinness and Williams

IV. Public Accommodations Provisions

Betty Whittleton, Legislative Counsel  
National Association of Theatre Owners

Sally Douglas, Assistant Director for Federal  
Government Relations, Research and Policy  
National Federation of Independent Business

V. Transportation Provisions

Charles Webb, American Bus Association

VI. Remedies

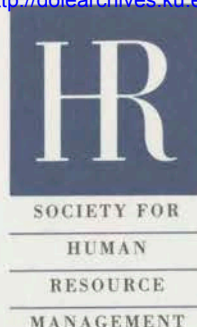
Pete Lunnie, Director of Employee Relations  
National Association of Manufacturers

VII. Questions and Answers

I believe that you will find the briefing most informative. The legislation is expected to move very quickly and deserves our thoughtful consideration. Please contact for more information.

Sincerely,





September 5, 1989

Dear Senator:

You may soon be asked to cast your vote on S. 933, the Americans With Disabilities Act of 1989, which was approved by the Senate Labor and Human Resources Committee on August 2. The bill would make it illegal to discriminate in the employment of persons with disabilities. Employers would also be required to make reasonable accommodation for persons with disabilities, so long as the accommodation would not pose an undue hardship.

On behalf of the Society for Human Resource Management, (SHRM), formerly the American Society for Personnel Administration, I would like to share with you our views on the title of the bill which deals with the employment relationship. SHRM is a professional society of over 40,000 individual human resource managers, dedicated to excellence in their field. Members of SHRM will be directly impacted by the employment provisions of the ADA.

We have reviewed the employment title, Title I, of S. 933, and have briefly reviewed the recently issued Committee report. While not completely eliminating all of the concerns SHRM expressed about the bill as originally introduced, we were pleased that an effort had been made in most instances to address those concerns. An analysis of the employment aspects of the bill, and our understanding and concerns with some of it's provisions, is enclosed.

Unfortunately, as a result of our review of the legislation and Committee report, as well as concerns which have been raised by SHRM members, we are unable to support the bill as drafted. Our decision to withhold our support is the result of our grave concern with the apparent protections provided by this legislation to persons who violate the law and use illegal drugs.

SHRM does not question the need to provide protections from discrimination for former addicts who are not currently using drugs. However, as currently drafted, we are fearful that employers could be required to treat addicts who are current users of illegal drugs as disabled, thereby obligating the

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ALEXANDRIA, VA 22314  
(703) 548-3440 FAX: (703) 836-0367

*Formerly American Society for Personnel Administration*



September 5, 1989  
page two

employer to make "reasonable accommodation."

While the language in the bill would, we believe, allow employers to adopt and enforce zero tolerance drug testing programs, the bill would not permit them to take action against employees who use illegal drugs in all cases. Specifically, the bill appears to provide protection to individuals who may not be "addicts" but who are currently using drugs.

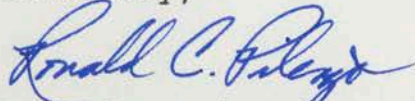
The real world problems posed by such a law are enormous. For example, we believe that a poorly performing employee who recognizes that they may soon be terminated will be encouraged under this bill to come forward and identify themselves as a drug abuser, and entitled to reasonable accommodation. The employer would then have the burden of proving that the individual was an addict, and that the employer was therefore entitled to terminate the employee because of poor performance, one of the defenses contained in the bills. Unfortunately, this and other defenses appear to only be available in the case of addicts and alcoholics. In effect, illicit, recreational use of drugs would entitle an individual to greater protections than that afforded to a law abiding employee who doesn't use drugs!

We believe that the best way to ensure that the statute is not interpreted in such a manner is to amend the statute to redefine a "qualified individual with a disability" to exclude any employee or applicant who uses illegal drugs.

There has been a strong public outcry in this country that illegal drug abuse is the number one problem facing the nation. We believe that enacting legislation which could provide protections to individuals engaged in illegal drug use flies in the face of this public sentiment.

The Americans With Disabilities Act is an important piece of legislation which deserves your consideration. However, we urge you to carefully review its provisions, and vote to ensure that the legislation does not provide protection for the very behavior this nation is seeking to halt.

Sincerely,



Ronald C. Pilenzo  
President





**AMERICANS WITH DISABILITIES ACT  
S. 933**

**Title I: EMPLOYMENT**

**Enforcement**

As originally introduced, the ADA would have allowed an applicant or employee to file a charge with the EEOC, using procedures in place for Title VII of the Civil Rights Act, or file suit in Federal District Court seeking a jury trial, punitive and compensatory damages. Lawsuits and charges could be filed where the applicant or employee only thought that they were about to be discriminated against. SHRM was convinced that the enforcement provisions of the original ADA would have encouraged litigation.

SHRM is therefore pleased with the changes recently made in S. 933, which now only permit applicants and employees to file charges with the EEOC where they believe an employer has discriminated, using Title VII procedures. We are also pleased that the provision allowing charges for "anticipatory" discrimination, which was in addition to Title VII, is eliminated, and the remedies available are limited to make-whole remedies: back pay, front pay, injunctive relief, etc.

We assume that the defenses available to employers under Title VII would also be available under the ADA.

**Coverage**

The original bill applied to all employers currently covered by Title VII of the Civil Rights Act, or those employers with 15 or more employees.

We are pleased that the substitute now phases in coverage over a two year period. For the first two years the bill is effective, it covers employers of over 25 employees. The number drops to 15 thereafter. This phased in approach was also used when the Civil Rights Act was first enacted, and although we prefer greater consideration for employers with between 100 and 25 employees, we

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believe that the new bill will be helpful to smaller employers grappling with their new legal obligations.

We were disappointed to see that, as in earlier versions of the bill, Congress is exempted from the obligation not to discriminate against persons with disabilities.

#### Reasonable Accommodation

The ADA adopts principles contained in the Rehabilitation Act of 1973, which imposes nondiscrimination obligations on federal contractors (Section 503) and federal grant recipients (Section 504). Employers must make "reasonable accommodation" to the known physical or mental limitations of qualified individuals.

The definition of "reasonable accommodation" contained in the ADA is virtually identical to the definition of reasonable accommodation found in regulations implementing Section 504 of the Rehabilitation Act. While the earlier version of the bill provided that reasonable accommodation "shall" include certain actions, the substitute uses the permissive "may", which we hope is intended to give employers greater flexibility.

The definition does, however, include modification of the regulatory language currently contained in Section 504 regulations. It is our understanding that the addition of the clause dealing with reassignment to a vacant position is intended to ensure that although reasonable accommodation might involve reassignment of an employee, that reassignment would be to a vacant position, and not in a manner which bumped other employees.

Similarly, we understand that the inclusion of modification or adjustment of "policies" as a reasonable accommodation is intended to ensure that employers are flexible in their policies when looking for ways to accommodate persons with disabilities. For example, an employer should be willing to waive a "no pets" policy for a visually impaired candidate who makes use of a seeing-eye dog.

#### Undue Hardship

As originally introduced, S. 933 did not include a definition of "undue hardship". The term "undue hardship" is of critical importance in the context of this bill, because an employer's obligation to make a reasonable accommodation for persons with disabilities is limited to situations where the accommodation would not pose an "undue hardship". It was therefore vital to SHRM that the statute clearly define what constituted "undue hardship."



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S. 933 now includes a definition of "undue hardship". The definition is lifted in part from regulations implementing Section 504 of the Rehabilitation Act. To the extent the authors' intent is to follow case law arising under Section 504 in employment situations, we have no objections to the definition of undue hardship. We continue to have some concern, however, that the definition of what constitutes "undue hardship" is so narrow that courts may require employers to undertake what are in fact costly and burdensome accommodations in some situations.

#### Discrimination Prohibited

As originally introduced, S. 933 included a separate title containing general prohibitions against discrimination, which were in addition to the more specific prohibitions found elsewhere in the bill. As a result, it was difficult to determine an employer's obligations in the employment context.

The substitute version has consolidated the obligations relating to employment into one title, eliminating SHRM's prior concerns regarding how the various titles of the bill interacted. For example, under the original ADA, it could be discriminatory to provide "a service, program, activity, benefit, job, or other opportunity that is less effective than that provided to others." SHRM was unable to explain how an employer could provide a job which was "as effective" as a job provided to others.

Our concern was reawakened, however, when the Committee took pains in it's report to state that "the Substitute should not be construed as departing in any way from the concepts included in the original "general prohibitions" title of the ADA . . ." We assume that the statutory language will control.

As revised, the bill contains new language in the employment section of the bill to specify what actions constitute illegal discrimination. Much is taken from existing Section 504 regulations.

S. 933 now provides that discrimination includes:

A) Participating in a contractual or other arrangement that has the effect of subjecting a person with disabilities to discrimination.

The bill specifically notes that such relationships include those with an employment or referral agency, labor union, an organization providing training and apprenticeship programs, or an organization providing fringe benefits to an employee.

SHRM understands this provision as simply stating that an employer may not do by contract that which it can't do directly.



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It is also our understanding that the statutory language dealing with contracts for fringe benefits would not limit in any way an employer's ability to adjust its fringe benefit package, by, for example, dropping certain types of coverage.

B) Using standards or criteria or methods of administration that have the effect of discriminating on the basis of disability.

SHRM understands that under this provision, an employer that uses an employment policy which is neutral on its face, but which has a disparate impact on persons with disabilities, may be guilty of discrimination, consistent with principles contained in the U.S. Supreme Court's decision in Alexander v. Choate.

C) Excluding or denying equal jobs or benefits to a qualified individual with a disability because of the known disability of an individual with whom the qualified individual is known to have a relationship or association.

As originally introduced, S. 933 did not clearly require that the employer know about the disability or about the association. It is our understanding that the intent of this provision is not to provide a disgruntled employee with a new cause of action upon termination, but rather to stop employers who, for example, upon learning that an applicant has a child with Downs Syndrome, automatically rejects the applicant.

D) Denying employment opportunities to a person with disabilities if the reason for the denial is based on the need to make reasonable accommodation.

It is our understanding that this section in no way prevents an employer from raising, as a defense, the fact that the accommodation would impose an undue hardship. It is also our understanding that this provision is intended to apply to employers who, upon seeing a candidate enter the workplace and knowing that the candidate will need an accommodation, automatically reject the applicant without determining his/her qualifications or what accommodation might be necessary.

In addition, we understand that this provision is intended to address the situation where, for example, an individual who applies for a position is told that the necessary accommodation would pose an undue hardship for the employer, and although the applicant offers to pay for the accommodation (e.g. buy their own computer), the employer still rejects the applicant.

E) Using employment tests or other selection criteria that screen out an individual or class of individuals with



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disabilities unless the test or criteria are job-related and consistent with business necessity.

