

S. HRG. 100-926

AMERICANS WITH DISABILITIES ACT OF 1988

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON THE HANDICAPPED

OF THE

COMMITTEE ON

LABOR AND HUMAN RESOURCES

UNITED STATES SENATE

AND THE

SUBCOMMITTEE ON SELECT EDUCATION

OF THE

COMMITTEE ON EDUCATION AND LABOR

HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

S. 2345

TO ESTABLISH A CLEAR AND COMPREHENSIVE PROHIBITION OF
DISCRIMINATION ON THE BASIS OF HANDICAP

SEPTEMBER 27, 1988

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AMERICANS WITH DISABILITIES ACT OF 1988

TUESDAY, SEPTEMBER 27, 1988

U.S. SENATE, SUBCOMMITTEE ON THE HANDICAPPED, OF
THE COMMITTEE ON LABOR AND HUMAN RESOURCES,
U.S. HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON
SELECT EDUCATION, OF THE COMMITTEE ON EDUCATION
AND LABOR,

Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room SH-216, Hart Senate Office Building, Senator Tom Harkin (chairman of the subcommittee) presiding.

Present: Senators Harkin, Kennedy, and Weicker, Representatives Owens, Coelho, Martinez, and Jeffords.

OPENING STATEMENT OF SENATOR WEICKER

Senator WEICKER [presiding]. The joint committee hearing of the U.S. Senate and the U.S. House of Representatives on the Americans With Disabilities Act will come to order.

It is a great pleasure to welcome my colleagues from the House, to welcome all those in attendance, whether as observers or as witnesses. This is a historic occasion.

I have a prepared statement, which will be submitted in its entirety for the record. I would just like to make the following comments.

I, like you, have lived through weeks, indeed months, of those earth shattering, heartstopping issues such as patriotism and Pledges of Allegiance and all those things which are of deep concern to America. Somehow, I have heard absolutely nothing about 36 million Americans with disabilities.

I think it is to the credit of both candidates, both the Governor and the Vice President, that they support the legislation that is the subject matter of this hearing. Yet, I think the time has come for the Nation, never mind the candidates, to insist that we start to discuss the realities of the world around us. Those realities include 36 million of our neighbors who have particular problems with discrimination.

As is well known I have spoken in the past, not only as a U.S. Senator, but as the father of a disabled child. Within the last several weeks, I find I have another disabled child, this time a learning disabled child. As we grow older, the discrimination that takes place against the ailments of infirmity become more obvious and more frequent.

As new situations confront us, such as AIDS, discrimination once again raises its head, a discrimination which so many of you in this

room know all too well, insofar as your particular disabilities are concerned.

Now, the agenda of the Nation is going to be set in the next several weeks, not after the election is over. If both parties and their candidates can tiptoe off the stage without mentioning the Americans With Disabilities Act and its passage immediately, in the next Congress, if they can do that then there will be no Americans with Disabilities Act enacted by the next Congress. If there is silence now, there will be silence later. If there is indifference to discrimination now, there will be indifference later.

This is the moment in the time of all Americans when they set the priorities and the goals of this Nation. Foremost among them should be the fact that for 36 million, and growing in number, Americans, the time has come to end all discrimination, in whatever form. If we do that, that is a patriotism of which we can all be proud.

[The prepared statement of Senator Weicker follows:]

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

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

In its 1986 report, *Toward Independence*, the National Council on the Handicapped noted: "People with disabilities have been saying for years that their major obstacles are not inherent in their disabilities, but arise from barriers that have been imposed externally and unnecessarily." That report went on to recommend that "Congress... enact a comprehensive law requiring equal opportunity for individuals with disabilities, with broad coverage and setting clear, consistent, and enforceable standards prohibiting discrimination on the basis of handicap."

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

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

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

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

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

Senator WEICKER. I understand that Senator Harkin, who is the chairman of the subcommittee and cosponsor of the legislation, is here.

But first, however, we will let Congressman Owens proceed, and then we will get to Senator Harkin.

STATEMENT OF HON. MAJOR R. OWENS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. OWENS. Thank you, Senator.

On behalf of the Subcommittee on Select Education of the Education and Labor Committee, I want to thank Senator Harkin and his colleagues for hosting this very important hearing. I have a brief opening statement.

For some of us, the Americans With Disabilities Act of 1988 represents the next giant step in the American civil rights movement. This legislation grants full rights to Americans with disabilities and moves our great Nation from a respectable position of official compassion for those with impairments to a more laudable position of empowering disabled Americans.

This legislation grows out of a vast movement for disability rights and empowerment, a movement made highly visible this spring when the students and faculty of Gallaudet University successfully campaigned for the installation of the first ever deaf president, and more deaf board of directors members of the university. One of the campaign student leaders is a witness in this morning's hearing, and he will testify as a participant on the third panel.

During the Gallaudet campaign, a faculty member characterized that historic effort as "our Selma." As of 1965 the Voting Rights Act was the legislative outgrowth of the 1965 civil rights march from Selma to Montgomery, AL, the Americans with Disabilities Act is part of a journey toward full empowerment for Americans with disabilities.

The measure prohibits discrimination on the basis of disability in such areas as employment, housing, public accommodations, travel, communications, and activities of state and local governments. To guide the journey toward full empowerment of disabled Americans, I have, in my capacity as chairman of the House Subcommittee on Select Education, created a task force on the rights and empowerment of Americans with disabilities.

I have appointed Justin Dart, a former Rehabilitation Services Administration Commissioner, to chair the task force. Mr. Dart is one of the most committed advocates for disabled Americans in this country, and he has made several unique contributions to the field of disability rights.

The task force and the selection of its membership was designed to be broadly representative of people with various disabilities. It has convened forums of public meetings of disabled consumers, rehabilitation professionals, parents, advocates, and Government officials in 44 States. Since May 23 of this year, over 500 people have been present at the forums and 10,000 people have attended the public meetings. Many of them have presented publicly aspects of the discrimination that they have faced on the basis of disability.

The task force is preparing an interim report documenting evidence of discrimination on the basis of disability in America, which will be ready by late October. An executive summary of the interim report is currently available for distribution. The final report of the task force is scheduled for release next year.

The task force is also recommending options for short and long term actions related to Congress, the executive branch, and the public. The information collected by the task force will be invaluable to my subcommittee and to Congress as a whole, as we consider the Americans with Disabilities Act and subsequent legislation to implement the integration of disabled Americans into the production mainstream of our society.

In the America of 1988, people with disabilities understand that democracy and self-help are synonymous. Americans with disabilities are mobilizing to help themselves. Power is their greatest need. With empowerment, all problems can be resolved, all public officials and programs can be held accountable.

Passage of the Americans with Disabilities Act of 1988 will greatly help in the empowerment of disabled Americans. With the power and authority of their Government fully behind them, combined with their own energies, Americans of disabilities can become the masters of their own fates.

[The prepared statement of Congressman Owens follows:]

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**Congressman
MAJOR OWENS
NEWS RELEASE**

FOR IMMEDIATE RELEASE

Contact: Margaret Summers
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OWENS SAYS DISABILITY RIGHTS ACT WILL HELP "EMPOWER" DISABLED AMERICANS

"The Americans with Disabilities Act of 1988 represents the next giant step in the American civil rights movement," says Congressman Major Owens (D-NY), Chairman of the House Subcommittee on Select Education. The Subcommittee, along with the Senate Subcommittee on the Handicapped, will hold a hearing on the legislation Tuesday, September 27, 10 a.m., Room 216 in the Hart Senate Office Building. Among the scheduled witnesses are Gregory Hlibok, a student leader of Gallaudet University demonstrations for a deaf president and deaf board members earlier this year, and Jade Calgory, a star of the film "Mac and Me" and the first disabled child to be featured in a commercial movie.

The disability rights measure prohibits discrimination on the basis of disability in such areas as employment, housing, public accommodations, travel, communications, and activities of state and local governments. It covers employers engaged in commerce who have 15 or more employees; housing providers covered by federal fair housing laws; transportation companies; those engaged in broadcasting or communications; and state and local governments. Congressman Owens notes that the Act will not repeal Sections 503 and 504 of the Rehabilitation Act of 1973 and all regulations issued under those sections will remain in full force and affect. Enforcement procedure for the Act includes administrative remedies, a private right of action in federal court, monetary damages, injunctive relief, attorney's fees, and cutoffs of federal funds.

The measure is being sponsored in the House by Congressmembers Owens, Tony Coelho (D-Calif.), and Silvio Conte (R-Mass.). Its Senate sponsors are Tom Harkin (D-Iowa) and Lowell Weicker (R-Conn.).

(MORE)

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In addition to the measure, Congressman Owens, in his capacity as the House Select Education Subcommittee Chairman, has created a Task Force on the Rights and Empowerment of Americans with Disabilities "to guide the journey toward full empowerment of disabled Americans." He appointed Justin Dart, a former Rehabilitation Services Administration Commissioner, to chair the Task Force. "Mr. Dart is one of the most committed advocates for disabled Americans in this country," says Congressman Owens, "and he has made several unique contributions to the field of disability rights."

The Task Force is gathering evidence of discrimination against disabled Americans, and is seeking examples of successful local, state, national and international efforts to overcome barriers to self-realization of disabled people. It is also recommending options for short and long-term actions relating to Congress, the Executive Branch, and the public. "The information collected by the Task Force will be invaluable to my Subcommittee and to Congress as a whole, as we consider this and subsequent legislation to implement the integration of disabled Americans into the productive mainstream of society," says Congressman Owens.

OPENING STATEMENT OF SENATOR HARKIN

Senator HARKIN [presiding]. Thank you very much, Congressman Owens.

Again, I want to welcome all of you here. I want to also welcome my colleagues here. I would say without hesitation that you see in front of you really the vanguard in the Congress of those who care about and fight for Americans with disabilities. Senator Kennedy, Congressman Coelho, Congressman Owens, Senator Weicker, and Congressman Jeffords. I am really proud that you are all here.

We are holding this joint hearing on the pervasive problem of discrimination in our Nation against Americans with disabilities. This hearing will go down, I believe, in history as another significant step in Congress' effort to ensure equal opportunity for our 42 million Americans with disabilities.

People with disabilities, like racial and ethnic minorities and women, are entitled to obtain a job, enter a restaurant or hotel, ride a bus, listen to and watch the TV, use the telephone, and use public services free from invidious discrimination and free from policies that exclude them solely on the basis of their disability. Every American must be guaranteed genuine opportunities to live their lives to the maximum of their potential.

Almost a quarter of a century ago, Congress took the historic step of passing the Civil Rights Act of 1964 which, among other things, bars discrimination against persons on the basis of race, color, and national origin by recipients of Federal aid, and in such areas as employment and public accommodations. Americans with disabilities were not protected by this landmark legislation.

In 1968, the Congress and the President took another historic step when it passed the fair housing legislation barring discrimination in housing. Once again, people with disabilities were not extended protections by this legislation.

In 1973, some 15 years ago, the Congress finally adopted section 504 of the Rehabilitation Act, which prohibits discrimination on the basis of handicaps. However, this legislation only prohibits discrimination by recipients of Federal aid. It does not cover discrimination by private employers; nor does it prohibit discrimination in public accommodations.

Thus, today under our Nation's civil rights laws, an employer can no longer say to a prospective employee, "I will not hire you because of the color of your skin, or because you are a woman, or because you are Jewish." If they did, a person could march over to the courthouse, file a law suit, win, and collect damages and attorney's fees.

Yet, to this day, nothing prevents an employer or an owner of a hotel or restaurant from excluding Americans with disabilities. The courthouse door is still closed to Americans with disabilities.

On April 28 of this year, several Senators and Representatives introduced the Americans With Disabilities Act of 1988 and took the first step in opening up the courthouse door to Americans with disabilities. The Americans With Disabilities Act prohibits discrimination against persons with disabilities in areas of employment, public accommodations, transportation, communications, and public services.

It is my expectation that this legislation will become the law of the land during the 101st Congress. However, the road to enactment will be filled with potholes and roadblocks. But if we stick together as a community, and we work with the groups representing employers and the hotel, restaurant, communications, and transportation industries, I believe we can succeed.

We have momentum on our side. When this Administration vetoes the Civil Rights Restoration Act, this Congress overrode it overwhelmingly. When the Fair Housing Act Amendments came before the Congress, we worked closely with the realtors and the homebuilders. We put together a broadbased coalition to get this passed. Again, overwhelmingly, we did it.

We can do the same with the Americans With Disabilities Act. It is good legislation, important legislation, needed legislation, and it is the right thing to do. Almost a quarter century after the passage of the Civil Rights Act of 1964, it is long overdue.

