July 18, 1989

M E M O R A N D U M

TO: SENATOR DOLE

FROM: DENNIS SHEA

SUBJECT: MEETING OF REPUBLICAN SENATORS ON THE AMERICANS WITH DISABILITIES ACT

The White House negotiating team for the Americans with Disabilities Act ("ADA") has requested a meeting with you and those Republican Senators who may have an interest in the ADA, but who do not sit on the Labor Committee. The purpose of the meeting would be to brief the Senators about some of the substantive provisions of the ADA. Bill Roper, Director of the White House Office of Policy Development, and John Wodatch from the Justice Department's Civil Rights Division, would do the briefing.

The White House negotiating team has requested that the meeting take place in S-230 sometime later this week.

The following Republican Senators may have an interest in the ADA and could be invited to the meeting:

A. Title V of the ADA would require telephone companies to provide telecommunication relay services to individuals who use non-voice terminal devices.

1) Danforth (ranking member of the Commerce Committee)
2) Packwood (ranking member of Subcommittee on Communications of Commerce Committee)
3) McCain (member of Subcommittee on Communications)

B. Title III of the ADA prohibits discrimination on the basis of disability in all activities of state and local governments. The provisions of Title III place particular emphasis on the accessibility of rail and bus transportation.

1) Kasten (ranking member of Subcommittee on Surface Transporation of Commerce Committee)

C. The ADA is intended to parallel the provisions of the existing civil rights laws. The ADA's enforcement provisions, for example, incorporate by reference the enforcement provisions of Title VII and Section 1981.

1) Thurmond (ranking member of the Judiciary Committee)
2) Specter (ranking member of the Subcommittee on the Constitution of the Judiciary Committee)

D. The requirements of the ADA will certainly have an impact on small business.

1) Boschwitz (ranking member of the Small Business Committee)

Would you like me to arrange a meeting between you and the Senators listed above?

YES_____ NO_____

ROBERT H. MICHEL
18TH DISTRICT, ILLINOIS

H-232, THE CAPITOL
WASHINGTON, DC 20515
225-0600

# 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,

Bob Michel
Robert H. Michel
Republican Leader

Bill Goodling
William F. Goodling
Ranking Member
Committee on Education and Labor

Steve Bartlett
Ranking Republican
Subcommittee on Select Education

February 8, 1989

TO: Senator Dole

FROM: Maureen West

SUBJECT: Social Security Work Incentives Act

---

Senator Reigle would like you to join him in reintroducing the "Social Security Work Incentives Act." You cosponsored this legislation last year which is similar to P.L. 99-643, the "Employment Opportunities for Disabled Americans Act," which you authored. Rep. Bartlett would like to see a Reigle/Dole companion bill as he has already introduced identical legislation.

Summary:

The "Social Security Work Incentives Act" would remove an essential disincentive to work by allowing Social Security Disability Insurance (SSDI) recipients who return to work and earn above the Substantial Gainful Activity (SGA) level ($300 per month) to be considered "disabled but working." When an SSDI recipient returns to work, regardless of whether his earnings would place him in the "disabled but working" status, his monthly benefit would be reduced by $1 for every $2 earned, after exclusion of the first $85 and impairment related work expenses. The beneficiaries who return to work would be provided Medicare coverage for 48 months with a buy-in arrangement into Medicare on a sliding fee scale once the 48 month period had elapsed.

Cost:

CBO and SSA can't agree on a cost estimate. CBO estimates the cost at $310 million over 5 years from enactment, SSA at $3.2 billion. CBO is due to come out with a new estimate soon at Ways and Means request. The main reason for the difference between CBO and SSA is that they disagree on the number of working disabled that would be induced to file for DI under this bill. Neither estimate includes the increases in general revenues from income and employment taxes that would result.

Both SSA and Sen. Bentsen's staff believe the bill's cost will significantly add to the deficit as well as fundamentally alter the nature of the SSDI program, changing it from a total disability program into a partial retirement program.

The current work incentives in the SSDI Program have not been successful -- This bill does for SSDI what your "Employment Opportunities for Disabled Americans Act" did for SSI. Sen. Durenberger has introduced a modest bill that permits individuals who are eligible for SSDI by virtue of their disability to buy into Medicare. By again joining Senator Reigle on this bill and supporting the Durenberger bill, you will indicate your support for the general concept of strengthening work incentives.

This bill encompasses recommendations from the HHS Disability Advisory Council Report charged to study overarching concerns of cash and medical assistance in the DI and SSI programs as well as disincentives to work associated with these programs. Research indicates that alternatives to these bills are limited and costly. I recommend supporting this bill and working with committee staff on making adjustments that would reduce the bill's cost after the second CBO estimate is available and work on the Budget has been completed.

All the disability groups support this bill and will look for you to cosponsor again. Given the success of your SSI bill, now P.L. 99-643 and the similarities of this bill to Sec. 1619 (authorizing cash benefits and Medicaid to SSI recipients) you may want to consider making this a Reigle/Dole bill.

Senator Reigle has held off introducing the legislation in the hope that you will join him in introducing a Reigle/Dole bill. He would like to introduce the legislation on Thursday.

Do you want to join Senator Reigle in reintroducing the bill?

Yes___ No___

Do you want to cosponsor Sen. Durrenberger's bill?

Yes___ No ____

February 8, 1989

TO: Senator Dole

FR: Maureen West

SUBJECT: Increasing SGA

---

Rep. Bartlett would like you to submit a question to Dr. Sullivan at his confirmation hearing asking what his position on raising the monthly Substantial Gainful Activity (SGA) level is. In addition, he would like you to send a letter to President Bush encouraging him to increase the SGA $ amount to $490 per month.

SGA is the measure used to determine eligibility for SSI and SSDI. It is increased at the discretion of the Secretary of HHS. SGA has been at $300 per month and increasing the SGA level to $490 will reflect the average wage growth since SGA was last adjusted in 1980. The current SGA level of $300 is too low to encourage disabled individuals to return to work. For many disabled individuals, the risk that their own earned income cannot cover necessary medical expenses is too great. Thus, individuals wanting to work will not enter the workforce and jeopardize their entitlement to benefits and Medicare.

Cost:

The new Administration will likely increase the SGA $ amount as this has been in the works for some time and was recommended by the HHS Disability Advisory Council (DAC) Report. Dorcas Hardy is also recommending an increase of $490. There will be a cost to the Disability Insurance Trust Fund as the application and award rates will increase. No specific dollar amount is available at this time.

Last year you sent a letter to Sec. Bowen informing him of your support for raising the SGA level; however, you did not quote a dollar amount and the Administration was considering increasing SGA to $400.

In considering this recommendation please keep in mind that the SGA level is not a monthly assistance payment of public dollars flowing to individuals -- rather it reflects private earnings by disabled individuals who want to return to work without the abrupt loss in cash benefits and insurance.

Showing your support for the full increase (consistent with the DAC Report and Dorcas Hardy's recommendation) will clearly signal your strong intent to remove barriers to independent living for disabled persons and capture the momentum in providing these individuals greater incentives for full participation and integration in society.

Do you support increasing the SGA level to $490 per month?

Yes____ No____

Would you rather support increasing the SGA without giving a $ amount?

Yes____ No____

In showing your support, which do you prefer?

___ Submitting a question for the record to Dr. Sullivan?

___ Sending a letter to President Bush?

Adahse

May 24, 1990

TO: Senator Dole

FROM: Mo West

SUBJECT: Senate/House ADA Differences

The Americans with Disabilities Act passed the House by a vote of 403-20. Four of the eight scheduled amendments passed during House floor debate. The only substantial and controversial change made to the House bill was Rep. Chapman's "Food Handlers" amendment.

Rep. Chapman's AIDS amendment to the employment title of the ADA specifies that it is not a violation of the Act for any employer to refuse to assign any employee with an infectious or communicable disease of public health significance (AIDS) to a job involving food handling, provided that the employer shall make a reasonable accommodation which offers an alternative employment opportunity for which the employee would sustain no economic loss. -- (The amendment does not take into account whether the individual poses a "direct threat" to the health or safety of others, thereby, discriminating against people with AIDS who pose no direct threat to others in food handling).

The Senate version specified that any person with a contagious disease who poses a "direct threat" to the health and safety of others may be fired or reassigned.

The Senate version in consistent with current statutes regarding people with AIDS and other contagious diseases, as well as, recent Supreme Court decisions. The Chapman amendment is based on unfounded fears and misperceptions about AIDS which only perpetuates discrimination. As you will note from the attached letter from Secretary Sullivan opposing the Chapman amendment -- AIDS cannot be transmitted during the preparation or serving of food or beverages and is inconsistent with anti-discrimination protections for people with AIDS and the intent of the Americans with Disabilities Act.

With reagrd to the public transportation provisions of the Act the House passed version specified that key transportation stations must be made accessible within 30 years with two thirds of the key stations accessible in 20 years. The Senate version required all key stations be made accessible within 20 years.

A House-Senate compromise was made during House Public Works & Transportation Committee action on the private transportation provisions of the Act. The Senate version required that within 6 years all new private buses be made "readily accessible and useable " to people with disabilities. In addition, the Senate

bill also mandated a study by OTA to be completed within 3 years to look at the most cost effective means of compliance. The compromise will mandate access but not require lifts. Instead regulations will define what constitutes access after reviweing the recommendations of the OTA study. The study's purpose has been changed to look at alternative means of providing access.

With respect to enforcement, the House amendment clarifies that the Attorney General may not seek damages on behalf of an aggrieved party and a person can bring suit for injunctive relief only if he or she is being subject to discrimination or has reasonable grounds for believing that he or she is about to be subject to discrimination because the covered entity is about to construct a new building in an inaccessible manner.

Finally, the House amendment changes the time frame under which a small business may be sued for violations under the public accommodations title. The House amendment retains the provisions delaying the effective date for 18 months. However, the House amendment specifies that with the exception of violations of provisions pertaining to making alterations and new construction "readily accessible to" and usable by people with disabilities, civil actions may not be brought against businesses that employ 25 or fewer employees and have gross receipts of $1,000,000 or less during the first 6 months after the effective date. Additionally, no civil actions may be brought against businesses that employ 10 or fewer employees and have gross receipts of $500,000 or less during the first year after the effective date.

The House only made one technical change to the telecommunications title of the Act which stipulates that every common carrier must still ensure that relay services are provided unless a state has already enacted legislation providing relay services.

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, 1990

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 services 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

Louis W. Sullivan, M.D.
Secretary

MITSUBISHI ELECTRIC AMERICA
FOUNDATION

# *MEMORANDUM*

**TO:** Advisory Committee (see distribution below)

**FROM:** Rayna Aylward, Executive Director

**SUBJECT:** ADA article

**DATE:** June 10, 1992

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In case you missed it, we enclose a copy of a recent *New York Times* article on the ADA, this one actually downplaying the impact on employers. As you'll see from the cover memo, we've also distributed copies to the Human Resources department heads at the MEA companies.

We look forward to seeing you at the July 20 reception (invitations will be sent separately).

Distribution:
Tom Backer
Susan Flowers
Susan Brody Hasazi
Carol Kochhar
Debbie Mc Fadden
Ellin Nolan
Steve Saunders
Larry Scadden
Dick Sheppard
Mike Vader
Jane West
Maureen West

CC:
Mr. Sakurai
Sarah Morris

816 Connecticut Avenue, NW ⁂ Suite 100 ⁂ Washington, DC 20006 ⁂ Phone: (202) 857-0031 ⁂ TDD: (202) 857-0036

MITSUBISHI ELECTRIC AMERICA
FOUNDATION

# MEMORANDUM

**FOR:** Stan Adams, MELMAC; Chuck Baum, MEIC; Bruce Brenizer, MSAI; Kathy Igo, HRI; Mary Kobayashi, MEA; John Savage, MCEA; Dick Schulenberg, MELA; Tim Trujillo, MCEA

**FROM:** Rayna Aylward, Executive Director

**CC:** Mr. Takasugi, MEA; Mr. Sakurai, MEA; Mr. Olschwang, MEA; Mr. Cipriano, MEA; Jill Hixson, MEPPI; Burt Fairchild, ASTRONET; Dr. Nitta, MERL; Dorothy Anastole, MELA

**DATE:** June 10, 1992

**SUBJECT:** ADA Article -- An Encouraging Perspective

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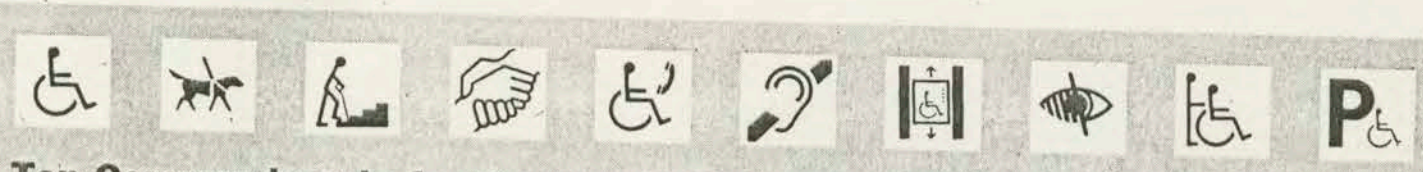
According to the attached article (from *New York Times*, 6/7/92), businesses actually have little to fear from next month's implementation of the employment provisions of the Americans with Disabilities Act.