It is our understanding that the language of the statute provides that nothing in the law, including this provision, would preclude an employer from using the successful completion of a drug test as a test or selection criterion in the employment process, and that an employer would not be required to prove that such a test is job-related or consistent with business necessity.

In addition, S. 933 includes provisions which we understand are intended to follow existing Section 504 law, and do not represent an expansion of that law. Those prohibitions include:

F) Limiting, segregating or classifying a job applicant or employee in a way that adversely affects their opportunities or status because of disability.

G) Not making reasonable accommodation unless the employer can demonstrate that the accommodation would impose an undue hardship.

H) Failing to select and administer tests so that tests accurately reflect the skills or aptitude that the test purports to measure, rather than reflecting the impaired sensory, manual or speaking skills of the applicant.

#### Medical Examinations and Inquiries

Earlier versions of the bill were not clear regarding an employer's ability to administer physical examinations. S. 933 now specifically prohibits an employer from conducting preemployment exams or asking an individual if he/she is disabled. This will be a change for federal contractors subject to Section 503 regulations, which permit preemployment physical. The ADA does permit preemployment inquiries into the ability of an applicant to perform job-related functions.

This provision, and language in the Committee report, will present problems for employers who use preemployment physical as a tool to prevent on-the-job injuries. Specifically, the Committee reports states that "individuals who fall within the "regarded as" prong of the definition include people who are rejected for a particular job for which they apply because of findings of a back abnormality on an x-ray, notwithstanding the absence of any symptoms".

An employer, faced with such an x-ray -- and told by the examining physician that such an individual would injure themselves if they attempted to perform the essential functions



page six

"Catch-22" position. The employer could be guilty of discriminating on the basis of disability if they refuse to employ the individual, or liable for the workers' compensation costs and any other damages caused when the employee suffers an on the job injury.

Furthermore, we believe that administering a drug test for purposes of ensuring a drug free workplace should not constitute a medical exam governed by this provision.

#### Alcohol and Drug Abusers

Previously, the ADA provided that an employer could require that alcohol and drug abusers not pose a "direct threat" to the health and safety of others. SHRM was concerned about the apparent conflict of this provision with the recently enacted Drug-Free Workplace Act, which imposes an obligation on employers to maintain a drug-free work place.

S. 933 now contains specific language providing defenses to employers from a charge of discrimination if they prohibit the use of alcohol or illegal drugs at the workplace; require that employees not be "under the influence of alcohol or illegal drugs" at the workplace; required that employees conform their behavior to requirements established pursuant to the Drug-Free Workplace Act and Department of Transportation regulations; and hold a drug user or alcoholic to the same standards of performance and behavior that it holds other individuals.

As noted in our cover letter, we have grave concerns regarding the apparent protections this bill provides to addicts who are current users of illegal drugs. We firmly believe that the statute should be amended to clearly provide that all current users of illegal drugs are not disabled and therefore entitled to the protections of the ADA.

It is our understanding that an employer may determine what constitutes being "under the influence", and may therefore establish a zero-tolerance policy for purposes of drug testing. Similarly, language permitting adherence to the Drug-Free Workplace Act and Department of Transportation regulations should be expanded to include Department of Defense drug testing regulations.

#### Employee Benefits

SHRM was concerned with language in S. 933 as originally introduced which seemed to suggest that employers might be required to tailor their fringe benefit plans to ensure that the plan was "as effective" for persons with disabilities as that



page seven

We are therefore pleased to see that S. 933 now clearly states that an employer --whether self-insured or insured through purchased services -- is free to design and change the terms of their bona fide benefit plans. Similarly, it is our understanding that nothing in the ADA would limit an employer's ability -- whether self-insured or not -- to include a preexisting condition exclusion in their health insurance plan.

In addition, it is our understanding that nothing in this bill would require employers to provide greater leave benefits to employees with disabilities than those provided to non-disabled employees.

**Tax Incentive:**

Section 190 of the Internal Revenue Code provides for a tax deduction of up to \$35,000 per employer for the costs of removing architectural barriers. We strongly encourage the Congress to eliminate this cap of \$35,000 and provide that the deduction is available by facility and for the costs of all types of accommodation.

Such a change to the tax code would serve as a real incentive to employers confronted with absorbing additional costs for accommodating persons with disabilities.



Similar Letters to House & SenateNational Association  
of ManufacturersALEXANDER B. TROWBRIDGE  
President

June 27, 1989

Honorable William L. Armstrong  
United States Senate  
528 HSOB  
Washington, DC 20510

Dear Bill:

The National Association of Manufacturers supports many of the concepts underlying S. 933, the Americans with Disabilities Act (ADA), but strongly opposes the legislation as introduced May 9. As a result, NAM and others are actively involved in discussions with representatives of the disability community to fashion legislation that all can embrace.

On the basis of policy adopted by our board of directors, NAM joins the Administration and sponsors of S. 933 in seeking to eliminate discrimination against those with disabilities. We recognize there are gaps in current law and, as a matter of equity, the protections afforded to other protected groups should be extended to the disabled. As a matter of economic reality — demographic trends and shrinking labor markets — barriers that limit their full participation in mainstream American life also deny the nation the valuable contributions their talents can offer.

The ADA, however, is not a simple extension of current civil rights law but a complex set of requirements lifted from various statutes and regulations that are sometimes undefined, frequently ambiguous and, in some instances, in conflict with other requirements, e.g., for drug-free workplaces. The multiple remedies provided, including direct access to jury trials and punitive and compensatory damages, are in excess of those afforded to other protected classes. This would appear to encourage increased litigation rather than conciliation. Employers and providers of services would face numerous uncertainties in attempts to accommodate the disabled and be liable not only for alleged acts of discrimination, but also for anticipated discrimination — whether or not intentional.

NAM and a coalition of associations and companies will continue to work with Congressional leadership, the Administration and representatives of the disability community. Our objective is meaningful, workable legislation that responds to the legitimate needs of the disabled without imposing unreasonable burdens on the economy. NAM is committed to that end. However, absent some accommodation to our concerns, particularly concerning remedies, we are equally committed to seeking defeat of S. 933. That is not a course of action we would relish, but as currently drafted, the bill is totally unacceptable.

Sincerely,



# Consortium for Citizens with Disabilities

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For further information contact:

Liz Savage (EFA), 459-3700  
Dennis Smurr (PVA), 872-1300  
Tom Sheridan (AAC), 293-2886

September 5, 1989

The Honorable Robert Dole  
U.S. Senate  
Washington, D.C. 20510

Dear Senator Dole:

Today is an historic day for America's largest minority - 43 million citizens with disabilities. This afternoon, the Senate will begin consideration of S. 933, the Americans With Disabilities Act of 1989, a comprehensive bill to eliminate discrimination against all persons with disabilities.

The Consortium for Citizens with Disabilities (CCD) and scores of other national organizations that are supporting this legislation have worked long and hard with the Senate and the Bush Administration to achieve a bill that provides people with disabilities comprehensive civil rights protections while still addressing concerns of the business community.

This is a bi-partisan bill which has the full support of the Bush Administration. However, we expect that some amendments will be offered that will nullify the protections the bill seeks to provide. The Bush Administration is committed to oppose all weakening amendments. We ask you to join the Administration in opposing all such amendments.

As President Bush has stated:

"I am going to do whatever it takes to make sure the disabled are included in the mainstreams. For too long the disabled have been left out of the mainstream, but they're not going to be left out anymore".

On behalf of America's 43 million citizens with disabilities, we urge you to support this long overdue legislation and oppose all weakening amendments to the Americans With Disabilities Act.

Thank you.

Sincerely,



ACLD, An Association for Children and Adults with  
Learning Disabilities  
AIDS Action Council  
AIDS National Interfaith Network  
Alexander Graham Bell Association for the Deaf  
American Academy of Child and Adolescent Psychiatry  
American Academy of Otolaryngology Head and Neck Surgery  
American Academy of Physical Medicine and Rehabilitation  
American Association for Counseling and Development  
American Association for Marriage and Family Therapy  
American Association of the Deaf-Blind  
American Association on Mental Retardation  
American Association of University Affiliated Programs  
American Baptist Churches U.S.A.  
American Civil Liberties Union  
American College Health Association  
American Council of the Blind  
American Congress of Rehabilitation Medicine  
American Deafness and Rehabilitation Association  
American Diabetes Association  
American Federation of Labor and Congress of Industrial  
Organizations (AFL-CIO)  
American Foundation for AIDS Research  
American Foundation for the Blind  
American Nurses Association  
American Occupational Therapy Association  
American Psychiatric Association  
American Psychological Association  
American Public Health Association  
American Social Health Association  
American Society for Deaf Children  
American Speech-Language-Hearing Association  
Americans for Democratic Action  
Association for Education and Rehabilitation of the Blind  
and Visually Impaired  
Association for the Education of Rehabilitation  
Facility Personnel  
Association for Retarded Citizens of the United States  
Autism Society of America  
Blinded Veterans Association  
Center for Population Options  
Child Welfare League of America  
Christian Church (Disciples of Christ)  
Chronic Fatigue Syndrome Information Institute, Inc.  
Church of the Brethren  
Church Women United  
Committee for Children  
Common Cause  
Conference of Educational Administrators Serving the Deaf  
Convention of American Instructors of the Deaf  
Council for Exceptional Children  
Deafness Research Foundation  
Disabled But Able to Vote  
Disability Focus  
Disability Rights Education and Defense Fund  
Epilepsy Foundation of America  
Episcopal Awareness Center on the Handicapped



The Lutheran Office for Governmental Affairs, Evangelical  
Lutheran Church in America  
Friends Committee on National Legislation  
Gallaudet University Alumni Association  
Gazette International Networking Institute  
Human Rights Campaign Fund  
International Association of Parents of the Deaf  
International Polio Network  
International Ventilator Users Network  
Juvenile Diabetes Foundation  
Lamda Legal Defense and Education Fund  
Leadership Conference on Civil Rights  
Learning How, Inc.  
Mental Health Law Project  
National AIDS Network  
National Alliance for the Mentally Ill  
National Association of Counties  
National Association for Music Therapy  
National Association of the Deaf  
National Association of Developmental Disabilities Councils  
National Association of People with AIDS  
National Association of Private Residential Resources  
National Association of Protection and Advocacy Systems  
National Association of Rehabilitation Facilities  
National Association of Rehabilitation Professionals in the  
Private Sector  
National Association of Social Workers  
National Association of State Alcohol and Drug Abuse Directors  
National Association of State Mental Retardation  
Program Directors  
National Center for Law and the Deaf  
National Coalition for Cancer Survivorship  
National Council on Alcoholism  
National Council of Churches  
National Council of Community Mental Health Centers  
National Council on Disability  
National Council on Independent Living  
National Council on La Raza  
National Council on Rehabilitation Education  
National Down Syndrome Congress  
National Easter Seal Society  
National Education Association  
National Family Planning and Reproductive Health Association  
National Fraternal Society of the Deaf  
National Gay and Lesbian Task Force  
National Handicapped Sports and Recreation Association  
National Head Injury Foundation  
National Hospice Organization  
National Industries for the Severely Handicapped  
National Mental Health Association  
National Mental Health Consumers' Association  
National Minority AIDS Council  
National Multiple Sclerosis Society  
National Network of Learning Disabled Adults  
National Network of Runaway and Youth Services