[The prepared statement of Senator Harkin follows:]

OPENING STATEMENT OF TOM HARKIN (D. Iowa), CO-CHAIRMAN
JOINT HEARING ON DISCRIMINATION ON THE BASIS OF HANDICAP
SENATE SUBCOMMITTEE ON THE HANDICAPPED
HOUSE SUBCOMMITTEE ON SELECT EDUCATION
SEPTEMBER 27, 1988

The Senate Subcommittee on the Handicapped and the House Subcommittee on Select Education are proud to hold this joint hearing on the pervasive problem of discrimination in our Nation against Americans with disabilities. I would like to extend a warm welcome to the witnesses and to the hundreds of persons in the audience. This hearing will go down in history as another significant step in Congress' effort to ensure equal opportunity for our 42 million Americans with disabilities.

People with disabilities, like racial and ethnic minorities and women, are entitled to obtain a job, enter a restaurant or hotel, ride a bus, listen to and watch the TV, use the telephone, and use public services free from invidious discrimination and policies that exclude them solely on the basis of their disability. Every American must be guaranteed genuine opportunities to live their lives to the maximum of their potential.

Almost a quarter of a century ago Congress took the historic step of passing the Civil Rights Act of 1964, which, among other things, bars discrimination against persons on the basis of race, color, and national origin by recipients of federal aid and in such areas as employment and public accommodations. Americans with disabilities were not protected by this landmark legislation. In 1968, the Congress and the President took another historic step when it passed the Fair Housing legislation barring discrimination in housing. Once again, people with disabilities were not extended protections by this legislation.

In 1973, some 15 years ago, the Congress finally adopted section 504 of the Rehabilitation Act, which prohibits discrimination on the basis of handicap. However, this legislation only prohibits discrimination by recipients of federal aid. It does not cover discrimination by private employers; nor does it prohibit discrimination in public accommodations.

Thus, today under our Nation's civil rights laws, an employer can no longer say to a prospective employee, "I will not hire you because of the color of your skin, or because you're a woman or Jewish." If they did, a person could march over to the court house, file a law suit, win, collect damages and attorneys fees.

Yet, to this day nothing prevents an employer or an owner of a hotel or restaurant from excluding Americans with disabilities. The courthouse door is still closed to Americans with disabilities.

On April 28, 1988, several senators and representatives introduced the Americans With Disabilities Act of 1988 and took the first step in opening up the courthouse door. The Americans With Disabilities Act prohibits discrimination against persons with disabilities in areas of employment, public accommodations, transportation, communications, and public services.

It is my expectation that this legislation will become the law of the land during the 101st Congress. However, the road to enactment will be filled with potholes and roadblocks. But, if we stay together as a community and we work with the groups representing employers and the hotel, restaurant, communications and transportation industries, I believe we can succeed.

We have momentum on our side. When the Administration vetoed the Civil Rights Restoration Act, this Congress overrode that veto overwhelmingly. And, when the Fair Housing Act Amendments came before this Congress, we worked closely with the realtors and the homebuilders and we put together a broad-based coalition to get this landmark legislation passed, again overwhelmingly.

We can do the same with the Americans With Disabilities Act. It's good legislation, important, needed, it's the right thing to do—and almost a quarter-century after the passage of the Civil Rights Act of 1964, it is long overdue.

For further information, contact Pam McKinney at 202-224-3254, or Bobby Silverstein at 202-224-6265.

Senator HARKIN. I would like to recognize Congressman Coelho now and welcome him to this hearing.

STATEMENT OF HON. TONY COELHO, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF CALIFORNIA

Mr. COELHO. Thank you, Mr. Chairman.

First off, Mr. Chairman, I would like to thank you and Chairman Owens for holding this hearing. As you and the chairman have both indicated, this is a historic hearing. I think it starts us down a path that has been needed for years.

As you have all indicated, there are approximately 36 million, some people say 43 million, Americans with disabilities that basically do not have their basic civil rights.

As one with a hidden disability, as one who openly discusses my epilepsy, I know what discrimination is. I am not going to go into detail of what is in this bill, because that has already been discussed and will be discussed more. I am only going to discuss briefly with my colleagues, and with those of you in this room, as to why I feel so strongly that this legislation is needed.

I have said repeatedly over the years, please do not dwell on the things that I cannot do, help me do the things that I can do. I can be a wonderfully productive American citizen if you will help me do that. Every American citizen, regardless of their ability or disability cannot do certain things. Just because those of us who are disabled are limited in our ability of doing certain things, does not mean that we are unable of being productive citizens.

It is time that our Government recognizes our abilities and gives us the dignity to do what we can do.

As a young man, I developed seizures, later diagnosed as epilepsy. For many years, for 5 years, as I had my seizures on a regular basis, I did not know what they were. I went to every doctor that you could think of. I also went to three witch doctors because I was supposedly possessed by the devil. My Republican colleagues think I am, but others believed I was. [Laughter.]

As I went to college, I was an achiever. I got outstanding grades in high school and outstanding grades in college. I was student body president in high school and student body president in college. I was outstanding senior in college. I was sought after by different businesses and groups, to be involved in their activities and be employed by them. I had decided that I wanted to be an attorney.

In my senior year, I changed my mind. I decided I wanted to become a Catholic priest. As I graduated with honors, I then had a physical exam in order to enter the seminary. The physical exam pointed out that these seizures that I had been having for 5 years meant that I had epilepsy.

I always remember very well what happened, in that I walked to the doctor's office from my car, sat in the doctor's office, was told about my epilepsy, walked back to my car, got back in my car and drove back to my fraternity house and I was the same exact person. But only in my own mind because the world around me changed.

My doctor had to notify the legal authorities of my epilepsy. My church was notified and immediately I was not able to become a Catholic priest, because my church did not, at the time, permit epileptics to be priests. My driver's license was taken away, my insurance was taken away. Every job application has the word epilepsy on it and I marked it, because I was not going to lie. I could not get a job.

My parents refused to accept my epilepsy. I became suicidal and drunk by noon. The only reason is because I had not changed as a person. The only reason is that world around me had changed. The light had been turned off, the light of opportunity, the light of hope. Not until a priest friend of mine turned me over to a man of hope by the name of Bob Hope did the light get lit again.

I am here today, serving in the capacity that I serve, because some people believe not because my Government protected me, not because my Government protected my basic civil rights.

I am a major advocate of this bill because I want to make sure that other young people, as their looking for hope, as they believe that the system should work for them, have that hope, have that opportunity.

What happened at Gallaudet University was not only an inspiration, I am sure, to the hearing impaired. What happened at Gallaudet University was an inspiration to all of us with disabilities, in that if we ourselves believe in ourselves and are willing to stand up we can make a difference.

That is what this bill is all about; 36 million Americans deciding it is time for us to stand up for ourselves, to make a difference, to say that we want our basic civil rights also. We deserve it.

Give us an opportunity to do what we can do, do not keep telling us what we cannot do.

I thank my colleagues.

[The prepared statement of Congressman Coelho follows:]

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Congress of the United States
House of Representatives
Office of the Majority Whip

THE AMERICANS WITH DISABILITIES ACT OF 1988
Statement by Rep. Tony Coelho
September 27, 1988

The joint hearing we are participating in today represents another important step in the struggle to secure civil rights protections for Americans with disabilities, our nation's largest minority. The time has come to send a message across America that people with disabilities can no longer be locked out, stigmatized or ignored. The time has finally come to end the discrimination 43 million Americans with disabilities face as they strive to take their rightful place in every aspect of our society.

I am honored to co-chair today's hearing because I belong to this minority. We are a diverse group -- we use wheelchairs, we are blind, we are deaf, many of us have hidden disabilities -- epilepsy, cancer, HIV infection, diabetes, mental illness. We have lived in the White House. We live in institutions and nursing homes. We live in large cities and in rural communities. We work in Congress and we work at McDonald's. Many of us aren't permitted to work at all.

No matter what our disability is, where we live, or what we do, we all share the common experience of discrimination. And we all share a common dream: to live wherever we choose, to work and achieve whatever career goals we strive toward, to communicate with our neighbors, to travel where we choose, and, like all other Americans, to freely use and enjoy public accommodations in our communities.

The Americans with Disabilities Act is a major step towards achieving our dream of equality. This act was developed by the National Council on the Handicapped, an independent federal agency appointed by President Reagan to investigate the status of disabled Americans. Over the past five years, the Council conducted innumerable hearings and forums across this country and reached the same inescapable conclusions again and again: barriers and discrimination, rather than the inherent physical or mental characteristics of persons with disabilities themselves, are to blame for the staggering unemployment and isolation of these citizens, our nation's largest minority.

The Americans with Disabilities Act proposes a series of protections against discrimination which parallel existing civil rights statutes. In drafting this bill, the Council has drawn also on the successful model used by the federal government in eliminating discrimination on the basis of handicap in federally-funded activities. This vision of the National Council on the Handicapped, that existing civil rights could and should be extended to protect the disabled, has been shaped by the input of hundreds of disabled Americans and parents of disabled children.

As the Council found, unfair discrimination is the daily experience of many of the 43 million Americans with disabilities. Every sphere of life is affected: housing, employment, recreation, transportation; even the ability to operate independently in the commercial sphere, or to vote, or to raise children. Our entire society has been inadvertently structured in a way that unnecessarily denies innumerable opportunities, great and small, to people with disabilities, in ways that are never even noticed by most Americans.

Simple daily tasks, like visiting the grocery store or the bank, going to a restaurant or a movie, using the telephone to report an emergency, taking the bus to the doctor, or even getting in and out of one's own home, can become monumental tasks or impossible barriers to overcome -- not due to the actual physical and mental conditions of disabled Americans, but due to prejudice, fears, and unnecessary obstacles which have been placed in their path.

Countless numbers of our fellow citizens who are veterans of foreign conflicts, have acquired a disability while defending their country, only to come home to a society that subjects them to discrimination and injustice, a society that shuns them merely because they are disabled. The architectural, communication and transportation barriers they face do not affect them and their families alone. Our entire society bears the economic burdens of this prejudice: dependency is expensive. It increases benefit entitlements and decreases productive capacity sorely needed by the American economy.

As I can tell you from my own experience with epilepsy, employment discrimination is one of the most pervasive problems affecting Americans with disabilities. Jobs are unfairly denied every day to thousands of capable people with epilepsy and other disabilities due to prejudice, stereotypes and groundless myths about our lack of abilities or because we are erroneously perceived to pose dangers to ourselves and others.

For example, I know one woman with epilepsy who was employed for nearly eight years as a secretary for a company. One day she had a seizure at work and was fired, simply because her employer felt that her co-workers should not have to work with someone like her.

Similarly, a young man with multiple sclerosis was fired from his job because he was unable to handwrite his reports even though he was perfectly capable of dictating them. Or, what of the veteran who lost a leg in Vietnam and was denied a job in a factory line even though he was totally able to perform the job?

These stories, sadly, are all true. Yet these individuals, like many other American citizens, have no remedy to challenge the denial of employment. They want to be productive, self-supporting and tax-paying participants in society, but they have been told that they cannot do so, for reasons that are irrational, illogical, and unjust. This bill gives these persons a remedy.

People with disabilities want to work. This has been confirmed by numerous studies, including the 1986 Lou Harris survey which found that two-thirds of the disabled people polled who are not employed said that they wanted to work. One-quarter of these Americans attributed their unemployment to employer discrimination and an additional 28 percent attributed it to transportation barriers.

The full and dramatic reality of this problem has been largely hidden, denied, and explained away. When a program, or a job, or a school, has excluded disabled people, or segregated them in a separate facility, this has been justified through the unchallenged myth of equating disability with inability. When taking stock of the status of unemployment in our society, the staggering level of disabled employment - 66 percent - is not viewed as a solvable problem, it's viewed as an inevitability. You hear things like, "Of course they can't work. They're disabled." This alleged self-truth has gone substantially unchallenged and is one of the most fundamental errors our society has ever made.

Equating disability with inability is false. In employment, for example, numerous studies have shown that employment for the disabled is restricted more by misconceptions, stereotypes, and generalizations about handicaps, unfounded fears about increased costs and decreased productivity, and outright prejudice, than by people's disabilities themselves. Overwhelmingly, the documentation shows that disabled workers equal or outperform non-disabled workers, without increasing insurance benefits or worker's compensation costs. We have allowed our discomfort with the handicapped, and our feelings of hostility toward them to create this gigantic and wasteful injustice.

Society has neglected to challenge itself and its misconceptions about people with disabilities. When people don't see the disabled among our co-workers, or on the bus, or at the sports field, or in a movie theater, most Americans think it's because they can't. It's time to break this myth. The real reason people don't see the disabled among their co-workers, or on the bus, or at the sports field, or in a movie theater is because of barriers and discrimination. Nothing more.