The article includes some simple tips on communicating with people with disabilities and cautionary advice on bogus consultants who claim to be experts on ADA compliance.

I hope you find this information useful and reassuring.

816 Connecticut Avenue, NW ⁂ Suite 100 ⁂ Washington, DC 20006 ⁂ Phone: (202) 857-0031 ⁂ TDD: (202) 857-0036



## Ten Commandments for Communicating With People With Disabilities

1 Speak directly rather than through a companion or sign language interpreter who may be present.

2 Offer to shake hands when introduced. People with limited hand use or an artificial limb can usually shake hands and offering the left hand is an acceptable greeting.

3 Always identify yourself and others who may be with you when meeting someone with a visual impairment. When conversing in a group, remember to identify the person to whom you are speaking.

4 If you offer assistance, wait until the offer is accepted. Then listen or ask for instructions.

5 Treat adults as adults. Address people who have disabilities by their first names only when extending that same familiarity to all others. Never patronize people in wheelchairs by patting them on the head or shoulder.

6 Do not lean against or hang on someone's wheelchair. Bear in mind that disabled people treat their chairs as extensions of their bodies.

7 Listen attentively when talking with people who have difficulty speaking and wait for them to finish. If necessary, ask short questions that require short answers, a nod or shake of the head. Never pretend to understand if you are having difficulty doing so. Instead repeat what you have understood and allow the person to respond.

8 Place yourself at eye level when speaking with someone in a wheelchair or on crutches.

9 Tap a hearing-impaired person on the shoulder or wave your hand to get his or her attention. Look directly at the person and speak clearly, slowly and expressively to establish if the person can read your lips. If so, try to face the light source and keep hands, cigarettes and food away from your mouth when speaking.

10 Relax. Don't be embarrassed if you happen to use common expressions such as "See you later," or "Did you hear about this?" that seem to relate to a person's disability.

*Source: National Center for Access Unlimited/Chicago*

The New York Times

**At Work**

# When Businesses Need Not Fret

## Complying with the Disabilities Act isn't as fearsome — or costly — as many thought.

By BARBARA PRESLEY NOBLE

FEW pieces of legislation have had as malignant an effect — with less reason, proponents would say — on the collective blood pressure of business owners as the Americans With Disabilities Act of 1990. But by the time the legislation's first phase, mandating accessibility to banks, hotels, restaurants and the like for the 43 million Americans with disabilities, went into effect in January, most businesses had accepted the inevitable, if grouchily, and some actually began to calculate the potential return from 43 million new consumers.

The next phase, which implements the law in workplaces of 25 or more employees, begins late next month, and once again compliance hypertension is rampant. It is abetted this time by a new cottage industry of self-taught consultants offering high-priced advice on how to fulfill A.D.A. obligations — advice typically available at little or no cost from government or private agencies. Thus much of the energy of disability rights groups is spent soothing nerves.

"Our first words are 'Don't panic,' " said D. J. Hendricks, assistant project manager at the Job Accommodation Network, a group that provides technical assistance to business and services to people with disabilities.

Experts say the A.D.A.'s basic guideline is that there are no immutable rules. Barrier removal, for example, should be "readily achievable" and "cheap and easy," according to the A.D.A. rules. But a company's accountant, who has the best idea of what the business can afford, and its lawyer, who is responsible for interpreting the law, will often be the arbiters of the compliance timetable. "Macy's could have done more last year than it can do now" because of its current financial problems, said Al Eisenberg, a lobbyist for the American Institute of Architects who was involved in developing the legislation.

The first step is to think about the work environment from the perspective of a person who is disabled. "If you were blind or in a wheelchair, what are the immediate problems?" said Barbara Bode, executive director of the Council of Better Business Bureaus' Foundation, which is part of a coalition of groups established to ease the act's progress to reality. She advises contacting a group that can provide an assessment and technical assistance — preferably a disability issues group like the Disability Rights Education and Defense Fund. "Go to the people who have spent their lives trying to accommodate the barriers," Ms. Bode said.

The efforts necessary to make a workplace accessible will vary by its nature and its employees. One place to assess is the area used for accepting applications and interviewing prospective employees: it should be wheelchair-accessible and someone should be available to read forms for people with visual impairments. "Employers must make allowances for people with disabilities to have the same opportunities to fill out an application," said Ms. Hendricks of the Job Accommodation Network.

Above all, A.D.A. proponents emphasize that the reality of the legislation is less complex than business owners imagine. "This isn't rocket science. There's a lot of common sense," said the A.I.A.'s Mr. Eisenberg. Or, as Ms. Bode said: "The law simply codifies courtesy."

•

Some sources for help with the A.D.A.:

A.D.A. Office
U.S. Dept. of Justice
P.O. Box 66118
Washington, D.C. 20035-6118
(202) 514-0301
(202) 514-0381 (TDD)

U.S. Equal Employment Opportunity Commission
1801 L St. N.W.
800-669-EEOC (voice)
800-800-3302 (TDD)

National Council of Better Business Bureaus
703-247-3655

Job Accommodation Network
800-ADA-WORK

Disability Rights Education and Defense Fund
800-466-4232

## The Phony Disability Experts

BARBARA BODE of the Council of Better Business Bureaus minces few words when she talks about consultants who sell bogus expertise in the A.D.A. to nervous small businesses: "They can be seduced by these entrepreneurial vultures."

Most of the information companies need to comply with the A.D.A. is available free or for little cost. The Justice Department and the Equal Employment Opportunity Commission publish technical assistance manuals, for example, and Ms. Bode's organization is preparing pamphlets for several industries that will be available soon.

Based on a collection of A.D.A.-consultant marketing materials that began to flow across her desk last summer, Ms. Bode offers several clues that should inspire skepticism in a potential client:

- Anyone who claims to be "A.D.A. certified." There is as yet no certification process.
- Basic terms misspelled or mangled. "One brochure misspelled 'accommodation' and kept referring to the Judicial Department," Ms. Bode said.
- Using the threat of litigation as a prod, or referring to a crisis. "Take a deep breath and call the Better Business Bureau," she said.

There are several reputable consultants, who tend to be oriented to larger businesses with expansive needs. Before engaging one, try calling former clients.

# NCIL

**National Council on Independent Living**
310 S. Peoria St., Suite 201
Chicago, Illinois 60607
312/226-1006 (Voice/TTY/TDD)

NOT JUST RESPONDING TO CHANGE,
BUT LEADING IT



TO: **NCIL MEMBERS**

FROM: BONNIE O'DAY, CHAIR
LEGISLATIVE AND ADVOCACY COMMITTEE per mls

DATE: MAY 30, 1989

RE: **LEGISLATIVE ALERT**

The Americans With Disabilities Act has been introduced! S.933 and H.R. 2273. The introduction of this landmark piece of civil rights legislation occurred on May 5, 1989. At this writing, there are 33 co-sponsors in the Senate and 114 sponsors in the House. Three successful hearings have been held in the Senate, but, we need your help immediately.

The final Senate hearing and "mark-up" is scheduled for June 19. On the House side, it is expected that the hearing process will be completed by the August recess. Momentum is building for a swift passage of this legislation. But in order to assure this passage, we need additional co-sponsors on both House and Senate sides.

Please consult the attached lists to determine if your Representative and Senators are on the bill. If so, please write to thank them. If not, please organize the following activities to encourage your Representative or Senators to become co-sponsors.

1. Get as many individuals as you can, including staff, board and participants to send letters documenting discrimination to your Congressional representatives. Documentation is especially needed in the area of transportation and public access, since these sections of the bill are undergoing major attack. The letters should be short and should include a request that the Representative or Senator become a co-sponsor of the ADA.

2. Organize phone calling campaigns to the office of your Congressional Representative. Again, callers should encourage the Representative to become a co-sponsor.

For more information, please contact **Eric Griffin**, Chairperson, NCIL Civil Rights Subcommittee **(508) 880-5325** or **Bonnie O'Day, (804) 461-8007.** It is imperative that letters and phone calls be received by your Congressional Representatives by June 19.

BLO:cjc

ATTACHMENT: CURRENT CO-SPONSORS OF THE ADA (5/22/89)

| SENATE | HOUSE | HOUSE (CONT'D) |
|---|---|---|
| MR. KENNEDY(MA) | ACKERMAN, GARY | LEWIS, JOHN |
| MR. DURENBERGER (MN) | AKAKA, DAN | MANTON, TOM |
| MR. SIMON (IL) | ATKINS, CHET | MARKEY, ED |
| MR. JEFFORDS (VT) | BEILENSON, TONY | MARTINEZ, MATTHEW |
| MR. CRANSTON (CA) | BENNETT, CHARLES | MATCHELY, RON |
| MR. MCCAIN (AZ) | BOEHLERT, SHERWOOD | MATSUI, BOB |
| MR. MITCHELL (ME) | BONIOR, DAVE | MAVROULES, NICK |
| MR. CHAFEE (RI) | BORSKI, BOB | McCLOSKEY, FRANK |
| MR. LEAHY (VT) | BOSCO, DOUG | McDERMOTT, JIM |
| MR. STEVENS (AK) | BOXER, BARBARA | McHUGH, MATT |
| MR. INOUYE (HI) | BRENNAN, JOE | McNULTY, MIKE |
| MR. COHEN (ME) | BROWN, GEORGE | MFUME, KWEISI |
| MR. GORE (TN) | BRYANT, JOHN | MILLER, GEORGE |
| MR. PACKWOOD (OR) | CAMPBELL, TOM | MILLER, JOHN |
| MR. RIDGLE (MI) | CARDIN, BEN | MINETA, NORM |
| MR. BOSCHWITZ (MN) | CLAY, BILL | MOAKLEY, JOE |
| MR. GRAHAM (FL) | COELHO, TONY | MORELLA, CONNIE |
| MR. PELL (RI) | COLLINS, CARDISS | MORRISON, BRUCE |
| MR. DODD (CT) | CONTE, SILVIO | OBERSTAR, JIM |
| MR. ADAMS (WA) | CONYERS, JOHN | OWENS, MAJOR |
| MS. MIKULSKI (MD) | CROCKETT, GEORGE | OWENS, WAYNE |
| MR. METZENBAUM (OH) | DELLUMS, RON | PALLONE, FRANK |
| MR. MATSUNAGA (HI) | deLUGO, RON | PELOSI, NANCY |
| MR. WIRTH (CO) | DICKS, NORM | RAHALL, NICK JOE |
| MR. BINGAMAN (NM) | DIXON, JULIAN | RANGEL, CHARLIE |
| MR. CONRAD (ND) | DONNELLY, BRIAN | RICHARDSON, BILL |
| MR. BURDICK (ND) | DOWNEY, TOM | ROBINSON, TOMMY |
| MR. LEVIN (MI) | DWYER, BERNARD | ROWLAND, JOHN |
| MR. LEIBERMAN (CT) | DYMALLY, MERV | ROYBAL, ED |
| MR. MOYNIHAN (NY) | EDWARDS, DON | SABO, MARTIN |
| MR. KERRY (MA) | ESPY, MIKE | SAIKI, PAT |
| MR. SAPBANES (MD) | FAZIO, VIC | SAWYER, TOM |
| MR. HEINZ (PA) | FEIGHAN, ED | SCHNEIDER, CLAUDINE |
| | FISH, HAMILTON | SCHROEDER, PAT |
| | FLORIO, JIM | SHAYS, CHRIS |
| | FOGLIETTA, THOMAS | SMITH, PETER |
| | FORD, HAROLD | SOLARZ, STEPHEN |
| | FRANK, BARNEY | STUDDS, GERRY |
| | FRENZEL, BILL | TOWNS, EDOLPHUS |
| | FROST, MARTIN | TRAXLER, BOB |
| | FUSTER, JAIME | UDALL, MO |
| | GARCIA, ROBERT | UNSOELD, JOELENE |
| | GEJDENSON, SAM | VENTO, BRUCE |
| | GEPHARDT, RICHARD | VISCLOSKEY, PETE |
| | GILMAN, BEN | WAXMAN, HENRY |
| | GORDON, BART | WEISS, TED |
| | GRAY, WILLIAM | WHEAT, ALAN |
| | GUARINI, FRANK | WILLIAMS, PAT |
| | HAWKINS, AUGUSTUS | WISE, BOB |
| | HAYES, CHARLES | WOLPE, HOWARD |
| | HOYER, STENY | YATES, SID |
| | HUTTO, EARL | YOUNG, DON |
| | JACOBS, ANDY | |
| | JONTZ, JIM | |
| | KASTENMEIER,BOB | |
| | KENNELLY, BARBARA | |
| | KILDEE, DALE | |
| | KLECZKA, GERRY | |
| | LANTOS, TOM | LEVIN, SANDER |
| | LEHMAN, BILL | LEVINE, MEL |

# Consortium for Citizens with Disabilities

TO: Disability Rights Advocates

FROM: Civil Rights Task Force

RE: URGENT ACTION NEEDED IMMEDIATELY IN HOUSE ON ADA!