National Organization for Rare Disorders  
National Organization on Disability  
National Ostomy Association, Inc.  
National P.T.A.  
National Puerto Rican Coalition  
National Recreation and Park Association  
National Rehabilitation Association  
National Spinal Cord Injury Association  
Paralyzed Veterans of America  
People First International  
Presbyterian Church (U.S.A.)  
Rainbow Lobby  
Self Help for Hard of Hearing People, Inc.  
Spina Bifida Association of America  
Synagogue Council of America  
Telecommunications for the Deaf, Inc.  
The Association for Persons with Severe Handicaps  
The Episcopal Church  
The Gray Panthers  
Tourette Syndrome Association  
Union of American Hebrew Congregations  
Unitarian Universalist Association of Congregations  
United Cerebral Palsy Associations, Inc.  
United Church Board for Homeland Ministries  
United Church of Christ, Office for Church in Society  
United States Student Association  
Issue Development and Advocacy Unit, General Board of Church and Society, The United Methodist Church  
Women's Equity Action League  
Women's Legal Defense Fund  
World Institute on Disability



Office of the Republican Leader  
United States House of Representatives  
Washington, DC 20515

April 25, 1989

Honorable Tony Coelho  
Majority Whip  
H-148 The Capitol  
Washington, D.C. 20515

Dear Tony:

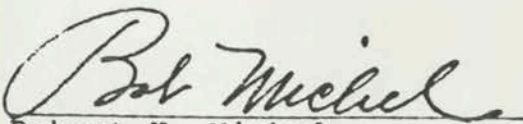
This letter concerns the Americans with Disabilities Act that you intend to introduce this session. Prohibitions against discrimination on the basis of disability should be expanded. We would like to work with you to develop a good bipartisan bill.

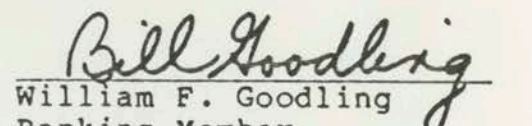
Drafting such legislation is a complex task. To develop strong and effective legislation on a bipartisan basis, continuous and open discussions among ourselves and our respective staff is critical so that the full range of issues may be reviewed and appropriate provisions developed.


A partnership on this legislation involves participation by all of us in subsequent discussions on provisions and involves sharing of relevant materials in a timely manner. By working together, we hope to develop language that we can agree upon, support, and introduce together. A bipartisan effort on this legislation is appropriate, definitely warranted, and most importantly, expected by individuals with disabilities and others who will be affected by it.

We are looking forward to hearing from you and beginning our work to move the introduction of a bipartisan bill.

Sincerely,

  
Robert H. Michel  
Republican Leader

  
William F. Goodling  
Ranking Member  
Committee on Education and  
Labor

  
Steve Bartlett  
Ranking Republican  
Subcommittee on Select  
Education



One Minute  
May 9, 1989

Mr. Speaker, the President and the Republican Party platform make very clear our commitment to empowering persons with disabilities so that they can reach their maximum potential. As Republicans, we stand ready to address the needs of persons with disabilities.

Today the Majority introduced a bill which attempts to expand protections against discrimination and define guidelines for enforcing new standards. I have indicated to the Majority our desire to work together to develop bipartisan legislation. The Ranking Republican on the Committee on Education and Labor, as well as the Ranking subcommittee Republican have joined me in this effort.

Americans with disabilities triumph daily over hurdles unwittingly erected by ignorance or indifference. Willful discrimination cannot be tolerated.

We look forward to working with the Majority to craft legislation to end discrimination against those with disabilities. By working together, we can open the doors of opportunity for the millions of Americans who are disabled.

###



# Consortium for Citizens with Disabilities

For further information contact:

Paul Marchand, ARC, 202/785-3388  
Pat Wright, DREDF, 202/328-5185  
Curt Decker, NAPAS, 202/408-9514

January 4, 1991

Stewart B. Oneglia, Chief  
Coordination and Review Section  
Civil Rights Division  
U.S. Department of Justice  
Box 66118  
Washington, D.C. 20035-6118

Re: ADA Proposed Federal Government Technical Assistance Plan

Dear Ms. Oneglia:

The Consortium for Citizens with Disabilities (CCD) and other national organizations that advocate for the rights of our nation's citizens with disabilities and their families, welcomes the opportunity to comment on the technical assistance plan proposed by the Department of Justice. CCD, a coalition of national consumer, provider and professional organizations, played a leading role in the enactment of the Americans with Disabilities Act.

We believe that effective implementation of the ADA will depend on the amount and quality of technical assistance that is provided to both covered entities, and individuals with rights under the law, and their advocates. The proposed plan contains many individual agency projects that are worthwhile and very useful. However, in evaluating the entire plan, we have the following concerns.

The proposed plan lacks adequate emphasis on the importance of coordination of technical assistance activities. In our view, coordination of all technical assistance activities is critical to effective implementation of the ADA. Unlike other civil rights laws, multiple agencies have jurisdiction over technical assistance provisions of the ADA. Covered entities and individuals with rights under the law will receive technical assistance from many agencies. There is, however, a great potential for inconsistency and duplication. The disability community and Congress intended that the DOJ have the responsibility for coordinating the federal government's technical assistance efforts so that such duplication and inconsistency could be avoided. We urge the DOJ, in its final plan, to elaborate on its coordination responsibility.

In addition the proposed plan does not adequately reflect involvement of persons with disabilities and their advocates in the development of either technical assistance strategies or dissemination of information and materials about the ADA's requirements. Congress, in enacting the ADA, recognized the fact that persons with disabilities and their advocates are often the



best experts on how to provide reasonable accommodations in the workplace and access to public accommodations in the most effective and inexpensive manner. Persons with disabilities and their advocates must be involved at every stage of the process. Technical assistance efforts will not be effective if persons with disabilities are consulted only after materials or model compliance strategies are developed. In order to take advantage of this source of expertise, we recommend that the final Technical Assistance Plan provide for training of people with disabilities and their advocates in the substance of the statute and regulations so that those individuals can become local community resources to the business community.

It is also critical that all training and other technical assistance materials be in a form that can be used by all persons with disabilities, including those with low reading skills and individuals with sensory impairments. Technical training about the ADA coupled with the inherent experience of individuals who live with disabilities will provide an invaluable, readily available and willing pool of experts who can play a critical role in making the promise of the ADA a reality.

Finally, we are very concerned about the availability of funding for the vast array of projects proposed in this plan. We are aware of the limited resources available to the DOJ and other agencies for FY 1991 activities. We strongly recommend that the DOJ, in its coordination role, works to insure that available funds are used most effectively, to avoid inconsistencies and duplication of efforts among agencies. We also strongly urge the DOJ and all other federal agencies with technical assistance responsibilities to request substantial increases in their FY 1992 budgets to implement this plan. CCD and the entire disability community pledges to aggressively advocate for such increases in the appropriations process. However, the success of our efforts to secure adequate appropriations will depend on the DOJ's leadership in making a commitment to securing these funds.

We look forward to working with you in the months ahead to insure that the ADA's technical assistance program achieves the goals of this landmark law.

Sincerely,

Academy of Physical Medicine and Rehabilitation  
AIDS Action Council  
AIDS National Interfaith Network  
Alexander Graham Bell Association for the Deaf  
American Association for Counseling and Development  
American Congress of Rehabilitation Medicine  
American Diabetes Association  
American Foundation for the Blind  
American Psychological Association  
American Speech-Language-Hearing Association  
Association for Education and Rehabilitation of the Blind  
and Visually Impaired  
Association for Retarded Citizens of the United States



Disability Rights Education and Defense Fund  
Epilepsy Foundation of America  
Goodwill Industries of America, Inc.  
Learning Disabilities Association of America  
Mental Health Law Project  
National Alliance for the Mentally Ill  
National Association of the Deaf  
National Association of Developmental Disabilities Councils  
National Association of Private Residential Resources  
National Association of Protection and Advocacy Systems  
National Association of Rehabilitation Facilities  
National Center for Law and the Deaf  
National Coalition for Cancer Survivorship  
National Council of Community Mental Health Centers  
National Council on Independent Living  
National Easter Seal Society  
National Head Injury Foundation  
National Industries for the Severely Handicapped  
National Mental Health Association  
National Multiple Sclerosis Society  
National Parent Network on Disabilities  
National Spinal Cord Injury Association  
Paralyzed Veterans of America  
Spina Bifida Association of America  
The Association for Persons with Severe Handicaps  
United Cerebral Palsy Associations, Inc.  
World Institute on Disability



PROJECT	MATERIALS DEVELOPMENT OBJECTIVES	PRIMARY TARGET AUDIENCES	FUNDING
JOB ACCOMMODATION	<p>TRAINING PROGRAMS AND MATERIALS ADDRESSING: WORK SCHEDULES, JOB ANALYSIS, JOB RESTRUCTURING, AND JOB REASSIGNMENT</p> <p>TRAINING PROGRAMS AND MATERIALS ADDRESSING RETOOLING, SPECIALIZED EQUIPMENT, AUXILIARY AIDS, ASSISTIVE DEVICES, AND ASSISTIVE SERVICES</p>	EMPLOYERS PERSONS WITH DISABILITIES VOC REHAB STAFF	
DISABILITY MANAGEMENT	<p>TRAINING PROGRAMS AND MATERIALS ADDRESSING: WORKMEN'S COMPENSATION, TAX INCENTIVES, LIABILITY INSURANCE, HEALTH INSURANCE, MEDICATION AT THE WORKPLACE, BENEFITS, DISCIPLINARY ACTION, NOTICES, LAY-OFFS AND TERMINATIONS</p> <p>TRAINING PROGRAMS AND MODEL DISABILITY MANAGEMENT SYSTEMS</p>	EMPLOYERS VOC REHAB STAFF PERSONS WITH DISABILITIES INSURANCE PROVIDERS	
COMMUNICATION	TRAINING PROGRAMS AND MATERIALS ADDRESSING TELECOMMUNICATION (INCLUDING TELEPHONE RELAY SYSTEMS), SENSORY AIDS, SAFETY/EMERGENCY COMMUNICATION SYSTEMS, SIGNAGE, ALTERNATIVE METHODS OF COMMUNICATION, AND ASSISTIVE TECHNOLOGY	EMPLOYERS SERVICE PROVIDERS PERSONS WITH DISABILITIES STATE/LOCAL GOV'T	
SELF-EMPOWERMENT	TRAINING PROGRAMS AND MATERIALS ADDRESSING: ADA COVERAGE FOR FAMILIES AND INDIVIDUALS, SELF-ADVOCACY AND SELF-REPRESENTATION	VOC REHAB STAFF SERVICE PROVIDERS PERSONS W/ DISABILITIES	