It is barriers and discrimination that have caused an "out of sight, out of mind" situation with disabled people. When housing is inaccessible and unavailable, the disabled have to stay at home, under the care of their families, or live in nursing homes and other institutions, rather than establishing and controlling their own households next door to you and me. When regular transportation is inaccessible, and transit services for the disabled are segregated, you won't see them on your bus or commuter train. When prejudice dictates that the handicapped can be productively employed only in separate sheltered workshops, you won't see too many in your workplace.

The exclusion and segregation of people with disabilities has had an insidious partner: the gloss of good intentions. An atmosphere of charity and concern has cloaked our ill-treatment of disabled people and permeated our excuses for denying them access to the full benefits of the complex fabric of modern American society. The institutions and the token van rides and the overprotective denials of employment have all been provided with the noblest intent.

While the charity model once represented a step forward in the treatment of persons with handicaps, in today's society it is irrelevant, inappropriate and a great disservice. Our model must change. Disabled people are sometimes impatient, and sometimes angry, but for good reason: they are fed up with discrimination and exclusion, tired of denial, and are eager to seize the challenges and opportunities as quickly as the rest of us.

It is time to stop the excuses and the veneer of good intentions. We must stop the cycle of separateness which hides the people with disabilities, and creates prejudice, which creates more separateness.

In the past, concerns about cost have been raised as an obstacle to our addressing this problem. Estimates of these costs are inflated. For example, when the implications of Section 504 of the Rehabilitation Act of 1973 were debated, universities and hospitals claimed that non-discrimination was absolutely beyond their financial means. We have now had regulations implementing Section 504 over 10 years. During that time, these institutions have not complained of financial difficulties due to accommodating the disabled.

I believe we will find that in the long run, ending discrimination will actually lower costs to our society as a whole. Maintaining discrimination is

expensive because discriminatory barriers keep people out of work, lowers our gross national product and our tax revenue and, what's more, swell benefits payments. Government studies have estimated that eliminating employment discrimination in even a narrow spectrum of jobs would add \$58 million to annual government revenues. A Department of Transportation study indicated that, with accessible transportation, SSI benefit savings due to increased employment would account for \$276 million a year. Statistics indicated that funds generated by eliminating handicap discrimination would return more than three dollars for every dollar spent. We as a nation stand to cash in quite a bit on the integration, and subsequent enhanced productivity, of people with disabilities.

The Americans with Disabilities Act addresses these basic areas: employment, transportation, public accommodations, public services and communication barriers.

In employment, this Act will make it illegal to deny job opportunities to qualified applicants on the basis of handicap. The Act will cover the same range of employment activities as those covered by Title VII of the Civil Rights Act of 1964.

In transportation, the Act will eliminate barriers by requiring new transportation equipment to be accessible to the disabled. This follows a national trend, in which the current federal mandate to provide useable public transportation for the disabled is being done through lift-fitted and otherwise-accessible equipment. The next step, barriers in existing equipment, will be dealt with by allowing phase-in periods. This way, transit systems will slowly become more and more accessible to the disabled without creating a burdensome cost to the transit districts. The bill provides that para-transit (separate, subsidized door-to-door van systems) can and should still be used, but not as a substitute for regular fixed-route service.

In mandating this particular configuration of transportation services, Congress will be affirming the consensus which is being reached in both the disability community and the transit community after a decade of much experimentation in how best to eliminate transportation barriers. An increasing number of cities large and small, including New York, Denver, Seattle, San Francisco, Tacoma, Johnstown, and Champagne-Urbana, have successfully integrated large numbers of disabled people into their entire transit systems. These cities serve as models to the rest of the country, illustrating how to maximize disabled ridership, minimize costs, and work harmoniously with the disability community.

The Act will prohibit discrimination in public accommodations covered by Title II of the 1964 Civil Rights Act. Also, it will prohibit discriminatory activities of state and local governments resulting from ordinances, laws, regulations, or rules. It includes the continued phase-in of closed captioning in television broadcasts, viewable by deaf and hearing-impaired watchers upon purchase of decoder. Such measures will begin to bring down the many barriers that are so debilitating to the disabled on a day-to-day basis.

The Americans with Disabilities Act of 1988 provides the vehicle through which we can address the critical problem of discrimination on the basis of handicap in our country. We must provide disabled citizens the same equality of opportunity which our nation values so highly. We must all work together toward the day when disabled people face no discrimination. I urge all my colleagues to join us in this fight.

Senator HARKIN. Congressman Coelho just again showed what we know around here to be true, that that testimony that comes from the heart is always the best testimony.

I would like to recognize our distinguished chairman of the Labor and Human Resources Committee, the Senator from Massachusetts, Senator Kennedy.

OPENING STATEMENT OF SENATOR KENNEDY

Senator KENNEDY. Mr. Chairman, just for a moment, because we all want to hear the witnesses, I too want to commend you, Senator Weicker, Major Owens, Congressman Coelho, Congressman Jeffords, for holding these hearings.

I think, as you listen to those who have spoken today, you realize that there probably has not been a family in the country that has not been touched by some form of physical or mental challenge. You have heard some statements today, very moving statements of members of the family. That has been true in the Kennedy family, as well, a sister who is retarded, my own son who has lost a limb to cancer. I bet if you go across this country, there really is not a member of a family or an extended family that has not been touched.

This legislation will become law. I think those that have physical or mental challenge has to take heart by the actions that have been taken very recently in the Congress, with the Fair Housing Act and the Civil Rights Restoration Act. There is a movement and it is alive and it is growing. And it should grow.

This legislation will become law. It will become law not because of the people up here, although all of us want it to become law, but because of you all across this Nation, in the small towns and communities, in the plants and factories all across this Nation, that are really challenging our country to ensure that we are basically going to have an even playing field and we are going to eliminate the barriers that keep people out, so that people can become a real part of the American dream.

I just want to give the assurance to both Senator Harkin, who is the chairman of the Subcommittee on the Handicapped, and Senator Weicker, who has done such a great job in this area as well, that this will be the first order of business when the next Congress meets, assuming that we are all here.

Senator HARKIN. That is great news, the first order of business next year.

[The prepared statement of Senator Kennedy follows:]

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STATEMENT OF SENATOR EDWARD M. KENNEDY
ON S. 2345, THE AMERICANS WITH DISABILITIES ACT

For Immediate Release:
September 27, 1988
CONTACT: Paul Donovan
Robin Buckley
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Today marks the first day of hearings by the Senate Subcommittee on the Handicapped on the Americans with Disabilities Act. At the outset, I want to commend Senator Harkin and Senator Weicker for their leadership on this issue, and for their tireless support in working toward a more just society for the disabled and for all Americans.

The 100th Congress has already adopted two landmark bills to protect the rights of the disabled. The Civil Rights Restoration Act, enacted over the veto of the President, provides substantial protections for the handicapped against discrimination. And the Fair Housing Act of 1988 includes for the first time a series of provisions to bring the disabled within its far-reaching protections.

The Americans with Disabilities Act is the essential next step in our ongoing effort to guarantee that the 36 million physically and mentally challenged citizens of our nation enjoy the same fundamental rights as all other Americans. We recognize that enactment of a law does not necessarily end discrimination or prejudice in our society, but it is often the indispensable means of advancing toward that goal.

With the help of medical science and the commitment of growing numbers of concerned citizens in public and private life throughout the country, we are poised on the threshold of a new era of opportunity in our society for millions of fellow citizens who have been unfairly left out. We are beginning to learn that disabled people are not unable. The old barriers of fear and prejudice and ignorance are crumbling, and the Americans with Disabilities Act will speed the day when those ancient attitudes are finally and fully overcome, and disabled Americans enjoy the right to realize their full potential.

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In 1973, Congress took the first step in ensuring that the civil rights of millions of Americans with disabilities are protected. Section 504 of the Rehabilitation Act has served as a symbol of equal citizenship for disabled Americans, an incentive for self-advocacy and community education -- and when necessary, a basis for court action. The legislation we are discussing today builds on what we started in 1973 -- it will provide disabled Americans with the same rights already accorded to women and minorities -- the right to be free from discrimination in all its insidious forms.

Finally, the Americans with Disabilities Act will also halt discrimination against individuals suffering from AIDS or who are infected with the AIDS virus. I am delighted that Admiral Watkins is with us today. The report of his Presidential Commission makes clear that discrimination against victims of AIDS is seriously impairing our ability to halt the spread of the AIDS epidemic, and action by Congress is overdue.

I look forward to this hearing, and I commend all those who have worked so hard to develop this legislation. The Americans with Disabilities Act deserves our high priority in Congress, and I intend to do all I can as chairman of the Labor and Human Resources Committee to expedite its enactment.

Senator HARKIN. I want to recognize my former colleague from the House, an individual I worked very closely with for many years during the House, again an eloquent spokesman for the right of Americans with disabilities, Congressman Jeffords from Vermont.

STATEMENT OF HON. JAMES M. JEFFORDS, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF VERMONT

Mr. JEFFORDS. Thank you very much, Mr. Chairman.

As has been pointed out, individuals with disabilities have been denied for so long, services, jobs, housing, transportation, hotel rooms, a means to communicate, access to Government officials, voting polls, and yes, even restrooms. Such denials have been sustained, systematic and yes, tolerated. No more.

With the introduction of the Americans With Disabilities Act of 1988 and this hearing, we begin in earnest to undo the remaining forms of discrimination against individuals with disabilities.

I wish to commend the National Council on the Handicapped, my esteemed colleagues especially those here today, Mr. Justin Dart, and others for their untiring efforts to document the full range of discrimination experienced by persons with disabilities, thus creating a moral and practical foundation for the expectations reflected in the ADA.

I am looking forward to the testimony of the witnesses here today. They represent a source of guidance and energy, a reflection of potential and determination, and the spirit of cooperation and partnership. They know what discrimination is and how to overcome it. They know what patience is and how to show it. They know what credibility is and how to judge it.

Our family members, our friends and our neighbors with disabilities ask for one simple right, the right to control their own lives, to make choices and to choose. This will not happen until we eliminate all forms of discrimination.

We continue the process of transforming the ADA into law. Its effects should not be judged in terms of cost, but rather realized potential; not be measured in terms of effort, but in increased productivity; and not be characterized as preferential treatment, but as reaffirmed human dignity. Starting today, we must work together to make the ADA a fact, not a gesture; reflected in practice, not promises; and grounded in commitment, not hope.

I was elected in Congress in 1974 and I worked with my colleagues on many acts along these lines, the Education of all Handicapped Children Act, the Rehabilitation Act, especially to extend the protections under section 504 to people seeking services and jobs directly with the Federal Government, the Civil Rights Restoration Act, the Technology Related Assistance Act or Individuals with Disability Act of 1988, and now the ADA.

Although our efforts reflect progress, we know from experience that comprehensive legislation takes great effort. As two of my distinguished figures have recently said, read my lips, the ADA will be enacted.

Thank you. [Applause.]

Senator HARKIN. I recognize our colleague from California, Congressman Martinez.

STATEMENT OF HON. MATTHEW G. MARTINEZ, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. MARTINEZ. Senator Harkin, thank you very much.

Let me start off by commending you and Congressman Owens for holding this hearing today on discrimination against disabled Americans.

For too long, these 32 million Americans have been ignored and their civil rights have been denied. They represent the largest minority group in this Nation and it is time that the Congress listened and acted on their concerns.

As chairman of the House Subcommittee on Employment Opportunities, I am proud of the great strides that the Rehabilitation Act has made in fighting employment discrimination, but it is not enough. While the Civil Rights Act of 1964 prohibits employment discrimination on the basis of race, color, religion, sex, or national origin by most employers, no similar protection is provided for disabled workers in the private sector.

I believe the Americans With Disabilities Act would be a giant step in providing that protection. Each and every qualified American should have the right to work to the best of his or her ability and this legislation will ensure that right. Americans willing and capable of work should no longer be judged on their disability but rather on their abilities.

Society and our Nation could benefit greatly from the integration of these individuals, not only into the work force but society as a whole. The ADA will give disabled Americans the right to have a full and productive life, a right which, in today's society, is often denied them.

During the past two Congresses, the Subcommittee on Employment Opportunities has also held hearings on discrimination against disabled Americans. In fact, we had a very eloquent testimony given by the son of Senator Kennedy.

It became evident during those hearings, and I am sure it will become evident today that society and Congress have begun a process of integration, but more needs to be done. I look forward to the testimony of the witnesses today. Senator Harkin, these are the individuals that know firsthand what it is like not to be given a fair and equal chance in the world based not on their ability, but on their disability.