DATE: September 28, 1989

Although the ADA was passed by an overwhelming vote in the Senate, it is in serious danger of being significantly weakened in the House. Grassroots activity is far more critical in the House than the Senate (for many reasons, including that House members run for re-election every 2 years). Right now we are losing this battle. The business community (including the National Federation of Independent Business, the Theatre Owners, the Hotel and Motel Association, Greyhound, the American Bus Association, and several other large national groups) are flooding all House offices with letters opposing or raising concerns about the ADA. THEIR LETTERS ARE OUTNUMBERING OURS BY AT LEAST 5 - 1. By next week, unless we move quickly, we will probably be outnumbered by 10 - 1.

Even our friends and cosponsors in the House are listening to the business communities from their states because they haven't heard enough from our side. In addition, some negative editorials have appeared in major newspapers, which the business community has distributed to all members of the House (see enclosed New York Times and Wall Street Journal editorials).

Both the public and private transportation sections of the ADA are in serious trouble. The public accommodations provisions may be severely limited by a small business exemption and some are even questioning the cost of providing telecommunications relay networks.

The only way to insure that we have the votes to beat amendments to weaken these provisions is to dramatically increase the volume of material to House offices from OUR side. Even though we do not have the enormous financial resources of the business community, we do have enormous numbers of voters. Members will listen if they hear from us.

THE TIME TO ACT IS NOW!!! THE ADA WILL PROBABLY BE ON THE HOUSE FLOOR WITHIN THE NEXT 3 WEEKS.

(see over)

Letters are the most effective grassroots communication to Members. We have enclosed lists of the 4 House committees with jurisdiction of the ADA as well as the Small Business Committee list (these members are very powerful and may try to offer weakening amendments). EVERY member of the House, but especially those on these committees, even if he/she is a co-sponsor, should receive letters from their State, and if possible from their district. It is critical to write every Representative from your state, especially since many districts don't have strong disability organizations. <u>All members are keeping a tally (pro and con) of the mail they receive</u>. Particular attention should be given to the following members:

Bob Michel (R) - House Minority Leader (Peoria, ILL)
Newt Gingrich (R) - House Minority Whip (GA - Atlanta area)
John LaFalce (D) - Chair, Small Business Comm. (Buffalo, Rochester, NY)
Joseph McDade (R) - Ranking Minority, Small Business Comm. (Scranton, PA)
Jack Brooks (D) - Chair, Judiciary Comm. (Galveston,Beaumont TX)
John Dingell (D) - Chair, Energy & Commerce Comm. (Dearborn, MI)
Norman Lent (R) - Ranking Minority, Energy & Commerce Comm. (Long Island, NY)
John Paul Hammerschmidt (R) - Ranking Minority, Public Works and Transportation Comm., (Fayetteville, Ft. Smith, AR)
Bud Shuster (R) - Ranking Minority, Surface Transportation Subcommittee (south/central PA (Altoona))

The following members in leadership positions should be thanked for their support - they will be critical when the bill comes to the floor:

Tom Foley (D) - Speaker of the House, (Spokane, WA)
Richard Gephardt (D) - House Majority Leader (St. Louis, MO)
Bill Gray (D) - Majority Whip (Philadelphia, PA)
Glenn Anderson (D) - Chair, Public Works and Transportation Comm. (Long Beach, CA)

We have also enclosed a list of other activities to generate grassroots support for the ADA. We urge you to involve other non-disability organizations in your efforts. Here are some groups that are supporting the bill:

AFL-CIO,
Common Cause
National Council of Churches
National Council of La Raza
General Federation of Women's Clubs
American Nurses Assoc.
National Education Assoc.
The Gray Panthers
Assoc. of Junior Leagues

This is only a partial list. If you can, work with them and other groups to maximize your efforts.

REMEMBER, THE TIME TO ACT IS NOW!!!

 Sep. 12, 1989 Wall Street Journal

# REVIEW & OUTLOOK

## The Lawyers' Employment Act

The easiest way to get a handle on the "sweeping" Americans With Disabilities Act that the Senate just passed is to consider this: Just days before the vote, in the middle of war-on-drugs week, the bill would have made it illegal for employers to discriminate against people who use crack and other drugs. That got removed. Also at the last minute, the Senate struck out language that would have encouraged people to file lawsuits on the grounds that they were *about to* be discriminated against.

The Americans With Disabilities Act, which breezed through the Senate Thursday, is loopy legislation in a good cause. It starts with the premise that 43 million people are handicapped, about one-sixth of the nation. The bill even declares that a person who is merely "regarded as having an impairment" should be considered disabled. That assertion prompted Senator Bill Armstrong to insist upon an amendment specifically stating that despite the vague wording, pedophiles, transsexuals, voyeurs and kleptomaniacs cannot be considered disabled and protected by the bill. There probably is a bevy of similar groups, beyond Senator Armstrong's imagination, who *will* be included under this definition, and who will use the act to file lawsuits.

Like so much recent federal lawmaking, the bill is a swamp of imprecise language; it will mostly benefit lawyers who will cash in on the litigation that will force judges to, in effect, write the real law.

Examples of vagueness abound. If the bill passes, as expected, owners of any new or altered buildings will be compelled to make "reasonable" accommodations for the disabled. The bill doesn't explain what "reasonable" entails.

The bill includes three separate definitions of discrimination, which seem to conflict. The most interesting declares that discrimination occurs when a business provides "a service, program, activity, benefit, job or other opportunity that is less effective than that provided to others." Let judges figure out what "effective" means. The bill says a company needn't incur "undue hardship" in meeting the standards.

Judging from the few places in which the bill is specific, the "undue hardship" provision could be pretty hard. For example, the bill does compel bus companies to install wheelchair lifts and toilets for the handicapped on inter-city buses. According to the industry, that will cost between $200 million and $666 million. Industries tend to exaggerate the costs of prospective laws, but even the lower figure is much higher than the entire industry's net annual profits.

In other places where the bill is specific, it takes additional measures to encourage litigation. Plaintiffs will be able to sue not only for the usual monetary damages, but also for punitive damages ranging from $50,000 to $100,000. It is very rare for a civil-rights act to allow punitive damages. In this case, the punitive damages will foster suits, discourage settlements and arm plaintiffs as they negotiate for settlements.

Crafted primarily by Democratic Senators Kennedy and Harkin, the bill is based on the presumption that most Americans are hostile to the disabled and need this sort of blunt coercion. According to this thinking, it is the innate hardheartedness of society that causes the hardships suffered by the disabled; society needs to be redesigned.

This philosophy dovetails nicely with the prevailing idea that Senator Kennedy brings to other civil-rights issues, namely that the U.S. is fundamentally discriminatory. Not surprisingly, Ralph Neas, the affirmative-action spokesman whose specialty is blocking the Bush administration's appointments, is a vocal supporter of the bill.

It is surprising that George Bush and the White House inner circle would ally themselves with this crabby philosophy. They enthusiastically support the bill, even in its earlier, more monstrous forms. Tom Harkin is one thing, but why would this White House so willingly dump such direct costs and a litigation nightmare on small and often struggling companies?

We're certain that most Americans are instinctively sympathetic to the disabled's problems, and are willing to make a good-faith effort to enable them to live full lives. They don't need to be sledgehammered into decency.

There is, finally, one positive thing that can be said about this legislation. As usual, the original bill would have exempted Congress from the coverage of any new law for the disabled. But late Thursday night Senator Charles Grassley rose to propose that the bill apply to Congress as well; his amendment carried. The odds are that the amendment will be struck down in the House or in conference. But this alone is a historic occasion, the first time Congress has seriously entertained the idea that it too should live under the vague legal monstrosities it creates and imposes on everyone else. Maybe someone should try to put Congress on the receiving end of the act's first lawsuit.

## Changing of the Prosecutors

Drexel Burnham Lambert today is scheduled to finally enter what amounts to its guilty plea. In lawyerly language, Drexel's attorneys will say the firm decided to plead guilty to six [illegible] and now says $650 million [illegible]

that Mr. Freeman didn't admit any securities violation, only mail fraud—whatever that means.

Judge Leval also learned that the prosecutors had no idea what actual

The New York Times

Founded in 1851

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WILLIAM L. POLLAK, *V.P., Circulation*

September 6, 1989

# Blank Check for the Disabled?

With surprisingly narrow public scrutiny, Congress is moving swiftly to extend broad civil rights protection to the nation's 40 million disabled citizens. The sentiment is laudable: to bring the disabled closer to the mainstream of American society. But the legislation is vague; not even its defenders are able to calculate its benfits and costs. Those costs could be monumental. The proposal thus requires patient, unemotional examination.

That won't be easy. The bill was unanimously approved by the Senate Labor and Human Resources Committee last month, and though it still awaits hearings in four separate House committees, it commands strong bipartisan support in both House and Senate and the endorsement of President Bush. As one skeptic put it, "No politician can vote against this bill and survive."

•

The bill would ban discrimination in employment in all businesses with more than 15 workers. That's caused no controversy. What has is a provision requiring nearly every retail establishment, large or small, old and new — barber shops, banks, restaurants, movie theaters — to be accessible to the disabled. The legislation does not spell out how. But in many cases it would mean building ramps, widening doorways, modifying restrooms. Elevators would be required in all new buildings of more than two stories.

The bill would also require bus companies to include lifts, specially designed restrooms and other facilities on all new buses built five to six years after enactment. The bill calls for a study — after the bill is passed, not before — to determine how much this would cost the companies.

The bus companies are angry. Most businessmen are simply fretful and confused. That's partly because the bill's language is so vague. It says that existing facilities must make only "readily achievable" changes that won't involve "burdensome expense." Yet what do these words mean in practice? Obviously, no bill can give precise instructions to thousands of individual businesses. But several states already have laws on the books that provide business more useful guidance than the Senate bill does.

Senator Tom Harkin, Iowa Democrat, argues that "costs do not provide a basis for exemption from the basic principles in a civil rights statute." Mr. Harkin has a hearing-impaired brother and a quadriplegic nephew. He's fought honorably for the bill, and has already made compromises.

He also points out that the Federal Government now spends nearly $60 billion a year on benefits for the disabled — a sum that could shrink if the disabled had easier access to jobs and could move from welfare rolls to tax rolls. The Census Bureau reported last month that less than 25 percent of all disabled men and only 13 percent of disabled women held full-time jobs. And the earnings of those who do work average only two-thirds that of all workers.

Predictions about the bill's projected benefits are obviously speculative. Worse, nobody has even tried to speculate about its costs. But it shouldn't be impossible to provide estimates. The Office of Management and Budget has done so before in tough instances, like the costs of air bags.

Congress and the Administration now have a similar responsibility to stand back, to weigh, to calculate. No one wishes to stint on helping the disabled. It requires little legislative skill, however, to write blank checks for worthy causes with other people's money.

LCCR

# Leadership Conference on Civil Rights

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



**MEMORANDUM**

TO: Members of the Press

FROM: Ralph G. Neas, Executive Director

DATE: August 31, 1989

## Update on the Americans with Disabilities Act

The Senate will most likely take up the Americans with Disabilities Act on September 6th or September 7th.

Enclosed are recent editorials and articles which address this vital and historic legislation.

If you have any questions or need additional materials, please call us at (202)667-1780. Also, for additional information, please call Bobby Silverstein, Senate Subcommittee on the Handicapped, at (202)224-6265.

## Reprint of 8-11-89 LCCR Press Mailing Cover Memo

Congress has taken a major step toward guaranteeing civil rights protection to America's 43 million citizens with disabilities. On August 2, 1989, the Senate Labor and Human Resources Committee, by a 16-0 vote, reported out the Americans with Disabilities Act (S. 933) to the full Senate. This legislation is the most comprehensive civil rights measure since the 1964 Civil Rights Act.

-over-

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.'"

The Americans with Disabilities Act prohibits discrimination against persons with disabilities in private sector employment, public accommodations, transportation, public services and telecommunications. An overview of the substitute bill is enclosed. The original bill was introduced in early May by Senators Tom Harkin (D-IA), David Durenberger (R-MN), Edward Kennedy (D-MA), and John McCain (R-AZ). The bill 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 223 cosponsors. They include Representatives Richard Gephardt (D-MO), Vin Weber (R-MN), David Bonior (D-MI), and Steve Gunderson (R-WI).

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.

Enclosures

NEW YORK TIMES
August 29, 1989

# Save Money: Help the Disabled

By James S. Brady

WASHINGTON

Astonishingly, it is legal under Federal law for a restaurant to refuse to serve a mentally retarded person, for a theater to deny admission to someone with cerebral palsy, for a dry cleaner to refuse service to someone who is deaf or blind. People with disabilities — the largest minority in the U.S. — were left out of the historic Civil Rights Act of 1964. Twenty-five years later, discrimination against disabled people is still pervasive.

Congress has a chance to correct this injustice. The Americans with Disabilities Act is now before the full Senate, and President Bush and more than 200 national organizations have endorsed the bill.

As a Republican and a fiscal conservative, I am proud that this bill was developed by 15 Republicans appointed to the National Council on Disability by President Reagan. Many years ago, a Republican President, Dwight D. Eisenhower, urged that people with disabilities become taxpayers and consumers instead of being dependent upon costly Federal benefits. The Disabilities Act grows out of that conservative philosophy.

*James S. Brady, White House press secretary under Ronald Reagan, is vice chairman of the National Organization on Disability.*

**A social program that conservatives can support.**

Today 66 percent of working-age adults with disabilities are unemployed and dependent on Federal subsidies. The Disabilities Act could save taxpayers billions of dollars by outlawing discrimination, putting disabled people on the job rolls and thereby reducing Government disability payments.