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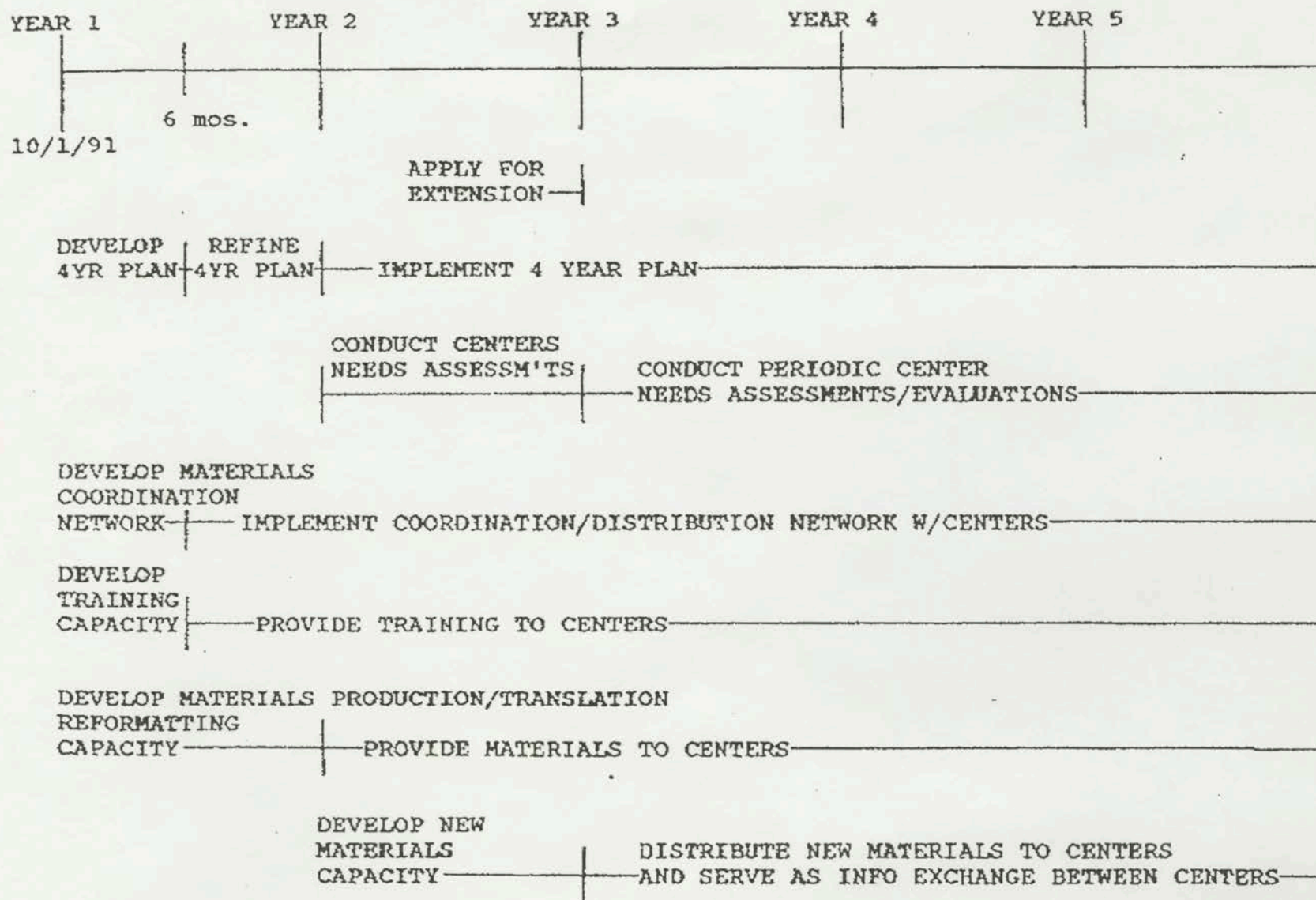
MATERIALS DEVELOPMENT PROJECTS

PROJECT	MATERIALS DEVELOPMENT OBJECTIVES	PRIMARY TARGET AUDIENCES	FUNDING
DISABILITY AWARENESS	TRAINING PROGRAMS AND MATERIALS ADDRESSING: DISABLING CONDITIONS AND ABILITIES OF PERSONS W/DISABILITIES, STEREOTYPES, MYTHS, NEGATIVE ATTITUDES, EMPLOYEE RELATIONS, AND CUSTOMER RELATIONS	EMPLOYERS SERVICE PROVIDERS STATE/LOCAL GOV'T	
REQUIREMENTS OF THE ACT	SURVEY EXISTING INFO ON THE ADA  REVISE/REFORMAT EXISTING INFO  TRAINING PROGRAMS AND MATERIALS ADDRESSING NEW INFORMATION AND REFORMATTED EXISTING INFORMATION	EMPLOYERS SERVICE PROVIDERS STATE/LOCAL GOV'T VOC REHAB STAFF PERSONS WITH DISABILITIES	
ACCESSIBILITY/ PUBLIC ACCOMMODATION	TRAINING PROGRAMS AND MATERIALS ADDRESSING ACCESSIBILITY INCLUDING: SELF-ADMINISTERED SURVEYS/CHECKLISTS, DESIGN ALTERNATIVES, AND LOW-COST OPTIONS	EMPLOYERS SERVICE PROVIDERS PERSONS WITH DISABILITIES STATE/LOCAL GOV'T COMMERICAL ESTABLISHMENTS	
HIRING PROCESS	TRAINING PROGRAMS AND MATERIALS ADDRESSING: ADVERTISING, TESTING, DRUG TESTING, JOB RECRUITMENT, MEDICAL EXAMINATIONS, AND SELECTION  INTERVIEW GUIDES, MODEL JOB DESCRIPTIONS AND MODEL JOB QUALIFICATIONS	EMPLOYERS SERVICE PROVIDERS PERSONS W/ DISABILITIES VOC REHAB STAFF STATE/LOCAL GOV'T	



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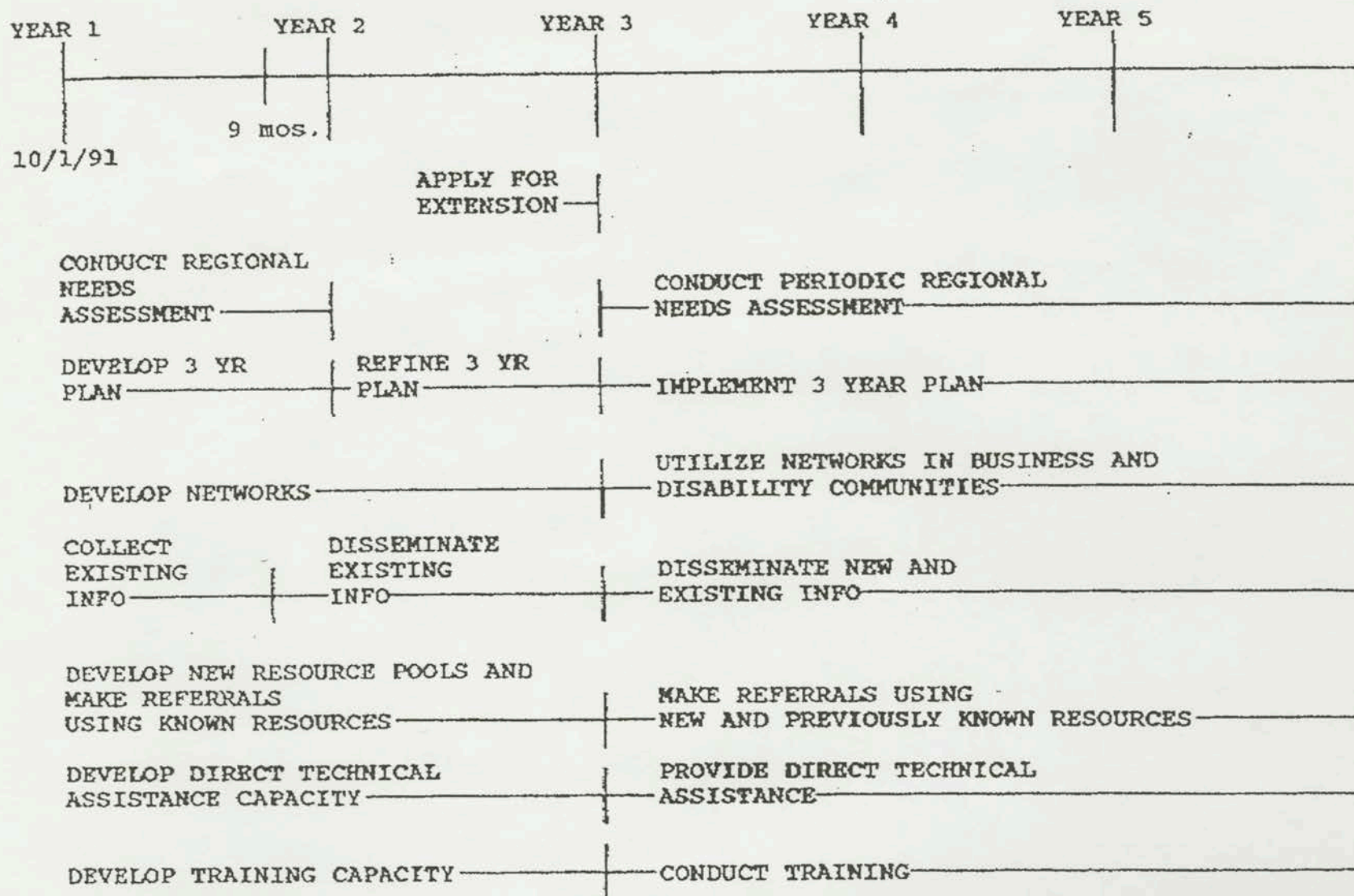
# TECHNICAL ASSISTANCE COORDINATOR