Thank you.

[The prepared statement of Congressman Martinez follows:]

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OPENING STATEMENT OF CONGRESSMAN MATTHEW G. MARTINEZ
BEFORE THE SENATE SUBCOMMITTEE ON THE HANDICAPPED
AND THE HOUSE SUBCOMMITTEE ON SELECT EDUCATION

HEARING ON DISCRIMINATION ON THE BASIS OF DISABILITY
SEPTEMBER 27, 1988
216 HART, 10:00 A.M.

SENATOR HARKIN AND CONGRESSMAN OWENS, I WANT TO COMMEND YOU FOR HOLDING THIS HEARING TODAY ON DISCRIMINATION AGAINST DISABLED AMERICANS. FOR TOO LONG, THESE 32 MILLION AMERICANS HAVE BEEN IGNORED AND THEIR CIVIL RIGHTS DENIED. THEY REPRESENT THE LARGEST MINORITY GROUP IN THIS NATION AND IT IS TIME THAT CONGRESS LISTENED AND ACTED ON THEIR CONCERNS.

AS CHAIRMAN OF THE HOUSE SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES, I AM PROUD OF THE GREAT STRIDES THE REHABILITATION ACT HAS MADE IN FIGHTING EMPLOYMENT DISCRIMINATION AGAINST THE DISABLED AMONGST FEDERAL AGENCIES AND CONTRACTORS. HOWEVER, IT HAS NOT BEEN ENOUGH. WHILE THE CIVIL RIGHTS ACT OF 1964 PROHIBITS EMPLOYMENT DISCRIMINATION ON THE BASIS OF RACE, COLOR, RELIGION, SEX OR NATIONAL ORIGIN BY MOST EMPLOYERS, NO SIMILAR PROTECTION IS PROVIDED FOR DISABLED WORKERS IN THE PRIVATE SECTOR. I BELIEVE THE "AMERICANS WITH DISABILITIES ACT" WOULD BE A GIANT STEP IN PROVIDING THAT PROTECTION.

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EACH AND EVERY QUALIFIED AMERICAN SHOULD HAVE THE RIGHT TO WORK TO THE BEST OF HIS OR HER ABILITY AND THIS LEGISLATION WILL ENSURE THAT RIGHT. AMERICANS WILLING AND CAPABLE OF WORK SHOULD NO LONGER BE JUDGED ON THEIR DISABILITY BUT ON THEIR ABILITIES. SOCIETY AND OUR NATION COULD BENEFIT GREATLY FROM INTERGRATING THESE INDIVIDUALS, NOT ONLY INTO THE WORKFORCE, BUT SOCIETY AS A WHOLE. THE ADA WILL GIVE DISABLED AMERICANS THE RIGHT TO HAVE A FULL AND PRODUCTIVE LIFE, A RIGHT WHICH IN TODAY'S SOCIETY IS OFTEN DENIED TO THEM.

DURING THE PAST TWO CONGRESSES, THE SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES HAS ALSO HELD HEARINGS ON DISCRIMINATION AGAINST DISABLED AMERICANS. WHAT HAS BECOME EVIDENT DURING THOSE HEARINGS, AND I AM SURE WILL BECOME EVIDENT TODAY, IS THAT SOCIETY AND CONGRESS HAVE BEGUN THE PROCESS OF INTERGRATION BUT MORE NEEDS TO BE DONE.

I LOOK FORWARD TO THE TESTIMONY OF THE WITNESSES. THESE ARE THE INDIVIDUALS THAT KNOW FIRST HAND WHAT IT IS LIKE NOT TO BE GIVEN A FAIR AND EQUAL CHANCE IN THE WORLD, BASED NOT ON THEIR ABILITY, BUT ON THEIR DISABILITY.

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Senator WEICKER [presiding]. Congressman, thank you very much. I ask unanimous consent that a statement by Senator Simon of Illinois be included in the record in its entirety.

[The prepared statement of Senator Simon follows:]

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PAUL SIMON
ILLINOIS

COMMITTEES:
LABOR AND HUMAN RESOURCES
JUDICIARY
FOREIGN RELATIONS
BUDGET

United States Senate

WASHINGTON, DC 20510

STATEMENT OF SENATOR PAUL SIMON HEARING ON DISCRIMINATION ON THE BASIS OF DISABILITY September 26, 1988

Mr. Chairman, I deeply regret that I will not be able to attend this very important hearing. I would like to welcome the witnesses in person, and particularly welcome Mary Linden, from Morton Grove, Illinois. I will be looking forward to reading the testimony of all of the witnesses.

The topic of this hearing is important not only to the millions of Americans who continue to suffer directly the effects of discrimination, but also to our nation. We all feel the effects and are clearly lessened as a nation when we fail to guarantee the rights and use the abilities of all of our citizens.

A recent article in the magazine Business Week called Americans with disabilities the "last minority." We know from experience that civil rights legislation does not automatically end unfair and unequal treatment of people who have historically been left out of the mainstream. But we have also seen the enormous difference that comprehensive civil rights laws have made in the lives of other American "minorities." We know we can do better -- much better -- in bringing Americans with disabilities into the mainstream of our society -- into the workplace, our communities, our lives. We need the Americans with Disabilities Act to complete the civil rights agenda in this country and to bring equality of opportunity to our "last minority."

I sense we are ready to take the final steps to bring about full equality for Americans with disabilities -- and we will be a far richer nation when we do.

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618/457-3653

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Mr. COELHO. Mr. Chairman, can I have unanimous consent that a statement by me be put in the record at the end of my remarks?

Senator WEICKER. Indeed, a statement by Congressman Coelho will be included in the record at this point in its entirety, or at the conclusion of his statement.

We now go to the first witness, Sandy Parrino of the National Council on the Handicapped. I would like to say that this is a courageous lady. I might add, she represents a courageous group, the entire council, because indeed theirs has not been an easy road in bringing this legislation before us.

They have resisted the importunings of those that were dedicated either to partisanship or philosophy or special interest, and have tried to bring forth a work product that will do the job for the disabled, period. That was the only thing they had in mind.

I want to thank you, Sandy, by way of this introduction. The floor is yours.

STATEMENT OF SANDRA PARRINO, CHAIRPERSON, NATIONAL COUNCIL ON THE HANDICAPPED, WASHINGTON, DC

Ms. PARRINO. Thank you. Good morning.

My name is Sandra Swift Parrino. I am very honored to lead off testimony about a piece of legislation that is very close to my heart—the Americans With Disabilities Act of 1988.

I am, in private life, a mother with an involvement and commitment to two children born with serious disabilities. I am, in public life, the Chairperson of the National Council on the Handicapped, an independent Federal agency whose Board is comprised of 15 knowledgeable persons with disabilities—and experts on disability service programs. All of us, appointed by the President and confirmed by the Senate.

We are the only Federal agency mandated to address, analyze, and make recommendations on issues of public policy affecting Americans with disabilities. The main thrust of our efforts is toward eliminating barriers which prevent disabled persons from full participation in the mainstream of American life. Barriers, as you will see, that will topple upon passage of the Americans with Disabilities Act which you will hear referred to as ADA.

The National Council on the Handicapped has not been timid in its efforts in both originating and spearheading this legislation. Legislation we first recommended in a report titled "Toward Independence" that was sent to both the President and Congress in 1986.

Legislation we designed after indepth analysis and study. Legislation that is of clear importance to persons with disabilities and to Federal policy regarding disability programs. Legislation that offers constructive, realistic, and fiscally sound solutions to enhance independence and productivity of people with disabilities. Landmark legislation that is a civil rights, equal opportunity bill for 36 million disabled Americans. Legislation that will, in essence, no longer allow 36 million Americans to be left out of the American dream scenario.

The Americans with Disabilities Act of 1988 is not only important to 36 million citizens with disabilities—it is also—as I will il-

lustrate a bit later—of the highest importance to our Nation. From the quadriplegic as the result of a football injury . . . to the child in a hospital crib from rapidly growing numbers of senior citizens to 75,000 Vietnam veterans—the basic nugget of truth is that—due to discriminatory practices—persons with disabilities continue to suffer from the highest rates of unemployment and poverty than any other group of Americans. Less access to decent schooling—housing—work and transportation than anyone in this country—including noncitizens.

ADA is critically important because its provisions are shaped to break the chains that bind many of the 36 million people into a bondage of unjust, unwanted dependency on families, charity, and social welfare. Dependency that is a major and totally unnecessary contributor to public deficits and private expenditures.

These hearings will provide you with a vital source of information to assess the scope and meaning of the Americans With Disabilities Act. On behalf of 36 million citizens, I ask you to keep in mind that for decades disabled people have been waiting. For decades disabled people have seen laws enacted by their elected Representatives that prohibit discrimination for other categories of individuals. For decades, disabled Americans have had to live with the realization that there are no similarly effective laws to protect them.

Today, I am proud to say, there is an emerging group consciousness on the part of disabled Americans, their families, friends and advocates. A consciousness toward mounting political activism.

Martin Luther King had a dream. We have a vision. Dr. King dreamed of an America "where a person is judged not by the color of his skin, but by the content of his character." ADA's vision is of an America where persons are judged by their abilities and not on the basis of their disabilities; 36 million Americans, our Nation's largest and no longer silent minority. Ladies and gentlemen, American cannot afford to discard her disabled brothers and sisters.

In "Toward Independence", our 1986 report to Congress, our vision has been to shape responsible legislation by which Federal disincentives and barriers to employment are removed so that disabled Americans can go to work.

In the 1984 report to Congress by the Rehabilitation Services Administration, it was indicated that for every \$1 spent to return a disabled person to work, \$18 were returned to the tax base upon their placement. This would include not only taxes paid by the individual, but money saved from the removal of public expenditures.

ADA seeks to protect disabled citizens against discrimination in such areas as transportation, private sector employment, public accommodations, housing and communications and where appropriate the activities of State and local Government agencies.

America cannot afford to discard her disabled people. The majority of disabled people not working said they want to work. The first Louis Harris poll showed that disabled workers in the workplace are rated "good" to "excellent" by an overwhelming majority of their employers. Disability does not mean incompetence. The perception that disabled people are flawed and incapable of caring for themselves is the result of discriminatory attitudes, not the result of disability.

In a nation with a labor shortage, two-thirds of all disabled Americans between the ages of 16 and 64 years of age are not working. No one demographic group under 65 has such a small proportion working. The two words "not working" are perhaps the truest definition of what it means to be disabled in America today.

As Louis Harris discovered, people with disabilities want to become involved in their communities as taxpaying contributors.

It is contrary to sound principles of fiscal responsibility to spend billions of Federal tax dollars to relegate people with disabilities to positions of dependency upon public support.

People with disabilities represent America's greatest untapped resource of employables who want to work. As we all know, in America, jobs are a major source of status, dignity, and self-esteem. "What do you do," is a conversational staple. To contribute to society and support yourself is a cherished precept of our American vision.

ADA sweeps into obsolescence those obstacles that limit opportunity, promote discrimination, prevent integration, restrict choice and frustrate self-help for the working aged disabled Americans who are unemployed.

May I remind you, America cannot afford to discard her disabled brothers and sisters. Advancing age, economic circumstances, illness, and accident will someday, according to reputable statistics, put most of us, in the category of a person with a disability.

The goals espoused in the Americans with Disabilities Act are economically practical as well as morally correct and humanely necessary. The ADA is legislation that does away with troubling historical echoes. Echoes that must no longer be interpreted by America's disabled citizenry as a life sentence.

Esteemed Members of Congress, in closing, I wish to relay a message from 36 million Americans with disabilities. For decades, we have retained a faith in the reformability and adaptability of our Government. For decades we have been told to have patience, but patience is not an inexhaustible commodity. People with disabilities have waited long enough. America has waited long enough. The Americans with Disabilities Act must be enacted now.

The vision of equality for 36 million Americans with disabilities now rests with you.

I thank you. [Applause.]

[The prepared statement of Ms. Parrino follows:]

TESTIMONY OF SANDRA SWIFT PARRINO, CHAIRPERSON
NATIONAL COUNCIL ON THE HANDICAPPED

GOOD MORNING

MY NAME IS SANDRA SWIFT PARRINO.

I AM HONORED TO LEAD OFF TESTIMONY ABOUT A PIECE OF LEGISLATION THAT IS VERY CLOSE TO MY HEART... THE AMERICANS WITH DISABILITIES ACT OF 1988.

I AM, IN PRIVATE LIFE, A MOTHER WITH AN INVOLVEMENT AND COMMITMENT TO TWO CHILDREN BORN WITH SERIOUS DISABILITIES.