Experience has shown that no civil right has ever been secured without legislation. A law such as the Disabilities Act would insure that facilities and employers — public and private — maintain minimum standards of accessibility. The act would require installation of ramps, elevators, lifts and other aids in new private businesses and public buildings, and on newly purchased buses and trains. And it would prohibit discrimination in private employment, public accommodations, transportation and telecommunications.

By breaking down barriers in stores and offices, it would enable more disabled people to purchase goods and services — and thereby strengthen our national economy. By breaking down barriers in public transportation, the act would allow more people with disabilities to be employed and participate in community activities. The act would free hundreds of thousands of citizens who are virtually prisoners in their homes because of inaccessible transportation and public accommodations.

There are 37 million people in America who live with some form of disability. I never thought I would be one of them. Most people don't like to think about disability at all. But disability can happen to anyone. In fact, as our population ages and medical technology prolongs life, many more eventually will be disabled.

Since I took a bullet in the head eight years ago during the assassination attempt on Ronald Reagan, I have come to know the daily problems, frustrations and needs of those who live with disability. I have had to learn to talk again, to read again and to walk again. I have succeeded, and I know that everyone can learn to overcome the final obstacle to our equal inclusion in American life: prejudice toward people with disabilities.

Passage of the Americans with Disabilites Act will increase the acceptance, dignity and full participation of citizens with disabilities. We do not want pity or sympathy. All we want is the same civil rights and opportunities that all citizens have. We want fairness, acceptance and the chance to contribute fully to our nation — just like everyone else. ❑

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Atlanta Constitution - August 8, 1989

# Equal Opportunity for the Disabled

The Civil Rights Act of 1964 wrote an end to the most blatant types of discrimination against blacks, Hispanics and religious minorities. No longer could they be denied jobs, housing or public accommodations solely because of their race, national origin or religion; and those provisions were eventually extended to women and, to a lesser extent, people with disabilities.

But as has lately become obvious, Congress left other categories of discrimination virtually intact.

Long after blacks and Jews were cheerfully admitted to once-restricted jobs and restaurants, many of these remained off-limits to some 37 million disabled Americans. This was not merely because of attitudes that people with disabilities would be less decorative patrons or less productive employees, though such attitudes persist, but because of doorways too narrow to admit wheelchairs, elevators that lacked braille markings or sound systems that made no accommodations for the hearing-impaired.

People with disabilities were effectively barred from a wide array of places, ranging from doctors' offices to baseball parks and from churches to homeless shelters to hotels, in which they might have participated in normal everyday activities but for someone's failure to include them.

With the disabled, as Sen. Edward M. Kennedy (D-Mass.), co-sponsor of the Americans with Disabilities Act, has observed, it's not simply a matter of saying you can't close the door, but of making special accommodations for those who wish to enter.

Their lives could be transformed with the passage of the act, which sailed unanimously through a Senate committee last week with President Bush's endorsement.

Civil rights leaders are calling it the most comprehensive civil rights measure since 1964, even in its compromise version, which at Mr. Bush's insistence exempts churches and provides for enforcement through the Equal Employment Opportunity Commission rather than individual lawsuits.

It would ban discrimination against disabled people, including people with AIDS, by employers of 15 or more workers; and in public accommodations including restaurants, stores and health-care facilities.

It would also eliminate barriers not dreamed of by the framers of the Civil Rights Act. For example, it would ban discrimination against hearing-impaired people in telecommunications by requiring the installation of telephone-relay services, already in use in some states.

Although deaf people can now communicate with each other by means of teletype systems, the relay services would permit communication with someone who doesn't possess a special device: the caller would simply dial a number to plug into the relay service, to reach an operator capable of communicating with them both, achieving a degree of independence, and access to emergency help, that is now inconceivable.

The act would also require transit systems to make new buses accessible, in most cases, in five years.

It is an overdue measure, and an historic one. It should be moved through the House and Senate briskly.

Nashville Tennessean - 8/20/89

# Bill protects job rights of many disabled citizens

BILLS that sail quickly through Congress are sometimes worthless political pap. That is not the case with legislation now on the move that concerns disabled citizens.

The legislation, known as the Americans with Disabilities Act of 1989, was unanimously approved by the Senate Labor and Human Resources Committee before Congress went on recess. With its bi-partisan support, including 57 Senate sponsors and 223 House sponsors, the bill looks like a shoo-in. President Bush has already indicated his strong support for the measure.

Basically, the bill would extend to people with disabilities the same kind of protection against discrimination now given to women, minorities and the elderly. Federal law passed in 1973 now protects the disabled who are employed by some entity of the federal government, or by a company with a federal contract.

The bill would bar employment discrimination against the disabled in both the public and private sector. It would require public facilities such as restaurants, hotels and museums to be accessible to people with disabilities. New buses and subways would be required to be usable by people with disabilities, including people dependent on wheelchairs. Telephone companies would be required to operate relay services for the hearing impaired.

In addition to people with serious physical and mental impairments, the bill would apply to the people afflicted with AIDS and those carrying the HIV virus.

The employment segments of the law would apply to businesses with 25 or more employees for the first two years of enactment. After that, businesses with 15 or more employees would have to comply.

The bill's popularity on Capitol Hill has not spilled over into all areas of the private sector. The U.S. Chamber of Commerce has voiced some concern about the cost, as has the National Federation of Independent Business.

Some of those same concerns were expressed by businesses with federal contracts before the federal law was passed. But those businesses soon discovered that compliance with the law usually meant something as simple as adding a ramp or buying an amplifier for a telephone. One survey found that most of the accommodations cost between $50 to $100.

This law is designed to help the 37 million Americans who have some type of disability. But in helping them, it would help the nation as a whole by putting more people to work, and by reducing the amount of governmental assistance now being paid to disabled persons and their families. It is compassionate and common-sense legislation that deserves the support it now enjoys.

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Boston Globe - August 20, 1989

# A law to protect the disabled

Globe 8-20-

**THOMAS OLIPHANT**

WASHINGTON – Years after it should have, the United States is preparing to take a huge step toward giving a neglected class of discrimination victims – the disabled – the civil-rights protection of federal law.

With President Bush's agreement earlier this month, the Americans with Disabilities Act has unanimously cleared the Senate Labor Committee headed by Sen. Edward Kennedy and appears headed for quick passage in the House.

This welcome development comes at a time when economic opportunity for the 37-million Americans with some form of disability is retrogressing.

Just how vital this legislation is was evident last week in a Census Bureau report that showed disabled people had lost employment and income ground during the 1980s. The share of disabled men working full-time fell from 29.8 percent in 1981 to 23.4 percent last year, and the earnings of all disabled workers dropped to a level barely above 60 percent of what all workers make.

The fact that the disabled lost ground during the decade is powerful evidence that there is a tendency by employers to leave them stuck in entry-level positions. This is just one of many evils the new legislation would attack.

It would ban discrimination in employment by any employer or labor union, and includes an obligation to provide reasonable accommodations for the disabled on the job. For two years after enactment, there would be an exemption for businesses employing fewer than 25 people, a limit that would then drop to 15. It also requires that all new buses, trains and subway cars be made accessible to people in wheelchairs. Existing vehicles, as well as bus and rail stations, would be modified whenever other structural changes were made.

In public accommodations, disability may not be a reason for denial of the same access as anyone else to restaurants, hotels, stores, banks, theaters and health-care facilities; in practice, that will require the modification of existing building with ramps and handrails. As for new construction, designs must accommodate the disabled, and elevators would be required in any building with three or more stories.

Of all the breakthroughs in the legislation, perhaps the most surprising is that the concept of disability will extend to people with AIDS or those infected with the HIV virus. As with other ailments, there is only sanction for discrimination if a contagious disease poses "a direct threat to the health or safety of other individuals in the workplace."

What makes this breakthrough so important is that the legitimate fear of irrational discrimination by employers has been one of the major reasons people have been afraid to volunteer for HIV testing in greater numbers.

Despite the irrefutable case for such sweeping legislation, President Bush did not come easily or quickly to his position of support for it. He mentioned the bill several times during the presidential campaign, but once in office the administration began to stall as it came under the influence of business groups seeking to limit the legislation's scope.

In the end, the strength of the bipartisan coalition backing it was so strong that the president's men didn't dare risk having a veto overridden. However, they bargained hard, making a deal similar to the compromise that produced the landmark civil rights bill of 1964 – accepting the proposal's breadth in exchange for limiting the relief for victims of discrimination to back wages and court injunctions instead of punitive damages.

One moral of this story is that it pays handsomely for advocates of progressive initiatives to assemble bipartisan congressional coalitions behind their causes. Unlike President Reagan, who until his last year in office was never afraid to risk his approval rating on ideological stands, Bush has a reputation for bending and dealing. It's one reason his own approval rating is so high.

*Thomas Oliphant is a Globe columnist.*

Los Angeles Times - 7/28/89

# Freeing the Disabled From Bias

Legislation to protect the disabled from discrimination in the private sector and in public accommodation is moving toward final adoption in Congress, with the encouragement of President Bush. It is an appropriate and long-needed extension of the protections already provided by the 1973 Rehabilitation Act.

The protections of existing legislation are provided only in connection with federal institutions and programs and those that receive federal support. The new law, called the Americans with Disabilities Act, covers all other areas, in much the same way that the 1964 Civil Rights Act set a national standard against discrimination based on race.

The new law would cover the workplace, transportation, hotels and restaurants, opening new opportunities to an estimated 43 million Americans who now often encounter discriminatory barriers in their lives. The number of those to be protected is large, because the definition of disability specifically includes those with contagious diseases, a provision that would address the growing population infected with the human immunodeficiency virus (HIV) that causes AIDS. In this way, the new law would in effect implement one of the most important recommendations of the Presidential Commission on the Human Immunodeficiency Virus Epidemic, which called last year for federal protection against discrimination.

The legislation has run into stiff opposition from some business interests and from those who oppose anti-discrimination protections for persons with HIV infections. We disagree with those in the business community who feel that the required standards will make American businesses, and particularly small businesses, less competitive. There are protections written into the legislation to guard the businesses from "undue hardship." And we certainly disagree with those who oppose protections for those with HIV or other infectious diseases. It is fear of discrimination that has driven many people to conceal their infections, placing others at risk, or to resist having a test for HIV, placing both themselves and others at risk.

Some further amendments are expected as the legislation moves to final Senate action in August. It will be important, in that process, to see that the act's basic protections against discrimination are preserved. They are an extension of protections that go to the heart of the American concern for personal freedom and opportunity.

Christian Science Monitor - 8/18/89

# Rights for the Disabled

SOME discrimination is deliberate, the product of enmity or fear. Some is inadvertent, the product of ignorance or oversight. The discrimination that disabled people suffer is largely – though not entirely – of the latter variety. But unfair treatment of the disabled is not less painful or detrimental because it is unintentional.

The disabled haven't just been relegated to the back of the bus; many are unable to get on the bus at all. Nor do they readily have access to restaurants, stores, hotels, museums. Even when they can get into offices, they've had trouble getting jobs they're qualified to perform.

Congress, with the backing of President Bush, is looking to alleviate bias against the disabled with the most sweeping civil rights law in 25 years. The proposed Americans with Disabilities Act, expected to be enacted before year's end, would bar discrimination against qualified people (including those with AIDS) in hiring, firing, and working conditions, and would greatly facilitate the disabled's access to public, commercial, and transportation facilities. For the hearing impaired, telephone companies would be required to provide relay services linking voice and typed impulses.

The legislation is overdue; it deserves the expedited handling it's been getting on Capitol Hill.

Without meaning to be churlish, though, let's bear in mind that the bill's needed remedies will be expensive. Unlike earlier civil rights laws, which mandated only changes in attitudes, this bill mandates costly reconfigurations of buildings, buses, and trains. It also opens up wide new vistas of litigation for people with hundreds of conditions classified as disabilities. The costs of these rights will be passed along to the public.

These are costs American society properly should absorb. They do not militate against the legislation. But they require that rules of reason – fair, generous, but not excessive – should be applied by courts and regulatory agencies as the antidiscrimination remedies are put into pracuce.

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New York Daily News - August 14, 1989

# Brady 'challenges' America

## End bias against handicapped: Reagan aide

Former White House press secretary James Brady yesterday called on America "to meet a great challenge" — ending prejudice against the handicapped.

Brady, wounded during the 1981 attempt on Ronald Reagan's life, urged national, state and local leaders in religion, labor and management, education, the media "and disabled people themselves to speak out forcefully for the rights of the handicapped as citizens."

He urged Congress to pass the Americans With Disabilities Act to "further the goal of full partnership for the disabled."

Brady is vice chairman of the D.C.-based National Organization on Disability, which he joined in March.

"Since I took a bullet in the head eight years ago, I have come to know the daily problems of those who live with a disability," he said. "I've had to learn to talk again, to read again and to walk again. Most people don't like to think about the disabled. But I'm living testimony that a disability can happen to anyone. It's a fact of life — like being white, or black or Hispanic.

"We don't want pity or sympathy," he emphasized. "All we want is the same civil rights that other minority groups have."