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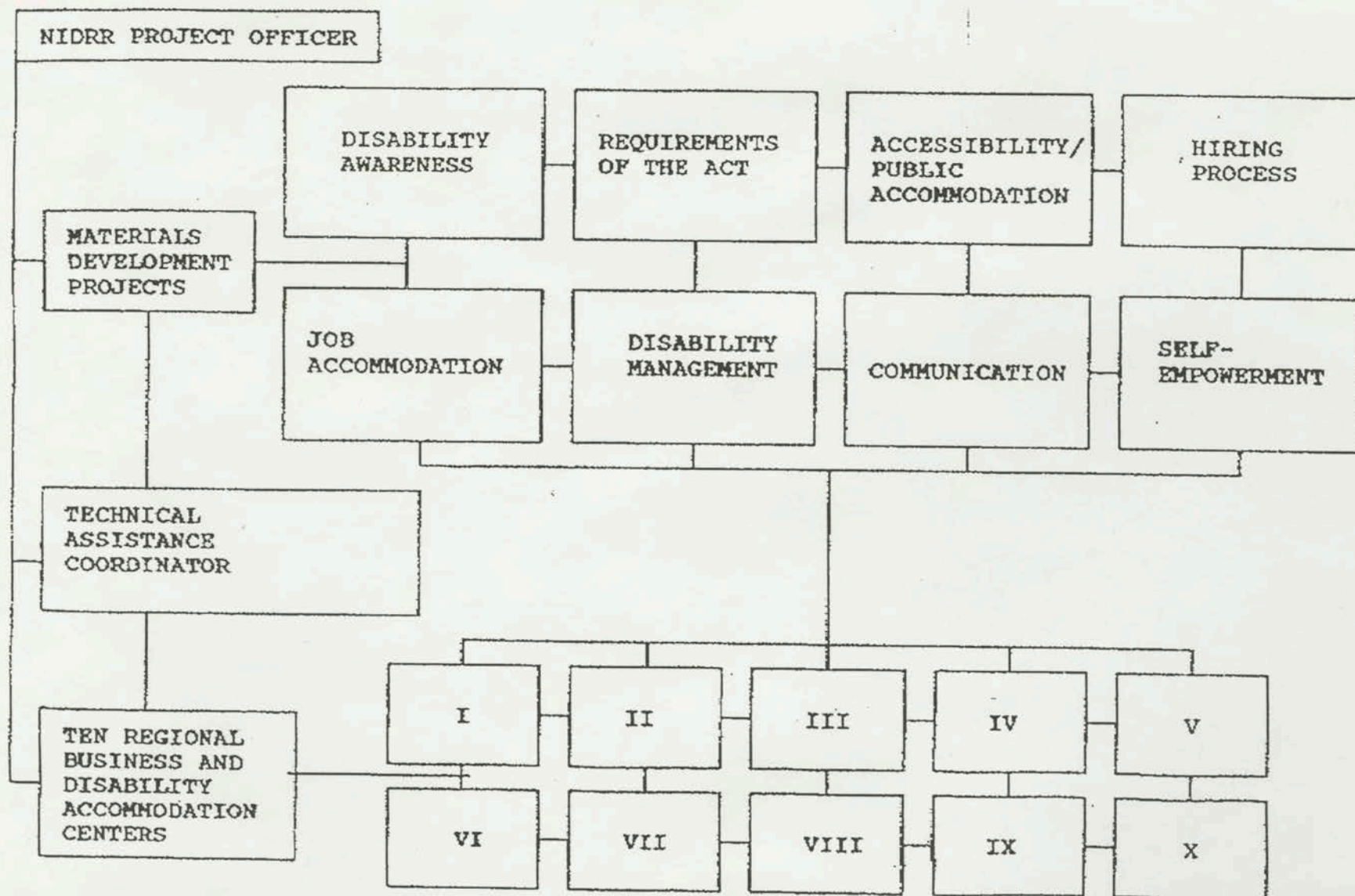
# TEN REGIONAL BUSINESS AND DISABILITY ACCOMODATION CENTERS





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# NIDRR ADA TECHNICAL ASSISTANCE INITIATIVE







THE SECRETARY OF HEALTH AND HUMAN SERVICES  
WASHINGTON, D.C. 20201



The Honorable Thomas S. Foley  
Speaker of the House  
of Representatives  
Washington D.C. 20515

MAY 1, 1988

Dear Mr. Speaker:

As the House of Representatives is preparing to take legislative action on the Americans with Disabilities Act (the Act), I wish to restate my position on the need for anti-discrimination protection for people with AIDS and HIV infection. There is strong evidence that blood-borne infections such as HIV infection are not spread by casual contact, and there is no medical reason for singling out individuals with AIDS or HIV infection for differential treatment under the Act.

While some have proposed that workers who handle food be treated differently under the Act, evidence indicates that bloodborne and sexually-transmitted infections such as HIV are not transmitted during the preparation or serving of food or beverages. Food service workers infected with HIV need not be restricted from work unless they have other infections or illnesses for which any food service worker should be restricted. Since the Act limits coverage for persons who pose a direct threat to others, relaxing the anti-discrimination protection for food service workers is not needed or justified in terms of the protection of the public health.

Further, I would add that any policy based on fears and misconceptions about HIV will only complicate and confuse disease control efforts without adding any protection to the public health. We need to defeat discrimination rather than to submit to it. The Administration is strongly committed to ensuring that all Americans with disabilities, including HIV infection, are protected from discrimination, and believes that the Americans with Disabilities Act should furnish that protection.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

Louis W. Sullivan, M.D.  
Secretary





## AMERICAN MEDICAL ASSOCIATION

535 NORTH DEARBORN STREET • CHICAGO, ILLINOIS 60610 • PHONE (312) 645-6000 • TWX 910-221-0300

JAMES S. TODD, M.D.  
Acting Executive Vice President

June 27, 1990

The Honorable Edward M. Kennedy  
Committee on Labor and Human Resources  
United States Senate  
315 Russell Senate Office Building  
Washington, D.C. 20510

RE: Conference Report on the  
Americans with Disabilities  
Act

Dear Mr. Chairman:

The American Medical Association supports the decision by House and Senate Conferees to delete a provision in the Americans with Disabilities Act (ADA) regarding food handlers. Inclusion of this provision is not necessary for the protection of the public and would be inconsistent with the principles underlying the ADA.

The ADA employment discrimination provision already allows employers to require that an individual with a currently contagious disease or infection not pose a direct threat to the health or safety of others. The AMA supports this general exception to the prohibition against employment discrimination. When appropriately applied, it will provide protection to the health of co-workers and the public.

We sincerely hope that you are successful at convincing your colleagues to accept the conference committee's agreement to delete the food handlers provision. Members of our society with infectious disease who do not pose a threat to public health deserve the same protection against discrimination as those with other forms of handicap.

Sincerely,

*James S. Todd M.D.*  
James S. Todd, M.D.

JST/ptb



FROM THE DESK OF C. EVERETT KOOP, M.D.

June 27, 1990

The Honorable Edward M. Kennedy  
Chairman, Labor Human Resources Committee  
428 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Senator Kennedy:

I am writing to urge you to promptly pass the conference report of the Americans with Disabilities Act to extend critical civil rights protections to 43 million disabled Americans. I would urge you to vote against any motion to recommit the bill on the Chapman amendment which resurrects groundless fears that AIDS can be spread through food.

As Surgeon General, and now as a private citizen, I have devoted countless hours to educate the American public about how AIDS is and is not transmitted. Congress has appropriated millions of dollars in this effort. The Chapman amendment undermines all of these critical public education initiatives.

The Americans with Disabilities Act would outlaw discrimination against the disabled in employment, government services, public accommodations, transportation and communications. An important feature of this bill is that "disabled Americans" includes those with AIDS and HIV infection. As Surgeon General, I recognized that discrimination against people with AIDS is the most serious obstacle to an effective public-health response to this deadly epidemic.

My call for laws against discrimination was echoed by the National Academy of Sciences, by President Reagan's AIDS Commission under Admiral Watkins and, most recently, by President Bush. The opportunity is now at hand to provide that legal protection.

If the Chapman amendment were adopted it would seriously undermine this protection. The amendment would allow people with contagious diseases to be moved out of food-handling positions. It does not specify diseases that are contagious through food, such as infectious hepatitis or typhoid. Everyone agrees that the public must be protected from those diseases, and the ADA provides that protection.

The Chapman amendment, however, sends a dangerously misleading message that people can get AIDS from food. The evidence, however, demonstrates conclusively that they cannot. AIDS is a blood-borne disease that can only be spread through blood-to-blood contact, through sexual activity and from mother to child at birth.



Senator Edward Kennedy  
Page 2

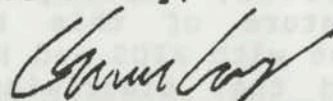
The proponents of this amendment concede that AIDS cannot be spread through food. But they argue that the public is ignorant about the facts and that restaurants might lose business if they were forced to keep someone with AIDS in a food-handling position. There is no end to this logic.

The Americans with Disabilities Act is meant to provide disabled people opportunities based on merit and not make decisions based on myths and stereotypes. The Chapman amendment, which caters to fear and ignorance, does the opposite. It has no place in a bill designed to enhance, rather than inhibit opportunities for the disabled.

I believe the Conference Committee used proper judgement in deleting the food-handlers amendment. The Senate should do the same.

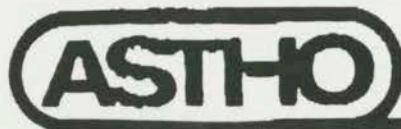
If you need further information, please feel free to contact me.

Sincerely,



C. Everett Koop, M.D.





ASSOCIATION OF STATE AND TERRITORIAL HEALTH OFFICIALS  
6728 Old McLean Village Drive, McLean, Virginia 22101  
Phone (703) 556-9222

---

June 11, 1990

Senator Edward Kennedy  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

As the chief health officers in our states we, the undersigned, are writing to urge you to delete the Chapman Amendment from H.R.2273, the Americans With Disabilities Act, during conference. We feel strongly that this amendment, which permits food service industry employers to transfer workers who are infected with the AIDS virus out of jobs that involve food handling, is discriminatory. Such action undermines the fundamental premise of the entire bill.

We concur with the unequivocal statements you have already heard many times from our colleagues in the Department of Health and Human Services and the Centers for Disease Control that the HIV infection cannot be transmitted through food. Inclusion of this amendment does a tragic disservice to the public by contributing to the misperception of AIDS as a disease that can be spread by casual contact. The Public Health Service and public health departments throughout the country have mounted extensive educational efforts to inform the American public about modes of transmission of HIV disease, and to combat inaccurate perceptions of risks posed by HIV positive persons. The appropriate response to public fear is ongoing education, not legitimizing further discrimination in statute. For these reasons, the Chapman amendment is not only unnecessary, but is counterproductive.

We strongly support the Americans with Disabilities Act as it clearly addresses legitimate public health concerns. As currently drafted, Section 103 does not preempt our existing state public health laws with regard to individuals who "pose a direct threat to the health or safety of others." We feel that only with the removal of the Chapman amendment can public health and safety be well served in a truly non-discriminatory fashion.