I AM, IN PUBLIC LIFE, THE CHAIRPERSON OF THE NATIONAL COUNCIL ON THE HANDICAPPED. AN INDEPENDENT FEDERAL AGENCY WHOSE BOARD IS COMPRISED OF 15 KNOWLEDGEABLE PERSONS WITH DISABILITIES....AND EXPERTS ON DISABILITY SERVICE PROGRAMS. ALL OF US, APPOINTED BY THE PRESIDENT AND CONFIRMED BY THE SENATE.

WE ARE THE ONLY FEDERAL AGENCY MANDATED TO ADDRESS, ANALYZE AND MAKE RECOMMENDATIONS ON ISSUES OF PUBLIC POLICY AFFECTING AMERICANS WITH DISABILITIES. THE MAIN THRUST OF OUR EFFORTS IS TOWARDS ELIMINATING BARRIERS WHICH PREVENT DISABLED PERSONS FROM FULL PARTICIPATION IN THE MAINSTREAM OF AMERICAN LIFE. BARRIERS, AS YOU WILL SEE, THAT WILL TOPPLE UPON PASSAGE OF THE AMERICANS WITH DISABILITIES ACT WHICH YOU WILL HEAR REFERRED TO AS ADA.

THE NATIONAL COUNCIL ON THE HANDICAPPED HAS NOT BEEN TIMID IN ITS EFFORTS IN BOTH ORIGINATING AND SPEARHEADING THIS LEGISLATION. LEGISLATION WE FIRST RECOMMENDED IN A REPORT TITLED "TOWARD INDEPENDENCE" THAT WAS SENT TO BOTH THE PRESIDENT AND THE CONGRESS IN 1986.

LEGISLATION WE DESIGNED AFTER IN-DEPTH ANALYSIS AND STUDY. LEGISLATION THAT IS OF CLEAR IMPORTANCE TO PERSONS WITH DISABILITIES AND TO FEDERAL POLICY REGARDING DISABILITY PROGRAMS. LEGISLATION THAT OFFERS CONSTRUCTIVE, REALISTIC AND FISCALLY SOUND SOLUTIONS TO ENHANCE INDEPENDENCE AND PRODUCTIVITY OF PEOPLE WITH DISABILITIES. LANDMARK LEGISLATION THAT IS A CIVIL RIGHTS, EQUAL OPPORTUNITY BILL FOR 36 MILLION DISABLED AMERICANS. LEGISLATION THAT WILL, IN ESSENCE, NO LONGER ALLOW 36 MILLION AMERICANS TO BE LEFT OUT OF THE AMERICAN DREAM SCENARIO.

THE AMERICANS WITH DISABILITIES ACT OF 1988 IS NOT ONLY IMPORTANT TO 36 MILLION CITIZENS WITH DISABILITIES....IT IS ALSO....AS I WILL ILLUSTRATE A BIT LATER...IMPERISHABLY IMPORTANT TO OUR NATION. FROM THE QUADRIPLAGIC AS THE RESULT OF A FOOTBALL INJURY....TO THE CHILD IN A HOSPITAL CRIB....FROM RAPIDLY GROWING NUMBERS OF SENIOR CITIZENS...TO 75 THOUSANDS VIETNAM VETERANS...THE BASIC NUGGET OF TRUTH IS THAT.... DUE TO DISCRIMINATORY PRACTICES....PERSONS WITH DISABILITIES CONTINUE TO SUFFER FROM THE HIGHEST RATES OF UNEMPLOYMENT AND POVERTY THAN ANY OTHER GROUP OF AMERICANS. LESS ACCESS TO DECENT SCHOOLING..HOUSING..WORK AND TRANSPORTATION THAN ANYONE IN THIS COUNTRY....INCLUDING NON-CITIZENS.

ADA IS OF CRITICALLY IMPORTANT BECAUSE ITS PROVISIONS ARE SHAPED TO BREAK THE THE CHAINS THAT BIND MANY OF THESE 36 MILLIONS INTO A BONDAGE OF UNJUST, UNWANTED DEPENDENCY ON FAMILIES, CHARITY AND SOCIAL WELFARE. A DEPENDENCY THAT IS A MAJOR AND TOTALLY UNNECESSARY CONTRIBUTOR TO PUBLIC DEFICITS AND PRIVATE EXPENDITURES.

THESE HEARINGS WILL PROVIDE YOU WITH A VITAL SOURCE OF INFORMATION TO ASSESS THE SCOPE AND MEANING OF THE AMERICANS WITH DISABILITIES ACT. ON BEHALF OF 36 MILLION CITIZENS I ASK YOU TO KEEP IN MIND THAT...FOR DECADES DISABLED PEOPLE HAVE BEEN WAITING.

FOR DECADES THE DISABLED HAVE SEEN LAWS ENACTED BY THEIR ELECTED REPRESENTATIVES THAT PROHIBIT DISCRIMINATION FOR OTHER CATEGORIES OF INDIVIDUALS. FOR DECADES DISABLED AMERICANS HAVE HAD TO LIVE WITH THE REALIZATION THAT THERE ARE NO SIMILARLY EFFECTIVE LAWS TO PROTECT THEM. TODAY, I AM PROUD TO SAY, THERE IS AN EMERGING GROUP-CONSCIOUSNESS ON THE PART OF DISABLED AMERICANS, THEIR FAMILIES, FRIENDS AND ADVOCATES. A CONSCIOUSNESS TOWARD MOUNTING POLITICAL ACTIVISM. MARTIN LUTHER KING HAD A DREAM. WE HAVE A VISION. KING DREAMED OF AN AMERICA WHERE A PERSON WAS JUDGED NOT BY THE COLOR OF HIS SKIN, BUT BY THE NATURE OF HIS CHARACTER. ADA'S VISION IS OF AN AMERICA WHERE PERSONS ARE JUDGED BY THEIR ABILITIES AND NOT ON THE BASIS OF THEIR DISABILITIES.

36 MILLION AMERICANS...OUR NATION'S LARGEST AND NO LONGER SILENT MINORITY. LADIES AND GENTLEMEN, AMERICA CANNOT AFFORD TO DISCARD HER DISABLED BROTHERS AND SISTERS.

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IN SHEPHERDING THIS LEGISLATION FROM RICHLY DESERVED CONCEPT TO STATUTORY CIVIL RIGHTS UMBRELLA...IN "TOWARDS INDEPENDENCE," OUR 1986 REPORT TO CONGRESS, OUR GOAL HAS BEEN TO DEVISE PRACTICAL, RESPONSIBLE LEGISLATION BY WHICH FEDERAL EXPENDITURES RELATING TO DISABILITY ARE MORE PRUDENTLY SPENT WHILE INEFFECTIVENESS AND COUNTER PRODUCTIVITY ARE MINIMIZED.

"IN THE 1984 REPORT TO CONGRESS BY THE REHABILITATION SERVICES ADMINISTRATION, IT WAS INDICATED FOR EVERY \$1.00 SPENT TO RETURN A DISABLED PERSON TO WORK, \$18.00 WERE RETURNED TO THE TAX BASE UPON THEIR PLACEMENT. THIS WOULD INCLUDE NOT ONLY TAXES PAID BY THE INDIVIDUAL, BUT MONEY SAVED FROM THE REMOVAL OF PUBLIC EXPENDITURES. (SINCE DISABILITY INCREASES WITH AGE, THE COUNCIL'S ROLE IN PREVENTION COULD BE MENTIONED IN THE TESTIMONY)."

ADA SEEKS TO PROTECT DISABLED CITIZENS AGAINST DISCRIMINATION IN AREAS SUCH AS TRANSPORTATION...PRIVATE SECTOR EMPLOYMENT...PUBLIC ACCOMMODATIONS...HOUSING AND COMMUNICATIONS AND WHERE APPROPRIATE THE ACTIVITIES OF STATE AND LOCAL GOVERNMENTS AGENCIES.

IN FACT, BOTH LOUIS HARRIS POLLS SUBSTANTIATED THAT THE TWO WORDS "NOT WORKING" ARE PERHAPS THE TRUEST DEFINITION OF WHAT IT MEANS TO BE DISABLED IN AMERICA TODAY.

AMERICA CAN NOT AFFORD TO DISCARD HER DISABLED PEOPLE. THE MAJORITY OF DISABLED PEOPLE NOT WORKING SAID THAT THEY WANT TO WORK. THE FIRST LOUIS HARRIS POLL SHOWED THAT DISABLED WORKERS IN THE WORKPLACE ARE RATED "GOOD" TO "EXCELLENT" BY AN OVERWHELMING MAJORITY OF THEIR EMPLOYERS.

DISABILITY DOES NOT MEAN INCOMPETENCE. THE PERCEPTION THAT THE DISABLED ARE FLAWED AND INCAPABLE OF CARING FOR THEMSELVES IS THE RESULT OF

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DISCRIMINATORY ATTITUDES...NOT THE RESULT OF DISABILITY. AS LOUIS HARRIS DISCOVERED, PEOPLE WITH DISABILITIES WANT TO BECOME INVOLVED IN THEIR COMMUNITIES AS TAXPAYING CONTRIBUTORS.

IT IS CONTRARY TO SOUND PRINCIPLES OF FISCAL RESPONSIBILITY TO SPEND BILLIONS OF FEDERAL TAX DOLLARS TO RELEGATE PEOPLE WITH DISABILITIES TO POSITIONS OF DEPENDENCY UPON PUBLIC SUPPORT.

MAY I REMIND YOU, PEOPLE WITH DISABILITIES REPRESENT AMERICA'S GREATEST UNTAPPED RESOURCE OF EMPLOYABLES WHO WANT TO WORK.

AS WE ALL KNOW, IN AMERICA JOBS ARE A MAJOR SOURCE OF STATUS, DIGNITY AND SELF-ESTEEM. "WHAT DO YOU DO?" IS A CONVERSATIONAL STAPLE, TO CONTRIBUTE TO SOCIETY AND SUPPORT YOURSELF IS A CHERISHED PRECEPT OF OUR AMERICAN VISION.

ADA SWEEPS INTO OBSOLESCENCE THOSE OBSTACLES THAT LIMIT OPPORTUNITY, PROMOTE DISCRIMINATION, PREVENT INTEGRATION RESTRICT CHOICE AND FRUSTRATE SELF-HELP FOR THE 65 PERCENT OF NON-INSTITUTIONAL WORKING AGE DISABLED AMERICANS WHO ARE UNEMPLOYED.

AMERICA CAN NOT AFFORD TO DISCARD HER DISABLED BROTHERS AND SISTERS.

ADVANCING AGE, ECONOMIC CIRCUMSTANCES, ILLNESS, ACCIDENT WILL SOMEDAY, ACCORDING TO REPUTABLE STATISTICS, PUT ALL OF US, OR A LOVED ONE, IN THE CATEGORY OF A PERSON WITH A DISABILITY.

THE GOALS ESPOUSED IN THE AMERICANS WITH DISABILITIES ACT ARE ECONOMICALLY PRACTICAL AS WELL AS MORALLY CORRECT... AND HUMANELY NECESSARY. THE ADA IS LEGISLATION THAT DOES AWAY WITH TROUBLING HISTORICAL ECHOES. ECHOES THAT MUST NO LONGER BE INTERPRETED BY AMERICA'S DISABLED CITIZENRY AS A LIFE SENTENCE.

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IN CLOSING I WISH TO RELAY A MESSAGE FROM 36 MILLION DISABLED AMERICANS. FOR DECADES WE HAVE RETAINED A FAITH IN THE REFORMABILITY AND ADAPTABILITY OF OUR GOVERNMENT. FOR DECADES WE HAVE BEEN TOLD TO HAVE PATIENCE. BUT PATIENCE IS NOT AN INEXHAUSTIBLE COMMODITY. PEOPLE WITH DISABILITIES HAVE WAITED LONG ENOUGH. AMERICA HAS WAITED LONG ENOUGH. THE AMERICANS WITH DISABILITIES ACT MUST BE ENACTED NOW. THE HOPES, ASPIRATIONS AND VISIONS OF 36 MILLION AMERICANS WITH DISABILITIES NOW RESTS WITH YOU.

Senator WEICKER. Sandy, thank you very much.

To the members of the panel, we have extraordinary individuals who have come to testify on this act. I would hope we could keep our questions down to a minimum, in order that all might have a chance to present their story, possibly each one of us only asking a question or two.

Sandy, very briefly, has a position been stated on this legislation by the Administration?

Ms. PARRINO. At this time, this legislation reflects the views of the members of the National Council on the Handicapped. However, both Presidential nominees have endorsed the bill.

Senator WEICKER. Last, in your view, is it possible to eliminate discrimination against persons with disabilities without Federal legislation?