James Brady

Baltimore Sun - August 14, 1989

# Editorials

## Extending civil rights

For a person confined to a wheelchair, a flight of steps up to an office building is not an impediment to getting a job interview; it is a denial of the chance even to compete. Physical handicaps are the most obvious examples, but people who are deaf, blind or even mentally retarded face similar invisible, albeit impenetrable, barriers to full participation in employment and recreational opportunities.

Congress planted the seeds for providing such access when it passed the Rehabilitation Act of 1973, which bars discrimination by federal agencies and by employers receiving federal funds. Though the law is widely considered a success, it clearly does not go far enough. Now comes The Americans with Disabilities Act of 1989, which would extend the protection against discrimination to private businesses as well. It also would require the installation of ramps, elevators and other access aids in new buildings, require hearing devices on office telephone equipment and lifts in all new buses and trains.

There is no estimate on the nationwide cost of the legislation, but since most of the provisions for easier access pertain to new construction, it is likely to be minimal. Regardless, it costs the government $57 billion a year to take care of people with disabilities. The billions saved by getting people off the government rolls and into productive jobs should more than balance the costs of implementing the law.

Today there are 37 million Americans with severe disabilities. Ensuring their access to employment, transportation and public facilities is as much a part of the modern civil rights struggle as guaranteeing equal opportunity for women or minorities. The Americans With Disabilities Act would just that.

SUNDAY, AUGUST 13, 1989

The Washington Post

AN INDEPENDENT NEWSPAPER

# A New Civil Rights Bill

MUCH OF recent civil rights history has been a process of broadening the tent, of extending to other groups the same protected status that the basic laws and court decisions gave initially to blacks. The main group saying that it, too, has been a victim of discrimination has been women. The disabled have been a strong runner-up.

A 1973 law extended some protections of the civil rights laws to the disabled; with certain caveats, it banned discrimination against disabled people in either federal employment or programs receiving federal funds. In 1988 there was a second such extension; again with caveats, the disabled were brought within the terms of the federal fair housing law. Now a move is afoot to complete the job. The Senate Labor and Human Resources Committee has approved, 16 to 0 with administration blessing, legislation to ban discrimination against the disabled in most private employment, state and local services and public accommodations.

It's a sound bill. We say that even though, as a general proposition and beyond the non-negotiable areas of race, creed, color and national origin, we are uneasy about legislation such as this, in which Congress grandly orders the society to rearrange itself and then walks away from a problem as if it were solved. At some point the word "discrimination" ceases to mean much more than a violation of the legislative preferences of the moment, and an awful lot of regulation and litigation is produced. That, in fact, is the whole point: to shift the allocation of certain social resources to the regulators and the courts.

But these objections are more procedural than substantive. Millions of Americans are disabled within the meaning of this law; the society and they both lose to the avoidable extent that they are shut out of the mainstream. While there would be costs of compliance, as with any regulation, there are also costs of not complying now—benefits that must be paid, income unearned, talents less than fully used, lives less than fully led.

The bill also is modulated. Most provisions that would affect the economy at large are modeled on the 1973 law that has taken hold in its narrower sector without great disruption. Businesses with fewer than 15 employees—the vast majority of firms though not of jobs—would be exempt. An employer would not be required to hire an unqualified employee; he would merely have to make sure the prospective employee was in fact unqualified and could not be easily accommodated. It would still be possible to say no.

A business would have to take only "reasonable" steps to accommodate the disabled, whether in its work force or the public. New buildings and buses would have to be made accessible; old buildings would not, unless otherwise undergoing major repairs. An alcoholic who drank on the job or whose performance was affected by that asserted disability could be fired; so could a person with a contagious disease that threatened the health or safety of others in the workplace. That is the current rule as to AIDS.

Yes, there will likely be a fair amount of litigation if the bill is passed, as both advocates and employers test its outer bounds in the courts. And, yes, some employers may hire some people who they otherwise would not just to protect themselves from lawsuits. But too often now, the presumption is *against* the disabled. This salutary bill would move the needle from against to for.

- over -

# Study Finds Workers With Disabilities Losing Ground

leadership

By Robert P. Hey
Staff writer of The Christian Science Monitor

WASHINGTON

THE employment difficulties of Americans with disabilities deepened during the 1980s, according to new figures from the Census Bureau.

This occurred despite the increased efforts and partial successes of Americans with disabilities to assert their rights to equal treatment in transportation, employment, voting, and within society in general.

According to the new Census Bureau statistics, workers with disabilities saw their earnings fall further below the income of able-bodied workers as the decade progressed. In 1980, workers with disabilities earned 77 percent as much as the able-bodied; but by 1987 they earned only 64 percent.

And a smaller percentage of men with disabilities were working as the decade neared an end than in 1981: 30 percent in 1981, but only 23 percent last year.

A proposed law now making its way slowly through Congress would make it much easier for the disabled to obtain both employment and public transportation. Proponents of the bill see it as a substantial civil rights measure. Called the Americans with Disability Act, it would prohibit discrimination against disabled workers throughout much of the American workplace, among other features. Existing law already prohibits discrimination in government employment.

The measure won unanimous Senate committee approval early this month after two months of negotiations between Senate Democrats and the Republican White House. It is headed for a vote by the full Senate and presumed approval next month. But the road to passage in the House may prove to be long and rocky; there it is liable to be considered by four committees and seven subcommittees.

Specialists in disability issues are surprised by the negative implications of the new Census Bureau statistics. And they are not certain how to explain the figures, although they offer theories.

"It really irritates me that we haven't a better answer," says Philip Calkins, of the President's Committee on Employment of People with Disabilities.

Yet there are a number of good working hypotheses, and Mr. Calkins offered several:

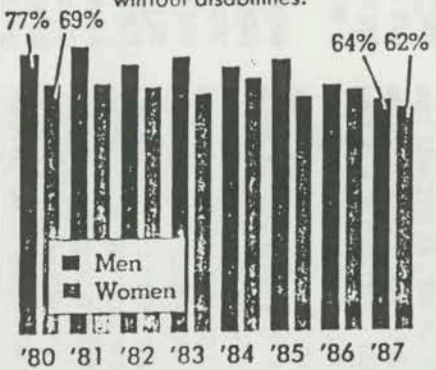
• "Health-care costs have really skyrocketed in the 1980s. The costs of health care, and of health-care insurance, are a major reason why people with disabilities face discrimination in the work force."

• "The number of employees in government at all levels has declined" relative to the US population. "Therefore, the number of places available in those protected areas has declined."

STAFF

**Income of Workers With Disabilities Is Falling**

Pay of workers with disabilities as a percentage of the pay of workers without disabilities.*




*Mean income.
Source: US Census Bureau

With the decline in government jobs, which offer legal protection against discrimination, workers with disabilities increasingly may have been kept in lower paying jobs, experts theorize. This may be a partial reason for the growing income gap between American workers in general and those with disabilities.

• As America's budget squeeze has tightened during the decade of the 1980s, some of the trims in spending for social programs have cut back on programs that aid people with disabilities, and help prepare them for employment.

Calkins has worked in the disability field for 10 years and uses a wheelchair himself. He says discrimination against people with disabilities does exist among private employees.

In part, that discrimination explains why an estimated "two-thirds of working-age people in the US with disabilities" who could hold jobs are unemployed, Calkins says.

During the 1980s, the Census Bureau did not revise in any substantial way its basic measure of disability, a spokesman says. Thus the bureau believes that the trends the statistics report cannot be attributed to a different definition, but rather to various changes in the workplace.

June 16, 1989

M E M O R A N D U M

TO: SENATOR DOLE

FROM: DENNIS SHEA

SUBJECT: SUPREME COURT CIVIL RIGHTS DECISIONS

The Supreme Court has issued four major civil rights rulings this term. I have described two of these rulings -- City of Richmond v. Croson and Wards Cove Packing Co. v. Atonio -- in a previous memorandum. I thought a description of all four cases in a single memorandum would be helpful to you.

## I. PATTERSON V. MCLEAN CREDIT UNION

By a 9-0 vote, the Supreme Court reaffirmed Runyon v. McCrary, a 1976 decision interpreting an 1866 civil rights law that grants to every individual "the same right...to make and enforce contracts...as is enjoyed by white citizens." In Runyon, the Court ruled that the 1866 law barred a private school from refusing to admit black students.

Although the Patterson decision upheld Runyon's interpretation of the 1866 law, the Court also ruled by a 5-4 vote that the 1866 law may not be used as the basis for lawsuits alleging racial harassment in the workplace. The Court emphasized that lawsuits alleging racial harassment in the workplace may be brought under Title VII of the Civil Rights Act of 1964 rather than under the 1866 law.

Looking into the crystal ball: When upholding Runyon, the Court applied the principle of stare decisis, the judicial doctrine that courts should refrain from overturning established and accepted precedent. The Court's application of stare decisis to Runyon may be a signal that it intends to apply stare decisis to Roe v. Wade when it soon decides the constitutionality of the Missouri abortion law.

## II. MARTIN V. WILKS

In Martin v. Wilks, the Supreme Court ruled that court-approved affirmative action settlements were open to legal challenge by white workers who were not parties to the original settlements. To support this conclusion, the Court emphasized that "it is a principle of general application in anglo-American jurisprudence that one is not bound by a judgment...in a litigation in which he is not designated as a party or to which he has not been made a party by service of process."

The Wilks decision involved a claim by a group of white firemen in Birmingham, Alabama, that they were being denied promotions in favor of less qualified black applicants. The City of Birmingham admitted to making race-conscious employment decisions but insisted that these decisions were unassailable since they were made pursuant to a court-approved settlement.

As a result of the Wilks decision, court-approved affirmative action settlements are now subject to reverse discrimination lawsuits.

**III.WARDS COVE PACKING CO. V. ATONIO**

In Wards Cove Packing Co. v. Atonio, the Supreme Court altered traditional Title VII analysis by relieving employers of the burden of justifying, on the grounds of "business necessity," those practices that are shown to have a disparate impact on a minority group. The decision now requires a Title VII plaintiff to prove -- at the outset -- that a hiring practice not only has a disparate impact but also has no legitimate business justification.

Wards Cove involved a claim by native Filipinos and Eskimos that a salmon-packing company located in northern Alaska had engaged in racially discriminatory hiring practices more than 15 years ago.

**IV. CITY OF RICHMOND V. CROSON**

In City of Richmond v. Croson, the Supreme Court struck down Richmond's minority set-aside program as a violation of the Equal Protection Clause of the Fourteenth Amendment. In Croson, the Court emphasized that the set-aside program was not justified since the trial record revealed no prior discrimination by the City of Richmond in awarding construction contracts.

**JUSTICE KENNEDY**

Justice Kennedy has voted in the majority in all four decisions. He also written the majority opinion in the Patterson case. As a result, observers of the Supreme Court no longer doubt that Kennedy is a conservative jurist.

**REACTIONS**

Not surprisingly, the civil rights establishment is up-in-arms about the recent Supreme Court decisions. Ben Hooks and Ralph Neas, for example, have publicly stated that "the recent Supreme Court term has been a disaster for all those committed to equal employment opportunity."

I have attached a Washington Post op-ed piece written by Charles Fried, former Solicitor General. The piece emphasizes that the decisions do not undermine the fairness of the civil rights laws, but rather restore some needed balance.

*Charles Fried*

# Restoring Balance to Civil Rights

The Supreme Court has, since January, decided three cases which critics say have undermined the fairness of civil rights laws. In fact these cases have completed the process of restoring a needed balance in a practical and moderate way.

It is easy to forget one particular legacy of the Carter years: governments and bureaucracies at every level, often abetted by activist lower federal courts, forcing quotas and rigid preferential schemes on businesses, colleges and public and private institutions.

In its ruling Monday *(Martin v. Wilks)* that court-approved affirmative action settlements are open to legal challenge by white workers, the court did no more than take seriously the claims of persons on the wrong side of quotas and govern those claims by the same procedural rules that apply to litigants generally.

In January the court ruled in *City of Richmond v. Croson* that any time government uses race to distribute burdens and benefits it must meet a strict standard of demonstrated necessity. While remedying discrimination is the principal and perhaps the only such justifying purpose, that purpose may not be lightly invoked by pointing to statistical disparities alone or to what the court has called societal discrimination: it is necessary to identify the particular discrimination that is being remedied. The court denied that racial classifications for "benign" purposes can more easily pass constitutional muster than discrimination of the old-fashioned kind.

*Croson*, interpreting the Constitution, refers only to governmental practices. *Wards Cove Packing Co. v. Atonio*, decided June 5, interpreted the Civil Rights Act of 1964, which bars discrimination in public and private employment. Congress made clear that it must not be used to force private employers to adopt quotas or preferences.

In 1971 the court in *Griggs v. Duke Power* interpreted the act to bar ostensibly neutral practices (like height and weight or accreditation requirements) that serve no reasonable purpose while raising unnecessary barriers to women and minority workers. Unfortunately, aggressive plaintiffs' lawyers and some lower federal court federal judges used this sensible rule to threaten employers with crushing liability if they used entirely reasonable employment qualifications (for instance, a high school diploma for blood bank technicians) but hired less than a statistically satisfactory number of minority or women workers. The only way to avoid the uncertain and costly burden of validating even common-sense employment qualifications was just to buy peace by using quotas.