Again, we strongly urge you to protect the integrity of the Americans with Disabilities Act and the sound public health principles it sets forth by securing its final passage without the Chapman Amendment.

Sincerely,

Robert Bernstein, M.D., Texas State Department of Health  
Jan Carney, M.D., Vermont State Department of Health  
Suzanne Dandoy, M.D., Utah State Department of Health  
Ronald D. Eckoff, M.D., Iowa State Department of Health



ASSOCIATION OF STATE AND TERRITORIAL HEALTH OFFICIALS  
6758 Old Madison Village Drive, Madison, Virginia 22113  
Phone (703) 533-2323



- 2 -

Charles Konigsberg, M.D., M.P.H., Kansas State Department of Health  
N. Mark Richards, M.D., Pennsylvania State Department of Health  
Lloyd F. Novick, M.D., M.P.H., New York State Department of Health  
Bernard J. Turnock, M.D., Illinois State Department of Health  
Sister Mary Madonna Ashton, Minnesota State Department of Health  
Raj Wiener, Michigan State Department of Health  
Adele Wilzack, R.N., M.S., Maryland State Department of Health  
David Mulligan, Massachusetts State Department of Health  
M. Joycelyn Elders, M.D., Arkansas State Department of Health  
Theodore E. Williams, J.D., Arizona State Department of Health  
John R. Bagby, Ph.D., Missouri State Department of Health  
Frederick Adams, D.D.S., M.P.H., Connecticut State Department of Health  
Donald E. Pizzini, M.E.S., Montana State Department of Health  
William T. Wallace, M.D., New Hampshire State Department of Health  
Ronald Fletcher, M.D., Ohio State Department of Health  
H. Denman Scott, M.D., M.P.H., Rhode Island State Department of Health  
Thomas Vernon, M.D., Colorado State Department of Health  
Robert M. Wentz, M.D., North Dakota State Department of Health  
Morris Green, M.D., Indiana State Department of Health  
Ronald H. Levine, M.D., North Carolina State Department of Health  
James W. Alley, M.D., Georgia State Department of Health  
Charles Mahan, M.D., Florida State Department of Health  
Kristine Gebbie, R.N., Washington State Department of Health

Sincerely,

Robert Berman, M.D., Texas State Department of Health  
Jan Gentry, M.D., Vermont State Department of Health  
Suzanne Bandy, M.D., Utah State Department of Health  
Ronald D. Eckert, M.D., Iowa State Department of Health



# American Federation of Labor and Congress of Industrial Organizations



815 Sixteenth Street, N.W.  
Washington, D.C. 20006  
(202) 637-5000

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June 6, 1990

Honorable Edward M. Kennedy  
Chairman  
Committee on Labor and Human Resources  
SD-428 Dirksen Senate Office Building  
Washington, D. C. 20510-6300

Dear Senator Kennedy:

On behalf of the AFL-CIO, I would like to express opposition to the motion to instruct Senate conferees on the Americans with Disabilities Act (ADA) with respect to the Chapman food-handlers amendment adopted in the House of Representatives.

The AFL-CIO opposed the Chapman amendment when it was offered in the House of Representatives. We support the view of Dr. Louis Sullivan, Secretary of the Department of Health and Human Services that the existing ADA language provides sufficient protection from individuals, including food handlers, with contagious diseases. We believe the Chapman amendment has no legitimate purpose, was proposed in response to fears and misperceptions, and should not be included in the final conference report on the Americans with Disabilities Act.

Sincerely yours,

Robert M. McGlotten, Director  
DEPARTMENT OF LEGISLATION





Bringing a lifetime of experience and leadership to serve all generations.



June 28, 1990

United States Senate  
Washington, D.C. 20510

Dear Senator:

The American Association of Retired Persons (AARP) urges you to support and vote for the **Americans with Disabilities Act (ADA)**, as reported by the Conference Committee, and to oppose any efforts to delay immediate passage of this important bill.

Speedy passage of this crucial civil rights legislation is needed to improve the quality of life and expand the opportunities for the millions of persons who have some form of disabling condition. More than 50 percent of people over age 65 are included in this group.

The bill reported by the Conference Committee establishes workable and fair framework for insuring that all citizens with disabilities, regardless of age, fully participate in the mainstream of society.

AARP supports the Conference agreement and urges you to vote for the Conference bill.

Sincerely,

A handwritten signature in dark ink, which appears to read "Horace B. Deets".

Horace B. Deets



# Consortium for Citizens with Disabilities

---

June 25, 1990

Dear Senator,

At long last, the civil rights of 43 million Americans with disabilities are about to be realized. Following overwhelming votes of support from the U.S. Senate last September (78 to 8 in favor) and the House of Representatives in May (403 to 20 in favor), House and Senate conferees have resolved the differences between the two bills and you will soon be voting on the Conference Report.

It is again time to vote to end discrimination based on fear, myths and stereotypes. We urge you to oppose any and all procedural actions that might come before the Senate which are aimed at delaying, weakening or killing ADA. Finally, we also urge you to vote for final passage of the Americans with Disabilities Act to guarantee the rights of our nation's citizens with disabilities. Passing the Americans with Disabilities Act just before all Americans celebrate Independence Day would bring about a real declaration of independence.

Please support the Americans with Disabilities Act. Forty-three million Americans deserve and need your vote. Thank you again for supporting our cause.

Sincerely,



## **National Organizations Supporting the Americans with Disabilities Act of 1989**

**Affiliated Leadership League of and for the Blind of America**  
**AIE 3 Action Council**  
**AIE 3 National Interfaith Network**  
**Alexander Graham Bell Association for the Deaf**  
**American Academy of Child and Adolescent Psychiatry**  
**American Academy of Otolaryngology Head and Neck Surgery**  
**American Academy of Physical Medicine and Rehabilitation**  
**American Association for Counseling and Development**  
**American Association for Marriage and Family Therapy**  
**American Association of the Deaf-Blind**  
**American Association on Mental Retardation**  
**American Association of University Affiliated Programs**  
**American Baptist Churches U.S.A.**  
**American Cancer Society**  
**American Civil Liberties Union**  
**American College Health Association**  
**American Council of the Blind**  
**American Congress of Rehabilitation Medicine**  
**American Deafness and Rehabilitation Association**  
**American Diabetes Association**  
**American Federation of Labor and Congress of Industrial  
Organizations (AFL-CIO)**  
**American Federation of State, County and Municipal Employees**  
**American Foundation for AIDS Research**  
**American Foundation for the Blind**  
**American Hospital Association**  
**American Jewish Committee**  
**American Nurses Association**  
**American Occupational Therapy Association**  
**American Physical Therapy Association**  
**American Psychiatric Association**  
**American Psychological Association**  
**American Public Health Association**  
**American Social Health Association**  
**American Society for Deaf Children**  
**American Speech-Language-Hearing Association**  
**Americans for Democratic Action**  
**Arthritis Foundation**  
**Association of Junior Leagues International, Inc.**  
**Association for Education and Rehabilitation of the Blind  
and Visually Impaired**  
**Association for the Education of Rehabilitation  
Facility Personnel**  
**Association for Retarded Citizens of the United States**  
**Autism Society of America**  
**Blinded Veterans Association**  
**B'nai B'rith Women**  
**Center for Population Options**  
**Center for Women's Policy Studies**  
**Child Welfare League of America**  
**Christian Church (Disciples of Christ)**  
**Chronic Fatigue Syndrome Information Institute, Inc.**  
**Church of the Brethren**  
**Church Women United**  
**Committee for Children**  
**Common Cause**



Conference of Educational Administrators Serving the Deaf  
Convention of American Instructors of the Deaf  
Council of State Administrators of Vocational Rehabilitation  
Council for Exceptional Children  
Deafness Research Foundation  
Disabled But Able to Vote  
Disability Focus  
Disability Rights Education and Defense Fund  
Epilepsy Foundation of America  
Episcopal Awareness Center on the Handicapped  
The Lutheran Office for Governmental Affairs, Evangelical  
Lutheran Church in America  
Federally Employed Women  
Friends Committee on National Legislation  
Gallaudet University Alumni Association  
Gazette International Networking Institute  
General Federation of Women's Clubs  
Goodwill Industries of America  
Human Rights Campaign Fund  
Huntington's Disease Society of America  
International Association of Parents of the Deaf  
International Ladies' Garment Worker's Union of America  
International Polio Network  
International Union, United Automobile Workers of America  
International Ventilator Users Network  
Juvenile Diabetes Foundation  
Lambda Legal Defense and Education Fund  
Leadership Conference on Civil Rights  
Learning Disabilities Association of America  
Learning How, Inc.  
Mental Health Law Project  
National AIDS Network  
National Alliance for the Mentally Ill  
National Association of Counties  
National Association for Music Therapy  
National Association of the Deaf  
National Association of Commissions for Women  
National Association of Developmental Disabilities Councils  
National Association of People with AIDS  
National Association of Private Residential Resources  
National Association of Protection and Advocacy Systems  
National Association of Rehabilitation Facilities  
National Association of Rehabilitation Professionals in the  
Private Sector  
National Association of Social Workers  
National Association of State Alcohol and Drug Abuse Directors  
National Association of State Mental Retardation  
Program Directors  
National Center for Law and the Deaf  
National Coalition for Cancer Survivorship  
National Council on Alcoholism  
National Council of Churches  
National Council of Community Mental Health Centers  
National Council on Disability  
National Council on Independent Living  
National Council of Jewish Women  
National Council on La Raza  
National Council on Rehabilitation Education



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National Council on the Aging  
National Down Syndrome Congress  
National Easter Seal Society  
National Education Association  
National Family Planning and Reproductive Health Association  
National Fraternal Society of the Deaf  
National Gay and Lesbian Task Force  
National Handicapped Sports and Recreation Association  
National Head Injury Foundation  
National Hospice Organization  
National Industries for the Severely Handicapped  
National Mental Health Association  
National Mental Health Consumers' Association  
National Minority AIDS Council  
National Multiple Sclerosis Society  
National Network of Learning Disabled Adults  
National Network of Runaway and Youth Services  
National Organization for Rare Disorders  
National Organization on Disability  
National Organization for Women  
National Ostomy Association, Inc.  
National Puerto Rican Coalition  
National Recreation and Park Association  
National Rehabilitation Association  
National Spinal Cord Injury Association  
National Urban League  
National Women's Law Center  
National Women's Political Caucus  
NOW Legal Defense and Education Fund  
Older Women's League  
9 to 5 - National Association of Working Women  
Paralyzed Veterans of America  
People First International  
People for the American Way  
Presbyterian Church (U.S.A.)  
Rainbow Lobby  
Self Help for Hard of Hearing People, Inc.  
Spina Bifida Association of America  
Synagogue Council of America  
Telecommunications for the Deaf, Inc.  
The Association for Persons with Severe Handicaps  
The Episcopal Church  
The Gray Panthers  
The National Federation of Business and Professional Women's  
Clubs, Inc.  
Tourette Syndrome Association  
Union of American Hebrew Congregations  
Unitarian Universalist Association of Congregations  
United Cerebral Palsy Associations, Inc.  
United Church Board for Homeland Ministries  
United Church of Christ, Office for Church in Society  
United States Student Association  
Issue Development and Advocacy Unit, General Board of Church and  
Society, The United Methodist Church  
Women's Equity Action League  
Women's Legal Defense Fund  
World Institute on Disability



July 6, 1990

## **An Open Letter to the Congress of the United States:**

We, the spiritual leaders of several of America's largest religious bodies, are united in our concern that the Congress is stalling the passage of the conference report on the American's with Disabilities Act (ADA). We understand the delay is over the controversy surrounding the "AIDS/food handler" amendment, sponsored by Representative Jim Chapman, of Texas.