Ms. PARRINO. I think the testimony answers that question. We have waited. We have been patient. It has not happened. I think that it is necessary to have this legislation.

Personally, I find that the fact that my two children are not protected under the Constitution to be unacceptable to me and it is unacceptable to me that 36 million disabled Americans are not protected under the Constitution. I think we need the legislation.

Senator WEICKER. Congressman Owens.

Mr. OWENS. Mr. Chairman, I have no questions. I would just like to join Senator Harkin in congratulating Mrs. Parrino on the magnificent job that was done in achieving consensus on this piece of legislation, and to thank her for the many years of hard work it took to get to this point.

Senator WEICKER. Congressman Jeffords.

Mr. JEFFORDS. Just one question. You mention a labor shortage which would indicate a need and if we end discrimination we would have an available resource, a human resource. Is the training that is available under present Federal legislation sufficient to handle the ability to make that resource available?

Ms. PARRINO. There is not enough training at the moment. We spend much too much in sustaining dependency and not enough in rehabilitating and training and educating.

Mr. JEFFORDS. Thank you.

Senator WEICKER. Senator Kennedy.

Senator KENNEDY. Just one question. We will probably hear a good deal of discussion about the cost of this legislation. I think it has been well documented, and you have certainly referred to the fact, that if this legislation is actually implemented, the possibilities that it gives for those that are physically handicapped and handicapped will be able to be much more productive in terms of the kinds of returns that will come back, not only in human terms but actually in financial terms, will be useful as well.

I wonder if you would just address that briefly, because this will certainly that, on the floor of the Senate, will be asked about. If you could tell us, if we achieve this legislation, whether people will be able to, you believe, be much more productive in terms of being involved in our economy? I am sorry we have to have this kind of a bottom line type of a question, but I think that is what is on people's minds these days, unfortunately.

Ms. PARRINO. The National Council is seeking to provide Congress with some kind of economic analysis of this bill. We are in the process of finding the appropriate people to do that, because it will be asked in the winter or the spring, we are sure.

There is a lot of data available in some of the areas, and there is also a lot of data that is not available. We are trying to first find what has already been done, what analysis has been done, and then see where the holes are, what has to be looked into.

I think we will be able to put some kind of a picture together by the spring. It is certainly a question that will be asked and has to be answered, but your reference to the labor shortage, we wonder just what this country is going to do as we know there is going to be a tremendous shortage of workers. It is a perfect match that we have here.

I certainly would hope we would not go looking outside the country to fill those jobs when we have a population here who wants to work in all levels of employment. So I think economically, if we look at it that way, it will be a great plus to us.

Senator KENNEDY. I appreciate that, and I hope you will keep us informed. It seems to me to be reasonably self-evident. If you eliminate these barriers and people are able to participate, that they are going to be productive members of society and they will also be contributing members to the society, in terms of their involvement in our whole economy.

I think whatever material we can have on that will be generally useful. Thank you very much.

Senator WEICKER. Congressman Coelho.

Mr. COELHO. Thank you, Senator.

Sandy, outstanding statement. Very, very nicely done. All of us appreciate your work and your effort and your presentation today.

Only one comment and one question. The comment is, do not have any more patience.

Ms. PARRINO. I think it has run out, do you not?

Mr. COELHO. It is time, I think, to stand up. I think Gallaudet proved that and sort of lit a spark not only with the hearing disabled but with the disability community all over the country. We do not want to be patient anymore. So I hope that you do not believe that anymore. Let us move on.

The question I have is that your statement that it is up to us now to adopt it is correct, but you understand politics. You know that that is not the way it is done. What is really important is the grassroots.

You and I talk about 36 million or 43 million—and we move between those numbers, it is somewhere in there—Americans with disabilities. If 36 million Americans would contact their legislative leaders, and urge upon them the need for this legislation, it would be done. That is a tremendous political force.

I am, as I said, one of those in the disabled community. I do not think we have done enough of educating my colleagues, as to what we want and what we do not want. That is why I say patience is over with.

I would just ask the question what are you doing, in the grassroots, to get all the groups to lobby on the ADA bill? We have 130

sponsors in the House. I do not know how many in the Senate. But that is not enough.

Ms. PARRINO. To try and answer your question, of course the members of the National Council on the Handicapped are not allowed to lobby, and of course we do not.

Mr. COELHO. We understand that. Not that we have got that out of the way.

Ms. PARRINO. Now that that is out of the way. [Laughter.]

However, we certainly believe in education. The Council is preparing some information on the bill, some questions and answers and an explanation, sort of in plain English, what the bill means. We hope to go, the staff and the members, to all 50 States and to just educate people at a State level, and then encourage them to educate people down to the grassroots level.

We are only 15 members and our staff, we only have 8, so it is a very large job. But we are going to attempt to do it. We will not go out and tell people what they should do regarding their Congressmen, but we will educate them about the bill, tell them what it means, and why it has been written and why it has been introduced.

Mr. COELHO. Thank you.

Senator WEICKER. Congressman Martinez.

Mr. MARTINEZ. Thank you, Senator Weicker.

I have a question along the same line that the Senate asked. Maybe it is a little bit different, or maybe the response to his was not exactly what I was looking for. I am interested in what the present administration's reaction was to the Council's report, first. Second, we have, in the Federal sector, a law that is supposed to protect the physically challenged. I am wondering if the Council, in its examination of everything, made a determination of whether that law is effective.

Anytime Congress acts, it holds out great hope to the people that look to benefit from that act of Congress. In many instances the followup or administration of that law does not occur. So those people that held up that hope are very disappointed. In this particular area, I would hate to see these people disappointed because they have worked so hard to see this come about.

So the two questions are one, what was the administration's reaction? Two, in your observations, how is the present law in the Federal sector working?

Ms. PARRINO. Well, to answer your first question, sitting behind me is our new Executive Director, Paul Hearne. Paul was sworn in to his position in August by the Vice President. At that swearing in, he indicated a need for Federal antidiscrimination legislation, to protect the rights of disabled people, and he mentioned this bill.

So that, I would say, there has been a level of acceptance of this legislation from the administration.

Mr. MARTINEZ. The second question regards the law that presently exists in the Federal sector, that protects the physically disabled.

Ms. PARRINO. Are you referring to 504 regulations?

Mr. MARTINEZ. Yes.

Ms. PARRINO. Is that adequate?

Mr. MARTINEZ. Is it working? As with various other things, under our supervision as the oversight subcommittee on Employ-

ment Opportunities, we find that the EEOC has not really placed enough emphasis on those things that provide affirmative action in the workplace.

I am wondering if, in this instance, the same thing is occurring, that where we have the law on the books really no one is paying attention to it and the physically disadvantaged continue to be discriminated against?

Ms. PARRINO. Well, here goes my hometown. I agree with you, not enough is being done. There is not enough compliance.

The village I live in, in Westchester County, Briar Cliff Manor, which does participate in revenue sharing, could not see fit to put a ramp in until just this year. Therefore, people in that town, that village, who wanted to go into the town hall and participate in town meetings or decisions that were being made for the population, disabled were not able—certainly physically disabled people were never able to get into that town hall.

That is just one example that has certainly irritated me for many years. I think it is true in communities all over the country. There has not been enough compliance in the 504 regulations. That is a personal opinion.

In that regard, then, does there need to be something put into the law that has teeth in it to force compliance?

Ms. PARRINO. I am not an attorney, and I do not know that I can really answer that, but my uneducated guess would be yes, that there has to be something. It is not enough to just have it down on the books because the similar situation with education.

All the classrooms were supposed to have been made accessible, but many schools are not. Many schools do not have the elevators or the accessibilities, to this day, 13 years after the bill was enacted. They still are not accessible and the classrooms are not accessible.

I would say that we would need some more, I guess, teeth you call it.

Senator WEICKER. Sandy, thank you very much. There will be further questions which can be submitted for the record. Thank you for your effort. Thank you for your courage. It is good to have the endorsement of the National Council. We will take it from here.

Ms. PARRINO. Thank you.

Senator WEICKER. Our next witness is Admiral Watkins. Again, in this particular instance, I would like to commend the Admiral for his courage for bringing sanity and common sense and fact to the discussion of AIDS within this Nation.

Before you arrived on the scene with your Commission, we were dealing with ignorance, superstition, fear, and philosophy. You have turned that around. You have my eternal gratitude for turning it around, you and your entire Commission.

Again, I will use that by way of introduction at this hearing. Thank you very much.

STATEMENT OF ADM. JAMES WATKINS, CHAIRPERSON, PRESIDENT'S COMMISSION ON THE HUMAN IMMUNODEFICIENCY VIRUS EPIDEMIC, WASHINGTON, DC

Mr. WATKINS. Thank you, Senator Weicker.

It is not only a pleasure to come over again to Capitol Hill to talk to important committees, but I am particularly honored that you would ask me to come over to testify on behalf of the Americans With Disabilities Act.

As former chairman of the President's Commission on the HIV Epidemic, I spent most of my time in the last year working with those who have a disability, the HIV infection, and those who, because of their infection, join millions of other Americans with handicaps and disabling conditions.

The Commission held over 45 days of public hearings and site visits in preparation for its report to the President. As I participated in these rigorous and, to my knowledge, unparalleled set of hearings, one point became clear early on, that without strong Federal antidiscrimination laws, to protect those with HIV from discrimination in both the public and private sectors, they would continue to face the unfair discrimination that other disabled persons have always faced.

As I prepared for this testimony today, I went back to read the section of our Commission's report on discrimination. Quite frankly, I felt it impossible to improve upon the words that we labored over for some weeks, so I would like to submit that section of the report in its entirety for my formal written statement.

Now, I would also like to summarize some of its points. Of course, my focus is obviously on AIDS and the HIV infection. Nevertheless, if the HIV epidemic had never occurred and, having experienced a unique opportunity over the past year to witness behaviors of many Americans toward their own neighbors, I would support the Americans With Disabilities Act so that all of our citizens with disabling conditions be guaranteed fair treatment in the workplace, schools, and housing.

My predecessor here this morning said enough time has, in my opinion, been given to the States to legislate what is right. Too many States, for whatever reason, still perpetuate confusion. It is time for Federal action.

Throughout our investigation of the spread of HIV in the United States, the Commission was confronted with a problem of discrimination against individuals with HIV seropositivity and all states of HIV infection, including AIDS.

At virtually every commission hearing, witnesses attested to discrimination's occurrence and its serious repercussions for both the individual who experiences it and for this Nation's effort to control the epidemic. Many witnesses indicated that addressing discrimination is the first critical step in the Nation's response to the epidemic.

HIV-related discrimination is impairing this Nation's ability to limit the spread of the epidemic. Crucial to this effort are epidemiological studies to track the epidemic as well as the education, testing and counseling of those who have been exposed to the virus. Public health officials will not be able to gain the confidence and

cooperation of infected individuals or those at risk for infection if such individuals fear that they will be unable to retain their jobs and their housing, and that they will be unable to obtain the medical and support services that they need because of discrimination based on a positive HIV antibody test.

As long as discrimination occurs, and no strong national policy with rapid and effective remedies against discrimination is established, individuals who are infected with HIV will be reluctant to come forward for testing, counseling, and care. This fear of potential discrimination will limit the public's willingness to comply with the collection of epidemiological data and other public health strategies, will undermine our efforts to contain the epidemic, and will leave HIV-infected individuals isolated and alone.

In general, because HIV is blood-borne and sexually transmitted, there is no need to treat those infected with HIV in a manner different from those not infected in such settings as the workplace, housing, and the schools. In the vast majority of workplace and public settings, there is virtually no risk of direct exposure to body fluids which could result in HIV transmission.

Detailed Centers for Disease Control guidelines have been issued for dealing with HIV infection in those cases which require special handling, such as health care workers and other workers who might be exposed to blood or those school children who lack control of bodily secretions.

Therefore, discrimination against persons with HIV infection in the workplace setting, or in the areas of housing, schools, and public accommodations, is unwarranted because it has no public health basis. Nor is there any basis to discriminate against those who care or associate with such individuals.

As a witness at the Commission's hearings on discrimination explained, individuals infected with HIV face two fights: The fight against the virus and the fight against discrimination. Just as the HIV-infected must have society's support in their fight against the virus, these individuals must have society's support in their fight against discrimination and must have assurances that policies will be implemented to prevent discrimination from occurring in the future.

Furthermore, each act of discrimination, whether publicized or not, diminishes our society's adherence to the principles of justice and equality. Our leaders at all levels, National, State, and local, should speak out against ignorance and injustice, and make clear to the American people that discrimination against those disabled for whatever reasons will not be tolerated. This is the guts of your act.