To avoid this sinister pressure toward quotas Justice White in *Atonio* said that a minority employee must show that the requirement he was attacking (say, a high school diploma) produces the bad numbers. And while the employer must come forward with an explanation for his criteria, the ultimate burden of proving this explanation unsatisfactory rests with the complainant.

This year's cases make sense in the context of other civil rights cases. In 1987, in *Johnson v. Santa Clara County*, the court held that under the Civil Rights Act an employer acting freely might adopt an affirmative action plan without first convicting himself of illegal past discrimination. In 1986, in *Sheet Metal Workers v. EEOC*, all but two justices agreed that a court faced with an "egregious" and "recalcitrant" discriminator may impose a "minority membership goal" but not a "strict racial quota."

Thus, intentional discriminators face strong remedies. That's why the court yesterday wisely did not overrule a precedent punishing intentional discrimination. But where there has not been identified discrimination, the Constitution will not tolerate the use of governmental power to prefer people on grounds of race—whether the government is managing its own affairs or regulating the affairs of others. And the Civil Rights Act must not be perverted, as sometimes happened after *Griggs*, into a device to threaten private employers into adopting such preferences.

When a private employer acts voluntarily, not under the threat of liability, he is freer to prefer women and minorities. After all, before the Civil Rights Act, private employers could discriminate *against* women and minorities with impunity.

It this is where the court has taken us, I wonder whether those who see in recent decisions "a giant step backward" are not in truth simply nostalgic for the bygone days of quotas and government-imposed preferences.

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*The writer, a professor at the Harvard Law School, was solicitor general during the second Reagan administration.*

April 26, 1989

Memorandum

To: Messrs. Goodling, Bartlett, Gunderson, Tauke, Ballenger, and Smith

From: Pat Morrissey

Subject: Update on questions pertaining to the ADA

Based on yesterday's meeting on the ADA, I have asked the CRS American Law Division (Nancy Jones) to do some research on the following questions.

1. How have the court's interpreted the phrase ".... regarded as having an impairment" in the definition of an individual with disability in section 504 of the Rehabilitation Act?

   If the courts are split on this, we may have a basis for exlcuding or limiting this phrase in the ADA.

2. How have the courts interpreted the phrase "... believe one is about to be discriminated against?"

   Nancy indicated that she thinks that this is a new concept, therefore, if that is the case, then I think we have an excellent basis for getting it deleted.

3. How many civil rights statutes allow for a private cause of action in cases of both intentional and unintentional discrimination, and how many limit cases to those involving only intentional discrimination?

   If most laws allow for a cause of action only in cases of intentional discrimination, we can make the argument for limiting the private cause of action to similar cases in the ADA or at least selected titles in ADA.

4. How many civil rights statutes place the burden of proof on the defendant?

   If most laws place the burden of proof on the plaintiff, we could argue for similar provisions in the ADA.

I will also work with Randy Johnson of our staff to compile a chart which reflects the titles in the ADA, the remedies and procedures under each, and the implications of such remedies and procedures.

April 14, 1988

TO: SHEILA BAIR

FROM: JOE FAHA

SUBJECT: AMERICAN WITH DISABILITIES ACT

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Attached for your information is a copy of the ADA bill that Harkin and Weicker will be introducing on April 29th. There are some significant changes from previous drafts. Also attached is a copy of Bush's "position statement on disabled Americans".

On Bush's position notice where highlighted that he supports "Federal legislation that gives people with disabilities the same protection in private employment that is now enjoyed by women and minorities." Earlier he talks about access to public accommodations and public transportation. Transportation, Housing and Communications are not discussed to the level that ADA does but it would seem that Bush supports ADA on extension of coverage to the levels of the Civil Rights Act of 64.

I was briefed by Bob Bergdorf and Andy Farbman of the National Council on the Handicapped yesterday. The attached package on the bill has a summary of each section. The bill itself seems rather easy to read. The following are my comments after my discussions with them.

Purpose:

The stated purpose of the legislation is to eliminate discrimination yet section 8 (c)(2) places an affirmative action requirement on employers that is not in the CR of 64. While the burden seems rather minimal, I am concerned about EEOC regs in this regard and the administrative burden it may cause small employers.

Definitions:

The definitions used are primarily from existing legislation. One note, however, is that there has been a change in the definition of "reasonable accommodation." The "undue hardship" language is eliminated in favor of section 7 (a)(1) which uses a criteria of fundamentally altering the essential nature and threatening the existence of the program, activity, etc. This is a higher standard that many courts have applied.

Housing:

Provisions mimic the House version of the Fair Housing bill including the universal design requirements for multi-family dwellings. No retrofitting is required. Dwellings that are open for first occupancy 30 months after the enactment of this bill must meet the universal design standards. (It is my understanding that the House Housing and Banking Committee is reviewing the Judiciary bill to see about jurisdiction because of the universal design requirements.)

If the Fair Housing bill is enacted, it is their intention to remove housing from the bill.

Transportation:

The requirements in this bill are in line with what I am working with the American Public Transit Association on. APTA has not as of yet bought into the entire package but is committed to supporting a policy that requires 100% of all newly purchased fixed route vehicles (buses and rail) be accessible. The number of years this bill requires for completion would really require retrofitting, however, Bob and Andy indicated that the Council is more concerned with movement in the right direction and would be willing to negotiate the time requirements.

Employment:

Under section 8 (c)(2) there is an affirmative action requirement as stated earlier.

The discussions in sec. 8 (c)(3) "Preemployment Inquiries" is a repeat of existing EEOC policy. It seems that the Epilepsy Foundation was concerned that if given the chance EEOC would turn back from these policies.

The Council is not under an illusion that this bill will clear through Congress this session.

April 28, 1988

TO: SENATOR DOLE

FROM: JOE FAHA
through SHEILA BAIR

SUBJECT: AMERICANS WITH DISABILITIES ACT

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Sens. Weicker and Harkin will be introducing the above bill tomorrow, 4/29 or today if the Senate is not in session on Friday. Cosponsors at this time include Simon, Kennedy, Stafford, Inouye and Kerry. The bill is the construct of the National Council on the Handicapped and has the support of all the disability organizations. Proponents of the bill understand that it serves as a direction and that parts of it have problems. They have no expectation that it will see the light of day this session.

I have spoken to SHEILA BAIR and we both recommend that you cosponsor with a statement of support for the general direction of the bill but that you have concerns about some of the provisions.

By being an original cosponsor of the bill you can benefit from media coverage (news conference on Friday at 1:00pm) and gain tremendous support from Americans with disabilities. If you wish to be an original cosponsor, it is necessary for you to indicate it by 12:00 pm today, Thursday, April 28, 1988.

BACKGROUND:

While there are numerous statutes, rules and regulations prohibiting discrimination on the basis of handicap, the scope of coverage is not equivalent to protections provided for persons on the basis of race or sex, e.g. in housing, public accommodations, employment, transportation, activities of state and local governments, broadcasting and communications.

BILL:

Prohibits discrimination on the basis of handicap in the above listed areas.

Employment: Extends coverage to those employers that are covered by the Civil Rights Act of 1964 wioth respect to race and sex but not by existing disability civil rights laws. The reasonable accommodation definition in this bill eliminates the "undue hardship" language in favor of a higher standard which may present problems. Enforcement is left to EEOC which is responsible for the enforcement of the CR Act of 64. There is hidden in the bill an affirmative action requirement to recruit qualified handicapped individuals which is outside the intent of it as stated.

Housing: The bill's coverage mimics the Fair Housing Legislation presently before the House Judiciary Committee. If the Fair Housing Bill if passed this provision would be dropped. The Fair Housing Bill in the House was approved by the Committee yesterday today and may likely come up for a vote on the floor in the next two weeks. The National Association of Home Builders is supporting the bill.

Public Accommodations: This bill states that public accommodations as defined in the Civil Rights Act of 64 must be accessible to persons with disabilities. It requires retrofitting within two years. It should be noted that 40 states already have state regulations requiring the same, Kansas being one. A two year retrofit requirement is unrealistic and will probably be changed.

Transportation: The bill requires business principally engaged in the interstate transportation of people, e.g. Greyhound, to make sure persons with disabilities can access their system. If a transportation system though itself purely intrastate allows one to access interstate transportation, it is covered as well and must make sure it can transport persons with disabilites.

Under transportation the bill also covers businesses that transport goods, data, or documents by making it illegal for them to discriminate against an individual on the basis on handicap in the use of the service. e.g. Federal Express would have to make sure that a disabled persons could access their offices or at least be able to make use of the service. The same would be true of Western Union, a moving firm, etc.

State and Local Governments: All actions practices and operations of state and local governments are covered.

Broadcasting and Communications: FCC under this bill would have to develop regulations that would result in an increase in the number of programs, announcements, etc. on television that are captioned. It also lays out what would be required of a business or other entity in providing reasonable accommodations to a deaf individual.

DISCUSSION:

There are many aspects of this bill that will be controversial and will meet with significant objections from many members of the Senate. Several of these have been pointed out in the description of the bill. However, the bill does map out a direction which you can agree with while indicating that you have some concerns.

The Vice President has released a statement on disability policy which says in one section that he would approve "Federal legislation that gives people with disabilities the same protection in private employment that is now enjoyed by women and minorities." He also states that "We must develop programs and policies that promote independence, freedom of choice and productive involvement in the social and economic mainstream. This does not merely mean employment. It also means equal access to the mainstream educational system, to public accommodations, to public transportation - in other words, meaningful access to all aspects of society.

Do you wish to be an original cosponsor? yes____ no____

If so I will write a statement of support of the direction of the bill while indicating concern for specifics.

Add sections on AIDS, enforcement, relationship to Rehab Act

April 29, 1988

TO: DENISE GREENLAW

FROM: JOE FAHA
LA WITH SEN. DOLE

SUBJECT: AMERICANS WITH DISABILITIES ACT

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Last night Sens. Weicker and Harkin introduced a bill entitled "Americans with Disabilities Act". On the floor Sen. Dole talked with Sen. Domenici about cosponsoring because of Sen. Domenici's long history of concern for disabled individuals especially the mentally ill. Sen. Domenici asked that his staff be briefed on the bill and thus the reason for my calling this morning. Sen. Dole would appreciate Sen. Domenici's consideration with the possibility of cosponsoring as soon as possible. Sen. Dole is himself an original cosponsor.

The Civil Rights Act of 1964 provides protection for people from discrimination based on reace, sex, religion. The law covers private employers of 15 or more employees. Civil Rights legislation for Americans with disabilities only covers businesses that either receive grants or contracts from the Fed. Gvt unless a state statute exists prohibiting such discrimination.

Attached for your perusal and consideration are the following:

1) a briefing paper on the bill I prepared for Sen. Dole's consideration
2) copy of the bill and fact sheet.
3) copy of Sen. Dole's floor statement.

Sen. Dole agrees with the general direction of the bill but has many questions with respect to some of the provisions.

Of note I would like to add that the bill does require that public accommodations as defined in the Civil Rights Act of 1964 must be accessible and places the requirement that they be so in two years. First let me hasten to say that New Mexico has very good public accommodation laws in effect. This I checked with the Architectural and Transportation Barrier Compliance Board. On this issue Sen. Dole believes that retrofitting of facilities within two years is unrealistic.

If you have any questions, please feel free to call me on 46521.

January 18, 1989

TO: Senator Dole (thru Sheila Burke)

FROM: Stacy Hoffhaus

SUBJECT: Status of Americans With Disabilities Act

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It is still unclear whether Senator Harkin will introduce the version of the Americans With Disabilities Act (ADA) developed by the National Council on the Handicapped and introduced last year, or whether he will introduce a more realistic version of the legislation. As you will recall, you were an original cosponsor of this bill when Senators Weicker and Harkin introduced it last year.

We have been coordinating with Senators Hatch and Durenberger, who are both now on the Subcommittee on the Handicapped. Hatch and Durenberger are waiting to see what Senator Harkin will do before they decide what action to take.

Publicly, the disability groups are behind the original version of ADA. Privately, however, disability leaders disagree about what is the best strategy to pursue.

You should be very wary of committing yourself to introducing your own version now as no one knows what Harkin or the Republicans on the Subcommittee on the Handicapped are going to do. It may be appropriate for you to introduce your own legislation at a later date, if Harkin introduces the original version and Hatch introduces something too unpopular with the groups. You could then develop and introduce a compromise version.

You may be asked at the Disability Inaugural event tonight whether you will cosponsor ADA. A suggested response is that you want to wait to see what Senator Harkin will be introducing and you want to be responsive to the concerns of the Republican members of the Subcommittee. I do not recommend saying at the event tonight that you plan to introduce your own legislation since the situation is so unclear at this point.

You should also be aware that last year President-elect Bush endorsed ADA "or similar legislation."

January 23, 1989

M E M O R A N D U M

TO: SHEILA BURKE
CHRIS BOLTON
STACY HOFFHAUS

FROM: DENNIS SHEA

SUBJECT: S. 2345

The following are some general observations on S. 2345.

Section 2(a)(1)

I find it difficult to believe that 36 million Americans -- or 1 out of every 7 Americans -- have one or more physical or mental disabilities. This number seems exaggerated.

accepted - gone as high as 42

Section 2(a)(6)

The statement that "persons with disabilities are a discrete and insular minority" has far-reaching constitutional ramifications. The courts have ruled that federal and state laws that affect the rights of "discrete and insular minorities" must meet a strict scrutiny test -- rather than an easier minimum rationality test -- in order to pass constitutional muster under the equal protection clause of the 14th Amendment. Most laws that are subject to the strict scrutiny test are declared unconstitutional.