We urge you to vote against any "motion to re-commit" on the basis of the Chapman amendment and help thereby preserve the integrity of the ADA, the trust of the American people, and ensure the civil liberties of all disabled Americans, including those with AIDS.

The ADA marks a turning point in America by affirming the need to stop discrimination against disabled citizens. The religious community has been active in advocacy for the ADA because it recognized that Americans are willing to end injustices based on fear and prejudice. Americans are ready to support legislation which protects civil rights in employment, transportation, public accommodations and telecommunications. With the passage of the ADA we will say as a nation that it is not only unfair, unjust, and unethical to discriminate against someone solely on the basis of their particular disability, it is now, finally, illegal.

All of this progress, however, will be stalled, if not reversed, if the Congress votes to re-commit the conference committee report on the ADA and thereby include the Chapman amendment.

The core of this amendment plays to the unsubstantiated fears of the American public that AIDS can somehow be transmitted by food. This cuts at the very core of the spirit and intent of the ADA to eliminate such myths and fears. The proponents of this amendment have clearly acknowledged that their premise is false, and yet they want to turn such fiction into law. We find this totally unacceptable and contrary to all that we stand for as institutions based on the sovereignty of a loving God and the dignity we owe each other as humans beings.

As leaders ourselves, we recognize a special responsibility of trust has been placed upon us to guide our various religious associations by seeking the truth in all we say and do. The same is true of the members of Congress, whom the American people have endowed with a public trust to lead in good faith and truth. We look to Congress not just to lead, but to lead justly. We believe the acceptance of this amendment will betray this sacred trust.

**Dr. John O. Humbert**  
General Minister and President  
Christian Church (Disciples of Christ)

**The Most Reverend Edmond L. Browning**  
Presiding Bishop  
The Episcopal Church

**Ms. Mary Cooper**  
Acting Director, Washington Office  
National Council of Churches

**The Reverend James E. Andrews**  
Stated Clerk of the General Assembly  
Presbyterian Church (U.S.A.)

**Rabbi Alexander Schindler**  
President  
Union of American Hebrew Congregations

**Dr. William F. Schultz**  
President  
Unitarian Universalist Association

**Dr. Paul H. Sherry**  
President  
United Church of Christ

**Bishop Robert C. Morgan**  
President  
General Board of Church and Society  
The United Methodist Church





## Department of Social Development and World Peace

Office of Domestic Social Development

3211 4th Street N.E. Washington, DC 20017-1194 (202)541-3185 FAX (202)541-3322 TELEX 7400424

June 27, 1990

Dear Senator:

The U. S. Catholic Conference, the public policy arm of the nation's Roman Catholic bishops, urges you to support the Conference Committee Report on the Americans with Disabilities Act (ADA) and to oppose any attempt to reinsert the Chapman amendment. The Conference strongly opposes the Chapman amendment, which would restrict the employment of food handlers with certain diseases. As you know the bishops' conference strongly supported the ADA bill when it was considered by the Senate because of the urgent need to help disabled people, including those suffering from HIV infection, to participate fully in our society.

The Conference Committee's action on the Chapman amendment should be supported by the Senate for two reasons: first, it is unnecessary; and second, such an amendment would set a pernicious precedent that could undermine the principles embodied in the civil rights protections of this nation.

The Chapman amendment is unnecessary because the ADA bill already includes provisions to cover situations in which employees with communicable diseases could pose an actual health threat to others. Clearly, the ADA would not require restaurants to employ food handlers whose contagious illnesses could be transmitted through preparing or serving food.

The amendment is also dangerous because it would codify the idea that employers may discriminate against disabled people solely on the basis of the ignorance and prejudice of others. Proponents of this amendment have argued that, while there is no evidence that HIV infection can be transmitted through food handling, food establishments must be free to cater to the fears and misunderstanding of some of their customers. Federal law, especially precedent setting civil rights laws, should be based on higher standards and principles.

Sincerely,

*Sharon Daly*

Sharon Daly  
Director





Willie L. Baker, Jr.  
International Vice President  
Director, Public Affairs Department

VIA FAX

May 17, 1990

The Honorable Steny Hoyer  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Representative Hoyer:

The United Food and Commercial Workers International Union has 1.3 million members organized in over 700 local unions throughout the United States and Canada. The UFCW and its local unions have collective bargaining agreements with employers throughout the food industry, including retail sales, meat packing, poultry and fish processing, and other food processing. We also have members in the health, leather, fur, shoe manufacturing and other industries.

We strongly urge your opposition to the "food handler" amendment that will be offered by Representative Chapman of Texas to the Americans with Disabilities Act. This amendment would reinforce the very kind of irrational discrimination that the Americans with Disabilities Act is designed to eliminate, and it should be defeated.

The amendment would allow discrimination in "food-handling" jobs against employees with "communicable diseases." It does not specify that those diseases be communicable through food. An employer could force a person out of a job with food-handling duties, even when that person remains qualified for, and wishes to continue in, the food-handling job.

The Chapman amendment purports to provide "alternative employment" to employees and to protect them from "economic damage." Most employers in the industry, however, have a small number of jobs that do not involve food handling. Many employees who work in such positions will not be qualified for alternative work.

Even if no employee suffered economic harm as a result of this discrimination, the Chapman amendment would still send a false and dangerous message that would undermine the efforts of our public health officials to calm unnecessary public fears about AIDS transmission.



The Honorable Steny Hoyer

May 17, 1990

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As President Bush has said, "Every American must learn what AIDS is -- and what AIDS is not...you can't get it from food or drink.... While the ignorant may discriminate against AIDS, AIDS won't discriminate among the ignorant."

Please vote against discrimination and against AIDS hysteria by defeating the Chapman amendment.

Sincerely,

*Willie L. Baker, Jr.*

International Vice President  
Director, Public Affairs Department



## National Organizations Responding to AIDS

July 10, 1990

Dear Senator,

The undersigned members of the National Organizations Responding to AIDS (NORA) coalition strongly urge you to vote NO should a motion to recommit be offered on the Chapman "food handler" amendment on S.933, the Americans with Disabilities Act.

This amendment was designed to allow food establishments to force a person with AIDS out of a certain job in the establishment and into another, even when the person remains qualified to do the first job and wishes to remain in that position.

The provision reinforces precisely the type of irrational discrimination that the ADA is designed to eliminate. It responds to public misperception and fear by legitimizing that fear through an explicit accommodation in the law. We strongly believe that the narrow margin by which the amendment succeeded is evidence that the "Chapman amendment" does not enjoy broad support.

The inclusion of the food handlers provision is also seriously counter-productive to the efforts of the federal government, and the efforts of the undersigned groups, to educate the general public that AIDS is not spread through casual contact -- including food preparation. This provision sends precisely the opposite message to the American public. Attached are letters from Dr. Louis Sullivan, Secretary of Health and Human Services and Dr. William Roper, formerly with the Domestic Policy Council in the White House, and now the Director of the Centers for Disease Control (CDC), which sets forth clearly that people with AIDS do not pose a risk in food handling. The letter from Dr. Sullivan states the Bush administration's opposition to the amendment. The provision in question would undermine the millions of dollars that CDC is spending to get out this responsible message.

If offered, we urge you to vote against the motion to instruct on the "Chapman amendment." It represents bad civil rights policy and bad public health policy.

Sincerely,

AIDS Action Council  
AIDS National Interfaith Network  
American Academy of Pediatrics  
American Association for Counseling and Development  
American Association for Marriage and Family Therapy  
American Association of University Affiliated Programs

*a coalition convened by*

AIDS ACTION COUNCIL

2033 M Street, N.W. • Suite 801 • Washington, D.C. 20036  
(202) 293-2886 • FAX (202) 296-1292



American Civil Liberties Union  
American Federation of State County and Municipal Employees  
American Foundation for AIDS Research  
American Jewish Committee  
American Medical Student Association  
American Nurses' Association  
American Psychological Association  
American Public Health Association  
Association for Retarded Citizens of the United States  
Association of Schools of Public Health  
Association of State and Territorial Health Officials  
Center for Population Options  
Center for Women's Policy Studies  
Child Welfare League of America  
Chronic Fatigue Syndrome Information Institute Inc.  
Citizens Commission on AIDS  
City of New York  
Coalition for the Homeless  
Committee for Children  
Federation of Parents and Friends of Lesbians and Gays  
Human Rights Campaign Fund  
Legal Action Center  
National Assembly of State Arts Agencies  
National Association of State Alcohol and Drug Abuse Directors  
National Association of Community Health Centers Inc.  
National Association of Protection and Advocacy Systems  
National Association of Social Workers  
National Council of Jewish Women  
National Council on La Raza  
National Gay and Lesbian Task Force  
National Hemophilia Foundation  
National Mental Health Association  
National Minority AIDS Council  
National Network of Runaway and Youth Services  
Planned Parenthood Federation of America  
Sex Information and Education Council of the U.S.  
Synagogue Council of America  
Union of American Hebrew Congregations





CONGRESSIONAL BUDGET OFFICE  
U.S. CONGRESS  
WASHINGTON, D.C. 20515

Robert D. Reischauer  
Director

August 29, 1989

Honorable Edward M. Kennedy  
Chairman  
Committee on Labor and Human Resources  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

The Congressional Budget Office has reviewed S. 933, the Americans with Disabilities Act of 1989, as ordered reported by the Committee on Labor and Human Resources on August 2, 1989. CBO estimates enactment of S. 933 would result in no direct spending by the federal government. The bill would require several agencies to establish regulations and standards with regard to this bill. We estimate the costs of these activities to be \$20 million in fiscal year 1990 and \$19 million annually in 1991-1994, assuming appropriation of the necessary funds. The costs to state and local governments are likely to be greater, particularly for improvements in transit systems. While these costs cannot be precisely estimated, they are discussed under costs to state and local governments.