The National Council on the Handicapped, an independent Federal agency comprised of 15 members appointed by the President to make recommendations on public policy issues affecting people with disabilities, included the proposal for a comprehensive Federal law of this kind in their January 1988 report to the President.

Their proposal, the Americans With Disabilities Act of 1988, of course, is the focal point of these hearings here today. It is what the Commission believes is the type of comprehensive, disability antidiscrimination legislation which should then serve as a model for all Federal legislation in this area.

I would like to close, Mr. Chairman, with one final comment. As the Commission debated this section of our report, one of the physicians on our panel, Dr. Burton Lee, a distinguished cancer specialist, made the following point. Dr. Lee said that in treating literally tens of thousands of lymphoma patients, even today, these patients faced almost inevitably some sort of discrimination once news of their disease became public.

Dr. Lee strongly supports the ADA because of the incredibly debilitating effects discrimination has on his own patients. He said that such a protection in law, particularly at a cancer patient's most vulnerable moment, can mean the difference between a premature death, or years more of life with family and friends.

Work, a decent place to live, a chance for an education are the essentials of life. Passage of the ADA will ensure that no one will lose these essentials simply because they have a disabling condition.

Thank you, Mr. Chairman, for allowing me to appear before you this morning.

[The prepared statement of Admiral Watkins, with an attachment, follows:]

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STATEMENT OF ADMIRAL JAMES WATKINS

GOOD AFTERNOON:

I GREATLY APPRECIATE THE OPPORTUNITY THIS AFTERNOON TO BRIEFLY ADDRESS THE PRIVATE SECTOR LEADERSHIP CONFERENCE ON AIDS. AS YOU KNOW, FROM OCTOBER OF 1987 UNTIL JULY, I WAS THE CHAIRMAN OF THE PRESIDENTIAL COMMISSION ON THE HIV EPIDEMIC, A JOB WHICH REQUIRED MY FULL-TIME ATTENTION. I CAN TRUTHFULLY SAY THAT, HAVING BEEN INVOLVED IN PUBLIC SERVICE FOR THE LAST ____ YEARS, MY ROLE AS CHAIRMAN OF THE COMMISSION WAS THE MOST COMPLICATED AND DIFFICULT OF MY CAREER.

IN RETROSPECT, I SEE THAT THE COMMISSION BEGAN AS MANY AMERICAN INSTITUTIONS ARE STILL OPERATING, IN THE DARK, WITHOUT DIRECTION, THAT IS WITHOUT THE PROPER PLANNING NECESSARY TO DEAL WITH AIDS. AFTER THE COMMISSION CONDUCTED 50 DAYS OF PUBLIC HEARINGS AND SITE VISITS, OUR PERSPECTIVE WAS MUCH DIFFERENT AND WE WERE ABLE TO PUT TOGETHER A FINAL REPORT WHICH HAS BEEN WIDELY PRAISED.

YOU SEE, AFTER YOU'VE DONE YOUR HOMEWORK, THE HIV EPIDEMIC REALLY ISN'T SO HARD. ABOUT FIVE MONTHS INTO OUR

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ASSIGNMENT, IT BECAME CLEAR TO ALL THE COMMISSIONERS THAT WE WERE HEARING AN INCREDIBLE AMOUNT OF CONSENSUS FROM OUR WIDE VARIETY OF HUNDREDS OF WITNESSES. THESE WERE PEOPLE FROM ALL WALKS OF LIFE, ALL POINTS OF VIEW. WHILE THEY DIFFERED ON SOME OF THE FINE POINTS OF PUBLIC POLICY, THE GREAT MAJORITY SUPPORTED A COMMON SENSE APPROACH TO DEALING WITH THE HIV EPIDEMIC.

THIS CONSENSUS OF ACTION IS WHAT YOU SEE IN THE COMMISSION'S REPORT--A COMMON SENSE APPROACH. WE TRY, AND I BELIEVE WE SUCCEED, TO SPEAK TO THE BASIC GOODNESS AND FAIRNESS THAT IS THE CENTERPIECE OF AMERICAN LIFE. NOBODY SHOULD GET SPECIAL TREATMENT, AND EVERYONE SHOULD BE TREATED FAIRLY WHEN THEY ARE SICK.

THIS IS MY FIRST PUBLIC APPEARANCE SINCE I LEFT FOR VACATION IN A REMOTE PART OF CANADA IN MID-JULY. BECAUSE I WAS NOT IN WASHINGTON, OR REACHABLE BY PHONE WHEN THE PRESIDENT ISSUED HIS FIRST IN A SERIES OF IMPLEMENTING ANNOUNCEMENTS, I MISSED BEING PART OF THE FIRST WAVE OF REACTION. I WOULD LIKE

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TO GIVE YOU MY REACTION TODAY, AS IT IS RELATED TO THE SPECIAL MISSION AMERICAN BUSINESS AND LABOR HAVE IN DEALING WITH THE HIV EPIDEMIC.

AS MANY OF YOU KNOW, THE CENTERPIECE OF THE COMMISSION'S AIDS STRATEGY WAS PASSAGE OF FEDERAL AND STATE ANTIDISCRIMINATION LAWS WHICH CLEARLY STATE THAT THOSE WITH HIV ARE DISABLED AND HAVE A HANDICAPPING CONDITION. SO FAR, MANY STATES HAVE PASSED SUCH LAWS, BUT ACTION ON THE FEDERAL LEVEL HAS BEEN MUCH SLOWER. THE SENATE SUBCOMMITTEE ON THE HANDICAPPED WILL BE HOLDING ITS FIRST DAY OF HEARINGS ON SUCH A LAW ON SEPTEMBER 29TH AND I WILL BE A WITNESS AT THAT HEARING IN STRONG SUPPORT OF THE AMERICANS WITH DISABILITIES ACT. SO FAR, THE HOUSE HAS NOT HELD ANY HEARINGS ON THE ADA BILL, AND SEPARATE LEGISLATION TO EXTEND CIVIL RIGHTS COVERAGE FOR ONLY THOSE WITH HIV WAS DROPPED FROM A HOUSE BILL IN JUNE.

THIS LEGISLATION IS ESSENTIAL AS, AND I QUOTE FROM OUR REPORT, "HIV-RELATED DISCRIMINATION IS IMPAIRING THIS NATION'S ABILITY TO LIMIT THE SPREAD OF THE EPIDEMIC...AS LONG

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AS DISCRIMINATION OCCURS...INDIVIDUALS WHO ARE INFECTED WITH HIV WILL BE RELUCTANT TO COME FORWARD FOR TESTING, COUNSELING, AND CARE. PUT YOURSELF IN THE SHOES OF SOMEONE WHO IS AFRAID HE WILL LOSE HIS JOB AND HOME, AND WHO MIGHT HAVE 10 OR 15 YEARS FROM TIME OF INFECTION UNTIL ^{any} SYMPTOMS ARE PRESENT. THE COMMISSION FELT THAT THIS PERSON SHOULD BE TREATED LIKE ANYONE ELSE WHO HAS CANCER, HEART DISEASE, DIABETES OR ANY OTHER DISABLING CONDITION. NO SPECIAL TREATMENT, JUST FAIR TREATMENT.

AS YOU CAN SEE, THE CONGRESS HAS NOT GOTTEN VERY FAR IN THIS PROCESS. I INTEND TO WORK WITH MEMBERS OVER THE NEXT YEAR TO MAKE SURE THIS NECESSARY LEGISLATION TO COVER THE RIGHTS OF ALL ILL AND DISABLED PEOPLE IN BOTH THE PUBLIC AND PRIVATE SECTORS IS ENACTED AND SIGNED INTO LAW. BOTH PRESIDENTIAL CANDIDATES HAVE ENDORSED THIS TYPE OF LEGISLATION.

HOWEVER, AS IMPORTANT AS PASSAGE OF A FEDERAL ANTIDISCRIMINATION LAW IS, THE COMMISSION ALSO RECOGNIZED THAT

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PASSAGE OF CIVIL RIGHTS LAWS CAN BE A SLOW PROCESS. I QUOTE:

"THE COMMISSION RECOGNIZES THAT PASSAGE OF MORE COMPREHENSIVE DISABILITY DISCRIMINATION LEGISLATION BY CONGRESS MAY TAKE TIME. THEREFORE, THE COMMISSION BELIEVES THAT IT IS IMPERATIVE FOR THE FEDERAL GOVERNMENT TO TAKE IMMEDIATE STEPS TO INFORM THE PUBLIC REGARDING EXISTING FEDERAL ANTIDISCRIMINATION LAW AND REGARDING THE REMEDIES WHICH ARE AVAILABLE...."

I AM CONCERNED THAT THE DEBATE OF THE LAST TWO MONTHS HAS NOT FOCUSED PROPERLY ON WHAT WAS ACTUALLY IN THE PRESIDENT'S STATEMENT, AND THAT IS AN ENDORSEMENT OF THE OFFICE OF PERSONNEL MANAGEMENT GUIDELINES FOR ALL FEDERAL AGENCIES, BUT ALSO, MOST IMPORTANTLY, AS A STANDARD OF CONDUCT FOR THE NATION.

WE DO NOT HAVE TO WAIT UNTIL THE ADA BILL IS PASSED NEXT YEAR TO USE THE OPM GUIDELINES AS A MODEL FOR ALL AMERICAN BUSINESSES. I URGE EVERYONE HERE TODAY TO GET A COPY OF THE

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GUIDELINES AND ENDORSE THEM IN YOUR WORKPLACE. WHEN I FIRST HAD A CHANCE TO REVIEW THEM, I WAS SO IMPRESSED WITH THEIR CLARITY. CONNIE HORNER, THE DIRECTOR OF OPM, HAD PUT INTO WORDS THE COMMON SENSE WE NEED ON THIS ISSUE.

THE ROLE OF AMERICAN BUSINESS AND LABOR IS CENTRAL IN ESTABLISHING FAIR EMPLOYMENT POLICIES AS WELL AS POTENTIALLY BEING THE MAJOR AVENUE OF EDUCATION ON THE HIV EPIDEMIC FOR THE AVERAGE AMERICAN. LET US TAKE THE TRAGEDY OF AIDS AND TURN IT INTO AN OPPORTUNITY TO IMPROVE THE EDUCATION AND HEALTH OF ALL AMERICANS. WHAT THE WORKER LEARNS IN THE WORKPLACE ABOUT THE HIV EPIDEMIC, AS WELL AS HIS OR HER OWN HEALTH, IS TAKEN HOME AND SHARED WITH THE REST OF THE FAMILY. WE MUST NOT MISS THE OPPORTUNITY TO EDUCATE WORKERS ABOUT HOW THEY CAN MAINTAIN A HEALTH LIFESTYLE FOR THEMSELVES AND THEIR FAMILIES.

MANY PEOPLE HAVE ASKED ME WHAT MY GREATEST WORRY IS FOR THE FUTURE WITH THE HIV EPIDEMIC, AND I ALWAYS ANSWER--OUR TEENAGERS, AND THE ROLE OF DRUG ABUSE IN FUTURE SPREAD OF HIV. WITH REGARD TO THE LATTER, IT IS TIME THAT WE COLLECTIVELY

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RENOUNCE THE USE OF ILLEGAL DRUGS. WE NEED STRONGER LAW ENFORCEMENT POLICIES THAT REACH NOT ONLY THE STREET MERCHANT IN HARLEM, BUT THE YUPPIE ON WALL STREET. WE NEED A GREATLY EXPANDED TREATMENT SYSTEM, SO THAT ANYONE WHO DESIRES HELP IN KICKING THE HABIT CAN DO SO. PERIOD. ANYONE, ANYTIME, NO MORE SIX MONTH WAITING LISTS.

WITH REGARD TO OUR YOUNG PEOPLE, THE FUTURE OF OUR NATION, WE ARE LEARNING MANY LESSONS FROM THIS EPIDEMIC. WE HAVE SEEN THAT IT IS BETTER, LESS EXPENSIVE, AND FAR MORE HUMANE TO PREVENT A PROBLEM THAN TO CORRECT IT -- AND IF THIS IS TRUE FOR HIV, IT IS EVEN MORE TRUE FOR DRUG ABUSE. WE HAVE SEEN THAT SCIENCE DOES NOT HOLD ALL THE ANSWERS TODAY, AND MAY NOT TOMORROW. WE HAVE SEEN THAT EDUCATION IS OUR GREATEST WEAPON AGAINST THIS EPIDEMIC, AND AGAINST SO MANY OF OUR OTHER PROBLEMS NEEDING SOLUTIONS. AND WE HAVE SEEN THAT WE CANNOT FIND THOSE SOLUTIONS ALONE. ONLY THROUGH THE EFFORTS OF MANY, WORKING TOGETHER, WILL THESE BOULDERS FINALLY BEGIN TO BE ROLLED AWAY.