Harris's head problem

Section 3(2)(A)

The definition of "physical or mental impairment" is unusually broad. A person with a severe case of acne, for example, would be "physically impaired" for purposes of the statute since acne would qualify as a "cosmetic disfigurement to the skin."

true Hatch agrees

Section 3(3)

I would eliminate this entire section. It is impossible to define what it means to be "regarded as having or treated as having a physical or mental impairment."

problem area

Section 4(b)(2)

For purposes of clarity, this section should spell out that the statute preempts any state law that provides a lesser degree of protection to those individuals covered by the statute.

Section 5(a)(1)(A)(iii)

What does it mean to provide a job that is "less effective" than a job provided to others? Who determines "effectiveness" and what criteria does the decision-maker employ when making his determination? I am not convinced that Section 5(a)(1)(B) answers these questions with any precision.

problem area

Section 5(a)(1)(A)(vii)

I would strike this section entirely. It is much too broad.

Section 5(a)(1)(C)

This section appears to conflict with Section 5(a)(1)(A)(iv).

?

Section 6(a)(1)(C)

The word "associated" is too broad. I would substitute the phrase "related to."

Section 6(a)(2)(C)

The word "associated" is too broad. I would substitute the phrase "related to."

Section 6(b)(3)

It is not clear to me whether this section applies to "qualified multifamily dwellings" that are already in existence or only to "qualified multifamily dwellings" that are built 30 months after the enactment of the statute.

deleted

Section 6(c)

The definition of "qualified multifamily dwellings" is in the conjunctive when it should be in the disjunctive.

Section 7(a)(1)

The "fundamentally alter" standard is too strict. A "substantially alter" standard would be more equitable to business.

undue hardship

Section 7(b)(1)

The 2-year retrofitting requirement for private business is too short, particularly in light of the 10-year grace period permitted for alterations to mass transit stations.

Section 8(c)(3)(A)

This section would prohibit an employer from making a preemployment inquiry of an applicant as to whether the applicant has a physical or mental impairment. This prohibition appears to conflict with Section 8(c)(3)(B), which permits an employer to make a preemployment inquiry into the the ability of an applicant to satisfy "legitimate qualification standards."

Section 8(h)(2)

This section defines "communications barriers" to include "devices that are necessary to achieve effective communication with persons with a physical or mental impairment." Obviously, this definition is too broad, since it is often impossible to communicate in a meaningful way with someone who suffers from a severe mental disorder, such as schizophrenia or autism.

Section 9(g)

This section is unfair to employers, since it requires the employer to prove that its qualification standards, selection criteria, and eligibity criteria are legitimate. In most civil and criminal cases, the burden of proof lies with the complainant.

4/18/89

TO: CEG
FROM: KEN
RE: "AMERICAN DISABILITY ACT" Harkin bill

Chris Bolton, Dole's AA, called me to try to "get to the bottom" of what is going on with this bill.

Her first inquiry was about a mailing that she understood you had mentioned to Dole that indicated that you would be supporting a Dole bill.

Peter C. and Ted, however, inform me that no such mailing has gone out. Ted thought that you have been verbally telling people that you would probably support a Dole bill.

Chris says that Dole's staff is just now proceeding to sort through this issue with Dole and are emphasizing that it is a tough controversial issue.

After the recess, Hatch will be introducing his own bill that will not please the disability crowd. Harkin's as you know will drive business wild. Bolton's view is that anything Dole would introduce somewhere in the middle would simply satisfy no one and yet anger all.

She wanted to know if you would be interested in have a Dole, CEG, etc. letter to Harkin urging that whatever hearings he holds be well-balanced in view of the serious implications for our economy and businesses.... thus, encouraging a wide spectrum of participants in the hearings.

She understands that there may be some Iowa political considerations, and notwithstanding the backlash that will likely be directed at any Dole/CEG LEGISLATION, Dole wants to help and do whatever you want.

Therefore.....

1. Do you feel strongly about a Dole compromise bill at this time....or would a letter expressing concern for a balanced hearing help, particularly in view of Hatch's alternative.

   __X__ must have bill

   _____ letter OK for now

2. What is the deal with a "mailing"? Peter and Ted know of no such mailing. Peter says he recalls receiving only one letter, and we responded before there was any talk about a Dole bill.

I wrote some handwritten letters to a few of my friends in the disability community telling them Dole told me "there would be a Dole bill."

CEG

Maureen --

Below are my comments on your memo:

Revise first paragraph under "Political Problems" to begin, "President Bush repeatedly expressed his support for the ADA during the campaign. However, now ... (pick up original text)"

Revise second and third paragraphs in same section to read as follows: "The disability community is prepared to stage protests and react militantly should the Adminstration not support this legislation. If you introduce a bill before the Administration acts, the disability groups will perceive you as actively undermining their efforts to secure Administration support, as well as support from other Congressional Republicans."

Add New Section after "Political Problems"

"Previous Dole Position

You cosponsored the original version of the ADA in the last Congress (which was much broader than the current Harkin version). However, at that time, the bill was being introduced as a symbolic gesture and was not being pushed by its sponsors. In addition, you placed a floor statement in the record indicating that while you supported the broad objectives of the bill, you had a number of concers with specific provisions."

Delete "Committee Action," and revise "Recommendations" section as follows:

Beginning the first paragraph, insert sentence "The legislation Senator Harkin intends to introduce could be highly controversial with the business sector and many conservative advocacy groups." Delete the last sentence, and replace with the following: "Should the Committee report a bill, you would still be well positioned to introduce your own version of the legislation, since, given that Committee's liberal composition, it is virtually certain that there will be insufficient support to pass the bill on the floor."

Revise "Options" as follows:

_____ Introduce a Bill Now.

_____ Wait at least until the hearings give us a better idea of the issues. In conjunction with the introduction of the Harkin bill, you might wish to make a floor statement embracing the goals of the ADA, but expressing skepticism that the Harkin bill is too broad and cannot pass the Senate, and raising the prospect of introducing your own vehicle.

Sarah

April 19, 1989

TO: Senator Dole

FROM: Maureen West

SUBJECT: ADA Strategy

---

As you requested I spoke with Senator Grassley regarding the Americans with Disabilities Act (ADA). ~~It might~~ He seemed to Chris

OVERVIEW OF THE LEGISLATION:

The Americans with Disabilities Act is comprehensive landmark civil rights legislation that establishes a national mandate to end discrimination against people with disabilities. The Act will parallel in scope the civil rights statutes provided racial and ethnic minorities, women and older persons -- extending anti-discrimination statutes and enforceable standards ~~addressing~~ creating to deal with discrimination against people with disabilities in employment, transportation, public accomodations, communications, and State and local governments.

Federal legislation barring discrimination against individuals with handicaps exists under Section 504 of the Rehabilitation Act of 1973 but is limited to those entities receiving federal financial assistance. The ADA would provide broader coverage since it would apply to the private sector. It is also more specific in its statutory requirements.

POLITICAL PROBLEMS:

The White House wants more time to study the bill because effected agencies (Department of Labor, Department of Transportation, Federal Communications Commission and the Department of Commerce) are very concerned about its cost, regulatory impact, and the effect on the economy and small business. Extension of anti-discrimination statutes with enforceable remedies, may result in increased litigation against those not in compliance with its mandated standards.

The disability community believes President Bush is committed to the ADA and will stage protests and react militantly ~~should~~ if the Administration does not support this legislation. Last year you cosponsored ~~the~~ a similar bill which was broader in scope and the disability community will look for your support again. Your own bill will be perceived as undermining ~~their~~ efforts. specific of the disability community

You are a moving target and introducing a bill before the Administration acts and the private sector responds, sets you up as a fall guy for a President, who has to date, strongly supported ADA or similar legislation -- but now wants to refrain from endorsing ADA for the aforementioned reasons.

COMMITTEE ACTION:

This legislation will be highly controversial and letting Senators Harkin and Hatch contend with the volatile issues in Committee will provide for a clear delineation of the problems associated with this legislation, which at this point are unknown. Balanced hearings are to begin in May.

The Republican members of the Labor & Human Resources Committee are moderate and will report out a Harkin bill if the legislation even gets that far.

RECOMMENDATIONS:

Timing is critical, to introduce a Dole

I strongly recommend that you wait ~~out~~ ~~your~~ bill at ~~this time~~ until ~~and let~~ the Committee battle out the highly controversial aspects of this legislation, while stating your consistent support for a comprehensive civil rights bill, that is fair and balanced. You can then ~~will surface~~ as a hero for compromise ~~with both~~ the disability groups and the private sector. position yourself to emerge as a compromise is necessary between

Too much is still unknown about this legislation, and I am certain the major ~~all the~~ land mines that are hidden ~~in this bill~~ will surface ~~throughout~~ ~~the~~ hearings. A Dole bill at this point ~~is~~ would put you in a no win situation. In the course of

OPTIONS:

_____ Prepare a floor statement indicating your interest in monitoring hearings and Committee action on the bill(s), thereby, reserving your option to introduce legislation after concerns have been raised.

_____ Develop Dole bill

I would like to discuss this further with you.

**COMMITTEE ACTION:**

This legislation will be highly controversial and letting Senators Harkin and Hatch contend with the volatile issues in Committee will provide for a clear delineation of the problems associated with this legislation, which at this point are unknown. Balanced hearings are to begin in May.

The Republican members of the Labor & Human Resources Committee are moderate and will report out a Harkin bill if the legislation even gets that far.

**RECOMMENDATIONS:**

I strongly recommend that you wait out your bill at this time and let the Committee battle out the highly controversial aspects of this legislation, while stating your consistent support for a comprehensive civil rights bill, that is fair and balanced. ~~You will surface as a hero for compromise with both the disability groups and the private sector.~~ Too much is still unknown about this legislation and I am certain all the land mines that are hidden in this bill will surface throughout the hearings. A Dole bill at this point is a no win situation.

**OPTIONS:**

____ Prepare a floor statement indicating your interest in monitoring hearings and Committee action on the bill(s), thereby reserving your option to introduce legislation after concerns have been raised.

____ Develop Dole bill & introduce now

I would also like to discuss this further with you.

April 19, 1989

TO: Senator Dole

FROM: Maureen West

SUBJECT: ADA Strategy

---

As you requested I spoke with Senator Grassley regarding the Americans with Disabilities Act (ADA).

OVERVIEW OF THE LEGISLATION:

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~~You are a moving target and introducing a bill before the Administration acts, and the private sector responds, sets you up as a fall guy for a President, who has to date, strongly supported ADA or similar legislation -- but now wants to refrain from endorsing ADA for the aforementioned reasons.~~

May 3, 1989

Sheila, these are just ideas?

TO: Senator Dole

FROM: Mo West

SUBJECT: Statutory Language with ADA

---

The following legal questions need to be raised:

1. How have the Court's interpreted the phrase "... regarded as having an impairment" in the definition of an individual with disability in section 504 of the Rehabilitation Act?

If the Court's are split on this, we may have a basis for excluding or limiting this phrase in the ADA.

2. How have the Court's interpreted the ~~the~~ phrase "... believe one is about to be discriminated against?"

Legal staff at CRS has indicated it is a new concept; therefore, if that is the case, it should be deleted, because can one measure or ascertain "about to be" it is just plain too vague.

3. How many civil rights statutes allow for a private cause of action in cases of both intentional and unintentional discrimination, and how many limit cases to those involving only intentional discrimination?

If most laws allow for a cause of action only in cases of intentional discrimination, the argument can be made for limiting the private cause of action to similar cases in the ADA or at least selected titles in ADA.

4. Most civil rights statutes place the burden of proof on the plaintiff, why should ADA place this burden on the defendant?

If most laws place the burden of proof on the plaintiff, the argument for similar provision in the ADA could be made. This is not the case.

More research will need to be done on the remedies and procedures under each title of the ADA and the implications of such remedies.

May 3, 1989

TO: Senator Dole

FROM: Mo West

SUBJECT: Major Statutory Language Problems with ADA

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1. Definition of disability -- Includes a provision which would allow an individual "regarded as having an impairment" to be considered an individual with a disability.

2. General standards for judging whether discrimination has occurred -- requires that equal and as effective means be applied and the same result/outcome be achieved in the case of the individual, including one with a disability, not comparable means and outcomes. (comparable would give flexibility)

3. Coverage extended to individuals with contagious disease or infection -- unless such an individual, including one with AIDS, poses a direct threat to the health and safety of others he/she could not be excluded based on qualification standards. (let Helms & Humphrey carry the opposition on this - it's inconsistent with 504/AIDS Commission/Arline Supreme Court case view on contagious disease) don't touch

4. Anticipated discrimination -- Under Title II pertaining to employment, an individual, based on disability, could pursue a private cause of action if he/she believed the he/she is about to be discriminated against on the basis of a disability. (reasonable point hard to prove in employment but not so in construction i.e. bldg. blueprint)

5. Access to multiple remedies -- Under Title II an individual pursuing a private cause of action may use Title VII of the Civil Rights Act of 1964 and section 1981 of the Civil Rights Act of 1866. Such options would give access to injunctive relief, compensatory and punitive damages.