If enacted, S. 933 would prohibit discrimination against people with disabilities in areas such as employment practices, public accommodations and services, transportation services and telecommunication services. S. 933 would require that the Equal Employment Opportunities Commission, the Department of Transportation, the Architectural and Transportation Barriers Compliance Board, the Department of Justice, and the Federal Communications Commission develop and issue regulations and standards for implementation and enforcement of this Act.

#### IMPACT ON THE FEDERAL BUDGET

Equal Employment Opportunities Commission (EEOC) Title II--Public Services--would prohibit discrimination by employers against qualified individuals with disabilities. S. 933 would require the EEOC to issue regulations to carry out Title II and to provide for enforcement of the provisions. Although no specific authorization level is stated in the bill, CBO estimates this cost would be \$15 million annually. This estimate is based on the EEOC's past experience with enforcing civil rights standards and assumes that approximately 240 additional full-time employees would be needed for the Commission's 52 field offices and that approximately 70 additional staff would be needed for the EEOC headquarters.

Department of Transportation S. 933 would direct the Secretary of Transportation to issue regulations within one year including standards applicable to the facilities and vehicles covered by these provisions. CBO estimates that the cost to the federal government of developing these regulations would be about \$0.5 million in fiscal year 1990. In addition, the federal government might bear some part of the costs of making transit services accessible to the handicapped, which are discussed below. The capital and



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operating costs of most mass transit systems are heavily subsidized by the federal government through grants by the Urban Mass Transportation Administration. We cannot predict the extent to which these grants might be increased to compensate for the additional costs attributable to S. 933.

Architectural and Transportation Barriers Compliance Board S. 933 would require the board to develop, issue, and maintain minimum guidelines for the design of accessible buildings, facilities and vehicles, and to establish an advisory committee for the following study. The board would be required to undertake a study to determine (1) the needs of individuals with disabilities with regards to buses and (2) a cost-effective method for making buses accessible and usable by those with disabilities. Although no specific authorization level is stated in the bill, CBO estimates the cost of the guidelines, study and advisory committee would be \$0.3 million in fiscal year 1990, \$0.3 million in 1991, \$0.1 million in 1992, \$0.1 million in 1993 and \$0.2 million in 1994. The cost estimate for this section fluctuates because: (1) salaries and expense costs (\$104,000) are reflected in all years, (2) the study costs (\$150,000) are reflected in fiscal years 1990 and 1991, (3) the advisory committee costs (\$40,000) are reflected in 1991 and 1992, and (4) the research contracts costs (\$80,000) for updating the minimum guidelines are reflected in 1994. This estimate assumes that 2.5 additional full-time employees would be needed as well as additional research contracts for the study and guidelines.

Department of Justice S. 933 also would require the Attorney General to develop regulations to carry out sections 201 and 202 of Title II--Public Services--and to investigate alleged violations of Title III--Public Accommodations--which includes undertaking periodic reviews of compliance of covered entities under Title III. These regulations would ensure that a qualified individual with a disability would not be excluded from participation in, or denied benefits by a department, agency, special purpose district or other instrumentality of a state or local government. Based on discussions with staff in the Department of Justice and on comparisons with the costs of similar tasks in other agencies, we estimate the cost of these activities would be \$4 million annually.

Federal Communications Commission (FCC) S. 933 requires the FCC to prescribe and enforce regulations with regards to telecommunications relay services. These regulations include: (1) establishing functional regulations, guidelines and operations for telecommunications relay services, (2) establishing minimum standards that shall be met by common carriers, and (3) ensuring that users of telecommunications relay services pay rates no greater than rates paid for functionally equivalent voice communication services with respect to duration of call, the time of day, and the distance from point of origination to point of termination. While no authorization level is stated, CBO estimates the cost of developing and enforcing these regulations to be \$0.1 million in fiscal year 1990, negligible in fiscal year 1991, \$0.2 million in 1992, \$0.2 million in 1993, and \$0.1 million in 1994. The FCC anticipates a lull in fiscal year 1991 because the states will be designing telecommunications relay systems and there won't be much FCC involvement. During fiscal years 1992 and 1993, the actual certification and evaluation of state programs would occur.



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In addition to the federal costs of establishing and enforcing new regulations, S. 933 could also affect the federal budget indirectly through changes in employment and earnings. If employment patterns and earnings were to change, both federal spending and federal revenues could be affected. There is, however, insufficient data to estimate these secondary effects on the federal budget.

#### COSTS TO STATE AND LOCAL GOVERNMENTS

Public Buildings S. 933 would mandate that newly constructed state and local public buildings be made accessible to the handicapped. All states currently mandate accessibility in newly constructed state-owned public buildings and therefore would incur little or no costs if this bill were to be enacted. It is possible, however, in rare cases, for some local governments not to have such law. These municipalities would incur additional costs for making newly-constructed, locally-owned public buildings accessible if this bill were to become law. According to a study conducted by the Department of Housing and Urban Development in 1978, the cost of making a building accessible to the handicapped is less than one percent of total construction costs. This estimate assumes that the accessibility features are included in the original building design. Otherwise, the costs could be much higher.

Public Transit Due to the limited time available to prepare this estimate, CBO cannot provide a comprehensive analysis of the impact of S. 933 on mass transit costs of state and local governments. The scope of the bill's requirements in this area is very broad, many provisions are subject to interpretation, and the potential effects on transit systems are significant and complex. While we have attempted to discuss the major potential areas of cost, we cannot assign a total dollar figure to these costs.

S. 933 would require that all new buses and rail vehicles be accessible to handicapped individuals, including those who use wheelchairs, and that public transit operators offer paratransit services as a supplement to fixed route public transportation. In addition, the bill includes a number of requirements relating to the accessibility of mass transportation facilities. Specifically, all new facilities, alterations to existing facilities, intercity rail stations, and key stations in rapid rail, commuter rail, and light rail systems would have to be accessible to handicapped persons.

Bus and Paratransit Services--CBO estimates that it would cost state and local governments between \$20 million and \$30 million a year over the next several years to purchase additional lift-equipped buses as required by S. 933. Additional maintenance costs would increase each year as lift-equipped buses are acquired, and would reach \$15 million by 1994. The required paratransit systems would add to those costs.

Based on the size of the current fleet and on projections of the American Public Transit Association (APTA), CBO expects that public transit operators will purchase about 4,300 buses per year, on average, over the next five years. About



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37 percent of the existing fleet of buses is currently equipped with lifts to make them accessible to handicapped individuals and, based on APTA projections, we estimate that an average of 55 percent to 60 percent of future bus purchases will be lift-equipped in the absence of new legislation. Therefore, this bill would require additional annual purchases of about 1,900 lift-equipped buses. Assuming that the added cost per bus for a lift will be \$10,000 to \$15,000 at 1990 prices, operators would have to spend from \$20 million to \$30 million per year, on average, for bus acquisitions as a result of this bill.

Maintenance and operating costs of lifts have varied widely in different cities. Assuming that additional annual costs per bus average \$1,500, we estimate that it would cost about \$2 million in 1990, increasing to \$15 million in 1994, to maintain and operate the additional lift-equipped buses required by S. 933.

In addition, bus fleets may have to be expanded to make up for the loss in seating capacity and the increase in boarding time needed to accommodate handicapped persons. The cost of expanding bus fleets is uncertain since the extent to which fleets would need to be expanded depends on the degree to which handicapped persons would utilize the new lift-equipped buses. If such use increases significantly, added costs could be substantial.

These costs are sensitive to the number of bus purchases each year, which may vary considerably. In particular, existing Environmental Protection Agency emissions regulations may result in accelerated purchases over the next two years as operators attempt to add to their fleets before much more stringent standards for new buses go into effect. Such variations in purchasing patterns would affect the costs of this bill in particular years. In addition, these estimates reflect total costs for all transit operators, regardless of their size. Costs may fall disproportionately on smaller operators, who are currently more likely to choose options other than lift-equipped buses to achieve handicapped access.

The bill also requires transit operators to offer paratransit or other special transportation services providing a level of service comparable to their fixed route public transportation to the extent that such service would not impose an "undue financial burden". Because we cannot predict how this provision will be implemented, and because the demand for paratransit services is very uncertain, we cannot estimate the potential cost of the paratransit requirement, but it could be significant. The demand for paratransit services probably would be reduced by the greater availability of lift-equipped buses.

Transit Facilities--We expect that the cost of compliance with the provisions concerning key stations would be significant for a number of transit systems, and could total several hundred million dollars (at 1990 prices) over twenty years. The precise level of these costs would depend on future interpretation of the bill's requirements and on the specific options chosen by transit systems to achieve accessibility. The costs properly attributable to this bill would also depend on the degree to which transit operators will take steps to achieve accessibility in the absence of new legislation.



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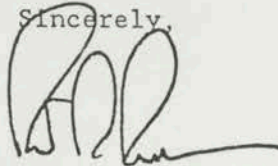
In 1979, CBO published a study (Urban Transportation for Handicapped Persons: Alternative Federal Approaches, November 1979) that outlined the possible costs of adapting rail systems for handicapped persons. In that study, CBO estimated that the capital costs of adapting key subway, commuter and light rail stations and vehicles for wheelchair users would be \$1.1 billion to \$1.7 billion, while the additional annual operating and maintenance costs would be \$14 million to \$21 million.

Based on a 1981 survey of transit operators, the Department of Transportation has estimated that adapting existing key stations and transit vehicles would require additional capital expenditures of \$2.5 billion over 30 years and would result in additional annual operating costs averaging \$57 million (in 1979 dollars) over that period. Many groups representing the handicapped asserted that the assumptions and methodology used by the transit operators in this survey tended to severely overstate these costs. The department estimated that the cumulative impact of using the assumptions put forth by these groups could lower the total 30 - year costs to below \$1 billion.

CBO believes that the figures in both these studies significantly overstate the cost of the requirements of S. 933, because, in the intervening years, several of the major rail systems have begun to take steps to adapt a number of their existing stations for handicapped access. In addition, based on a draft of language in the committee's report on this bill, we expect that the number of stations that would be defined as "key" under this bill would be much lower than that assumed in either of those studies. Furthermore, the Metropolitan Transit Authority in New York and the Southeastern Pennsylvania Transportation Authority in Philadelphia, two large rail systems, have entered into settlement agreements with handicapped groups that include plans for adaptation of key stations. The committee's draft report language indicates that these plans would satisfy the bill's requirement for accessibility of key stations. Other rail systems are also taking steps to make existing stations accessible. Therefore, we expect that the cost of the bill's requirements concerning key stations would probably not be greater than \$1 billion (in 1990 dollars) and might be considerably less.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Cory Leach (226-2820) and Marjorie Miller (226-2860).

Sincerely,



Robert D. Reischauer  
Director

cc: Honorable Orrin G. Hatch  
Ranking Minority Member