6. Use of failure standard in employment -- An individual with a disability, can pursue a private cause of action in several titles (II and III primarily which are transportation related) if a covered entity fails to provide/accomodate etc. This would allow an individual to sue in both cases of intentional and unitentional discrimination. ( put in refusal only - for intentional cases of dicrimination can one sue)

7. Inclusion of 504 -- In several provisions pertaining to transportation, the ADA includes not only a reference to the ADA itself but also section 504, possibly changing the standards that now apply to section 504. (take out 504 - if it changes why include it?)

← replace ≠ repeal?

8. Use of failure standard in public services and accomodations offered by a private entity -- An individual, on the basis of a disability, could pursue a private rights of action in a case of discrimination, and if successful receive actual costs, punitive damage, and attorney's fees. This option, like #6 would cover intentional and unintentional discrimination.

9. Use of different remedies in different titles -- Each Title uses differing combinations of remedies and procedures in cases of private causes of action. - consistency?

10. Burden of proof -- Under this statute burden of proof is placed on the defendant, while most laws place burden of proof on plaintiff. There should be consistency in approach.

11. "15" Exemption for Sm. Bus.

June 27, 1990

TO: Senator Dole

FROM: Mo West

SUBJECT: ADA Conference Report

The Senate and House conferees have finished the ADA conference and will file their report later today.

The Senate and House voted to strike the Chapman "Food Handlers" Amendment from the conference report. The Chapman amendment would have allowed an employer to remove an individual suspected of having AIDS from any job involving food handling and transfer that person to another job without economic loss. The ADA already incorporates provisions (direct threat clause) to cover situations in which employees with communicable diseases could pose a health threat to others.

Senator Grassley's amendment (which you cosponsored on the Senate floor during ADA consideration) will apply the requirements of the ADA to Congress and provide Title VII enforcement remedies of a private right of action for an alleged victim of discrimination. During consideration of this issue in conference the House and Senate conferees seperately met to discuss what language to include regarding Congressional coverage.

The House kept language in the conference report which keeps the House Fair Employment Practices Resolution intact as the only option for a House employee who is an alleged victim of discrimination to file a complaint. An "In -House" proceedings process would be used to determine whether administrative and judicial enforcement could further be pursued.

The Senate changed the Grassley amendment to delete Executive branch enforcement. This was deleted on the separation of powers issue between the executive and legislative branches. The conferees did agree to keep the private right of action remedy for employees to pursue employment discrimination and to enforce mandating the elimination of architectural and other barriers.

The Senate will have two years to determine an internal conflict resolution dispute system through the Ethics Committee to enforce civil rights protections.

June 27, 1990

TO: Senator Dole

FROM: Mo West

SUBJECT: Chapman Amendment

To follow up on your concern that the Chapman amendment did not receive serious consideration during conference. The Senate conferees voted 9-1 in favor of striking the amendment and the House voted 12-10 in favor of striking the amendment after lengthy discussion and individual statements by conferees on the issue.

The amendment which originated in the House was defeated by both Senate and House votes recorded in conference. The Senate and House versions of the ADA conference report contain a "direct threat" provision to remove any person from a food handling position who would pose a direct threat to the safety and health of others. Even the proponents of the Chapman amendment, including the National Restaurant Association, admit that there is no scientific evidence that AIDS can be transmitted through the handling of food. Should evidence be found that AIDS were transmitted by food -- the "direct threat" provision would apply.

The bill makes clear that anyone who poses a direct threat of disease is not covered and can be refused employment, reassigned or fired. Persons who create an actual danger to the health or safety of others will be removed from the workplace under the ADA, thereby nullifying the Chapman provision. Thus, the thrust of the Chapman amendment is toward persons who do not pose any real threat to safety.

The Chapman amendment affects all food handlers with a disease regardless of whether the disease is transmitted by food. A food handler who has a disease that is not spread by food handling (which includes AIDS -- transmitted only by sexual contact or blood) can be discriminated against, even though they pose no direct risk to others. Moreover, the Chapman amendment does not establish any medical standards -- leaving restaurants owners and restaurant workers to litigate the issue.

During House consideration of the ADA bill, Rep. Chapman decribed the purpose of his amendment as giving employers needed flexibility to deal with employees who are "diagnosed as having an infectious disease such as "AIDS". Rep. Chapman did not seek to claim that his amendment was necessary to protect the public from infection; he explained "the purpose of the amendment was to protect food handling business from loss of customers who would

refuse to patronize any food establishment if an employer were known to have a communicable disease." He noted that "there is a perceived risk from AIDS."

This amendment is based on misperception, fear and prejudice. Restaurant owners argue that public misperceptions could cost them their business because of public health reactions to health rumors. The Chapman amendment purposes to provide flexibility through "alternative employment" to employees, thereby protecting businesses from "economic damage." If the problem is one of misperception and economic loss -- transferring an individual to another job such as maitre'd or dishwasher would still perpetuate the same unfounded fears. If the argument is one of a public health risk -- the "direct threat" provision already in the bill provides the needed protections for employers to execise.

Secretary Louis Sullivan, the Centers for Disease Control as well as major medical and public health organizations back anti-discrimination protections for all people with disabilities, including people with AIDS. The purpose of the ADA is to ensure this and "direct threat" language offers protections for employers in the case of a significant health risk.

Will you vote against recommiting the bill on the Chapman amendment?

Yes____ No____ Undecided_____

SENATE RULE 42/PROCEDURES OF THE SENATE ETHICS COMMITTEE

CHARGE:

THE SENATE ETHICS COMMITTEE IS THE ONLY CONSTITUTIONAL ENFORCEMENT MECHANISM FOR ENFORCING CIVIL RIGHTS PROTECTIONS FOR EMPLOYEES OF CONGRESS.

THERE MUST BE A WHOLLY INTERNAL SENATE PROCESS FOR ENFORCEMENT OF THE CIVIL RIGHTS OF CONGRESSIONAL EMPLOYEES. THEY CITE SENATE RULE 42, OF THE SENATE ETHICS COMMITTEE AS THE APPROPRIATE AND SOLE ENFORCEMENT MECHANISM.

*THEY CLAIM THAT IT WAS UNFAIR TO CHARGE THAT THE SENATE HAS ITSELF FROM ANY CIVIL RIGHTS STANDARDS WHATSOEVER.

RESPONSE:

*JUSTICE CANNOT BE SERVED THROUGH AN INTERNAL SENATE PROCESS; ESPECIALLY WHEN THIS PROCESS IS CREATED AND STAFFED BY MEMBERS OR THEIR AGENTS AND ACTS AS THE SOLE AND FINAL ARBITER OF SUITS WITH NO OPPORTUNITY FOR A PRIVATE CAUSE OF ACTION IN THE FEDERAL COURTS.

BILL McCOLLUM
5TH DISTRICT, FLORIDA

VICE CHAIRMAN
REPUBLICAN CONFERENCE
COMMITTEE ON
BANKING, FINANCE AND
URBAN AFFAIRS
COMMITTEE ON
THE JUDICIARY

# Congress of the United States
## House of Representatives
## Washington, DC 20515

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To: Senate Republican Leg. Assistants

From: Representative Bill McCollum

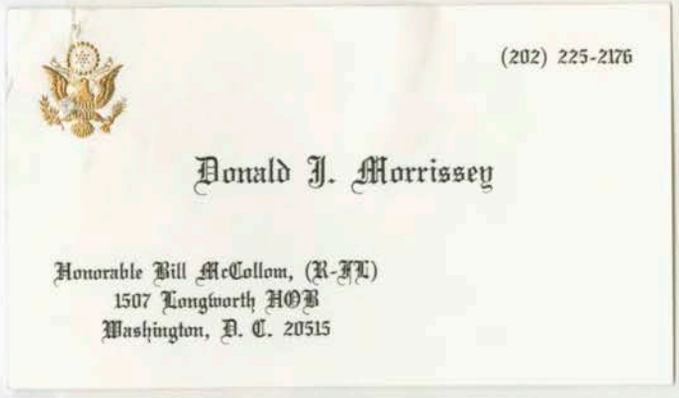
Re: Administration negotiating position on ADA

Date: July 26, 1989

Enclosed is a letter from Attorny General Richard Thornburgh laying out the Administration's current negotiating positions on S. 933, the Americans with Disabilities Act of 1989.

The mark-up on this bill is scheduled for Wednesday, August 2, in the Subcommittee on the handicapped. Although there has been agreement in some areas on this bill, the issue of remedies, among several others, remains contentious and will likely be a matter of serious dispute at the mark-up.

If you have any questions, feel free to contact Mr. Donald Morrissey or Mr. James Geoffrey of my office at 225-2176.



July 27, 1989

M E M O R A N D U M

TO: SENATOR DOLE

FROM: DENNIS SHEA

SUBJECT: AMERICANS WITH DISABILITIES ACT

Attached is a letter from Attorney General Thornburgh to Sen. Kennedy summarizing the Administration's view of the status of the pending negotiations on the Americans with Disabilities Act. The letter represents a "bill of particulars" outlining the Administration's positions, including its willingness to compromise on certain unresolved issues.

The following is a brief summary of the Thornburgh letter.

I. **EMPLOYMENT**

In the Thornburgh letter, the Administration reiterates its position on a phase-in: The effective date of the ADA should be 2 years after its enactment. On the effective date, Title II would apply to all employers with 25 employees or less. Title II would apply to all employers with 15 employees or less commencing 4 years from the date of enactment.

II. **REMEDIES**

Original Administration Position: The Administration originally proposed that the employment section of the ADA incorporate only those remedies found in Title VII of the Civil Rights Act of 1964.

Kennedy/Harkin Position: Kennedy/Harkin insist on maintaining the remedies available in 42 U.S.C. Section 1981, a post-Civil War statute that provides for an extended statute of limitations, jury trials, and awards of compensatory and punitive damages. These remedies would be in addition to the remedies found in Title VII of the Civil Rights Act of 1964.

The Administration Compromise: In the Thornburgh letter, the Administration proposes giving the Attorney General discretionary authority to seek civil penalties in cases involving egregious and willful violations of the employment and public accomodations sections of the ADA. These civil penalties would be in addition to the remedies found in Title VII of the Civil Rights Act of 1964.

**WARNING: IN A DRAFT OF THE THORNBURGH LETTER, THE ADMINISTRATION HAD PROPOSED PENALTIES OF UP TO $50,000 FOR THE FIRST VIOLATION, AND UP TO $100,000 FOR ANY SUBSEQUENT**

VIOLATIONS, OF THE PUBLIC ACCOMODATIONS AND EMPLOYMENT SECTIONS OF THE ADA. THIS PROPOSAL WAS DELETED FROM THE FINAL VERSION OF THE THORNBURGH LETTER.

ALTHOUGH THE SIZE OF THESE PENALTIES IS OUTRAGEOUSLY HIGH, THORNBURGH AND KENNEDY MAY HAVE MADE A PRIVATE DEAL ON THIS SUBJECT. I KNOW THAT SEN. HATCH WAS PERSONALLY INFURIATED BY THE SIZE OF THE PENALTIES AND YESTERDAY VENTED HIS ANGER ON BILL ROPER.

III. PUBLIC ACCOMODATIONS

Original Administration Position: The Administration originally proposed that the public accomodations section of the ADA duplicate the coverage of Title II of the Civil Rights Act of 1964. As a general matter, Title II of the Civil Rights Act of 1964 covers places of lodging, restaurants, places of entertainment, and gasoline stations. The Administration also proposed extending the coverage of the ADA's public accomodations section to medical offices.

Kennedy/Harkin Position: Kennedy/Harkin insist that the public accomodations section of the ADA cover virtually the entire private sector, except private homes and places of lodging with five rooms or less.

The Administration Compromise: In the Thornburgh letter, the Administration proposes a two-tier approach.

The first-tier would include all public accomodations covered by Title II of the Civil Rights Act of 1964 and all medical offices. These public accomodations would be subject to all of the nondiscrimination provisions of the ADA, including minimal retrofitting requirements.

The second-tier would include some -- not all -- of those public accomodations described in the ADA but outside the coverage of Title II of the Civil Rights Act of 1964. These second-tier public accomodations would be subject to a less burdensome set of nondiscrimination requirements.

IV. RELIGIOUS ENTITIES

In the Thornburgh letter, the Administration insists that all religious entities be fully exempt from the ADA.

WARNING: WE NEED TO MAKE SURE THAT THE PHRASE "RELIGIOUS ENTITIES" INCLUDES NOT ONLY CHURCHES AND SYNAGOGUES, BUT ALSO RELIGIOUSLY-AFFILIATED DAY CARE CENTERS AND SCHOOLS.

As you know, Kennedy/Harkin would exempt from Title II of the ADA only those employment practices that are based on a bona fide religious belief.

## V. PUBLIC TRANSPORTATION

In the Thornburgh letter, the Administration insists that the Secretary of Transportation be given some authority to grant waivers to the requirement that all new buses be lift-equipped. The Administration also insists that public transit authorities be required to allocate only 2% of their operating budgets for paratransit services.

## VI. PRIVATE TRANSPORTATION

In the Thornburgh letter, the Administration insists that no reuirements should be placed on private bus and rail companies, until the Secretary of Transportation has first conducted a full study of the feasibility and cost of these requirements.