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LET US USE THIS EPIDEMIC AS A CATALYST. LET US SEE IT AS PROVIDING OPPORTUNITIES TO CREATE A BETTER NATION FOR OUR CHILDREN TO INHERIT. LET US ELIMINATE INEQUITIES IN OUR HEALTH CARE DELIVERY SYSTEM; EDUCATE OUR YOUNG PEOPLE ABOUT THEIR OWN HUMAN BIOLOGY; ELIMINATE DISCRIMINATION, AND HARNESS THE GOODNESS ALREADY AT WORK OUT THERE INTO AN UNBEATABLE ARMY AGAINST THIS DISEASE.

YOUR LEADERSHIP IN ACHIEVING THESE GOALS IS ESSENTIAL, AND I APPLAUD ALL THAT MANY OF YOU HAVE ALREADY DONE TO ATTACK AND CONQUER SO MANY OF THESE PROBLEMS. I AM ALSO GRATEFUL THAT YOU ALLOWED ME TO COME BEFORE YOU TODAY TO CHALLENGE YOU CONTINUE TO WORK -- SINGLY AND TOGETHER, WITH GOVERNMENT, AND TO IMPROVE THAT GOVERNMENT WHEN NECESSARY -- TO REMOVE THE MANY OBSTACLES IN THE WAY OF FREE AND HEALTHY LIVES FOR OUR YOUNG PEOPLE.

FINALLY, I WANT TO PAY A SPECIAL TRIBUTE TO THE WORK OF B.J. STILES AND THE NATIONAL LEADERSHIP COALITION ON AIDS. NOT ONLY HAVE THEY PROVEN AN EFFECTIVE NATIONAL ORGANIZATION

ENCOURAGING DEVELOPMENT OF AND OTHER RATIONAL WORKPLACE AND
PUBLIC POLICIES, BUT AT OUR DARKEST HOUR LAST OCTOBER, B.J. AND
HIS BOARD STEPPED FORWARD TO EXTEND THE HAND OF FRIENDSHIP TO
ME AND THE OTHER COMMISSIONERS, AND WISH US WELL IN OUR WORK.
IT WAS A GENEROUS GESTURE, AND THE WORKING RELATIONSHIP BETWEEN
THE LEADERSHIP COALITION AND THE COMMISSION WAS EXCELLENT
THROUGHOUT MY TENURE. I WANTED TO THANK B.J. PUBLICLY TODAY
FOR THAT.

THANK YOU.

Alvin
James
L. H. H.

CHAPTER NINE: LEGAL AND ETHICAL ISSUES

Section I. Discrimination

Throughout our investigation of the spread of HIV in the United States, the Commission has been confronted with the problem of discrimination against individuals with HIV seropositivity and all stages of HIV infection, including AIDS. At virtually every Commission hearing, witnesses have attested to discrimination's occurrence and its serious repercussions for both the individual who experiences it and for this nation's efforts to control the epidemic. Many witnesses have indicated that addressing discrimination is the first critical step in the nation's response to the epidemic.

HIV-related discrimination is impairing this nation's ability to limit the spread of the epidemic. Crucial to this effort are epidemiological studies to track the epidemic as well as the education, testing, and counseling of those who have been exposed to the virus. Public health officials will not be able to gain the confidence and cooperation of infected individuals or those at high risk for infection if such individuals fear that they will be unable to retain their jobs and their housing, and that they will be unable to obtain the medical and support services they need because of discrimination based on a positive HIV antibody test.

As long as discrimination occurs, and no strong national policy with rapid and effective remedies against discrimination is established, individuals who are infected with HIV will be reluctant to come forward for testing, counseling, and care. This fear of potential discrimination will limit the public's willingness to comply with the collection of epidemiological data and other public health strategies, will undermine our efforts to contain the HIV epidemic, and will leave HIV-infected individuals isolated and alone.

On the other hand, the Commission has also received testimony about situations in which HIV-infected individuals have been treated with compassion and understanding by employers, coworkers, fellow students, and members of their local community. From these contrasting experiences, it is clear that the key to an enlightened and compassionate response is education and the planning and development of HIV programs and policies well in advance of the occurrence of the first case of HIV infection. The Commission believes that every employer, school system, and community should start that education and planning process now.

In general, because HIV is blood-borne and sexually transmitted, there is no need to treat those infected with HIV in a manner different from those not infected in such settings as the workplace, housing, and the schools. In the vast majority of workplace and public settings there is virtually no risk of the direct exposure to body fluids which could result in HIV transmission. Detailed Centers for Disease Control (CDC) guidelines have been issued for dealing with HIV infection in those cases which require special handling, such as health care workers and other workers who might be exposed to blood or those schoolchildren who lack control of their body secretions.

Therefore, discrimination against persons with HIV infection in the workplace setting, or in the areas of housing, schools, and public accommodations, is unwarranted because it has no public health basis. Nor is there any basis to discriminate against those who care for or associate with such individuals.

It is illegal to discriminate against persons with AIDS in those local jurisdictions with AIDS-specific anti-discrimination statutes, in those states which include AIDS as a protected

handicap under their disability anti-discrimination laws, and in programs which receive federal funds. Section 504 of the Rehabilitation Act of 1973 is the federal anti-discrimination statute which prohibits discrimination against otherwise qualified persons with disabilities (including persons subject to a range of AIDS-related discrimination) in any program or activity receiving federal funds.

Nevertheless, complaints of HIV-related discrimination persist and their number is increasing. For example, HIV-related cases handled by the New York City Commission on Human Rights have risen from three in 1983, to more than 300 in 1986, to almost 600 in 1987. Similarly, the Office of Civil Rights which enforces federal disability discrimination law in programs funded by the Department of Health and Human Services reports a rise in complaints related to HIV infection in the past few years. AIDS advocacy groups and civil rights organizations nationwide also are experiencing an increase in HIV-related discrimination cases.

As a witness at the Commission's hearing on discrimination explained, individuals infected with HIV face two fights: the fight against the virus and the fight against discrimination. Just as the HIV-infected must have society's support in their fight against the virus, these individuals must have society's support in their fight against discrimination and must have assurances that policies will be implemented to prevent discrimination from occurring in the future.

One of the primary causes of discriminatory responses to an individual with HIV infection is fear, based on ignorance or misinformation about the transmission of the virus. We cannot afford to let such ignorance and misinformation persist. Each publicized incidence of discrimination, such as the picketing of a school that has admitted a child with HIV infection, perpetuates this ignorance and sows doubts in the minds of those who hear of it. This undermines current and future HIV education programs as well as rational HIV policies.

Furthermore, each act of discrimination, whether publicized or not, diminishes our society's adherence to the principles of justice and equality. Our leaders at all levels—national, state, and local—should speak out against ignorance and injustice, and make clear to the American people that discrimination against persons with HIV infection will not be tolerated.

Just as our society has taken a definitive stand on discrimination against persons with other handicapping conditions and illnesses—such as cerebral palsy, mental retardation, and cancer—society must take a stand on discrimination against persons with HIV infection. The United States has been an international leader in affirming and promoting the civil rights of persons with disabilities. While much remains to be done, as a nation we can take great pride in the progress we have made in embracing persons with disabilities as a part of the mainstream of society. Persons with HIV infection must be clearly and definitively guaranteed their civil rights and be protected against discrimination just as persons with other disabilities are. Such protection enables the HIV-infected person to become a partner with social institutions in limiting further spread of the infection and supporting effective care-giving systems.

Obstacles to Progress

The Commission has identified the following obstacles to progress in combating discrimination against persons with HIV infection:

- There is not a societal standard or national policy statement clearly and unequivocally stating that discrimination against persons with HIV infection is wrong.
- There is no comprehensive, national legislation clearly prohibiting discrimination against persons with HIV infection as a handicapping condition.
- There is a lack of coordinated leadership from our public and private institutions on the issue of discrimination against persons with HIV infection.
- A patchwork of federal, state, and local laws is both confusing and, ultimately, ineffective in preventing discrimination or providing remedies.
- Enforcement of existing anti-discrimination laws is slow and ineffective.
- Education about transmission of the virus and about the laws banning HIV-related discrimination is insufficient. This results in ignorance, misinformation, acts of discrimination, and, in some persons, an irrational fear of association with those who are HIV-infected.

The Commission believes that removing these obstacles and eliminating HIV-related discrimination will require coordinated action by all Americans—by individuals and organiza-

ered under Section 504. The Commission supports the position that Section 504 coverage applies to persons who are HIV positive yet asymptomatic.

Section 504's prohibition against discrimination extends, however, only to federally funded programs and activities. Thus, large segments of the population in the private sector do not fall within its jurisdiction. There is no existing federal anti-discrimination protection for persons with disabilities facing discrimination in the workplace, housing, or public accommodations which do not receive federal funds.

RECOMMENDATIONS

The Commission believes that federal disability anti-discrimination law should be expanded to cover the private as well as the public sector. Specifically, the Commission recommends:

- 9-4 Comprehensive federal anti-discrimination legislation which prohibits discrimination against persons with disabilities in the public and private sectors, including employment, housing, public accommodations, and participation in government programs, should be enacted. All persons with symptomatic or asymptomatic HIV infection should be clearly included as persons with disabilities who are covered by the anti-discrimination protections of this legislation.

The National Council on the Handicapped, an independent federal agency comprised of 15 members appointed by the President to make recommendations on public policy issues affecting people with disabilities, included a proposal for a comprehensive federal law of this kind in their January 1988 report to the President. Their proposal, the Americans with Disabilities Act of 1988, was recently introduced in the United States Congress. The Commission believes that this type of comprehensive, disability anti-discrimination legislation should serve as a model for federal legislation in this area.

The Commission does not intend for anti-discrimination legislation to invoke affirmative action for persons with HIV infection. In other words, no one would be required to hire an individual with HIV infection based on that status.

The Commission recognizes that particular attention will need to be paid to the impact of such legislation on small employers, as has been done in other civil rights laws. Any dis-

ability anti-discrimination law passed should be consistent with, and not go beyond, the reach of existing civil rights laws for other groups such as minorities and women. In carrying out provisions of the new legislation, all persons with disabilities should have access to the same support services as those covered under other comprehensive federal anti-discrimination laws.

The Commission recognizes that passage of more comprehensive disability discrimination legislation by Congress may take time. Therefore, the Commission believes that it is imperative for the federal government to take immediate steps to inform the public regarding existing federal anti-discrimination law and regarding the remedies which are available for those who experience HIV-related discrimination by entities that receive federal financial assistance. Enforcement of existing law must be strengthened.

In 1986, the Department of Justice issued a memorandum which concluded that although federal disability law prohibits discrimination based on the disabling effects of AIDS, discrimination based on fear of contagion was not covered. The absence of any further statement from the Department of Justice has created confusion and uncertainty about its position, particularly since *Arline* rejected the fear of contagion argument. Specifically, the *Arline* decision stated:

We do not agree with petitioners that, in defining a handicapped individual under Section 504, the contagious effects of a disease can be meaningfully distinguished from the disease's physical effects on a claimant in a case such as this.

To eliminate uncertainty and clarify the applicability of federal disability law to HIV-related conditions, the Commission recommends:

- 9-5 The Department of Justice, which has been designated to coordinate the enforcement of disability discrimination law for all federal agencies, should issue a follow-up memorandum expressing support for the *Arline* decision and withdrawing its earlier opinion that fear of contagion is not a basis for Section 504 coverage. In addition, the Department of Justice memorandum should take the lead in endorsing lower court rulings by clarifying that persons who are HIV-infected yet asymptomatic, as well as persons with symptomatic HIV infection, are covered by Section 504.

- 9-6 The Office of Civil Rights within each agency should develop policy guidelines stating that all HIV-infected persons, including those who are asymptomatic, are subject to the jurisdiction of the Office. The agencies should publicize the availability of the services of their Offices of Civil Rights to those who have experienced HIV-related discrimination and should publish their intent to investigate actively all complaints. The agencies should distribute these policy guidelines to all contractors and grantees.
- 9-7 All agency Offices of Civil Rights should establish a system of aggressive investigation of violations of Section 504 in HIV infection-related cases, including expedited procedures for review of complaints and regular monitoring of those procedures.
- 9-8 Supplemental funds should be allocated to all agency Offices of Civil Rights to increase staff and resources for the enforcement of Section 504.

State and Local Government Response

In addition to strong federal anti-discrimination legislation, state and local legislation is needed to provide the local administrative procedures and courts as an alternative to federal litigation for enforcement of the rights of the HIV-infected. Local government officials are able to intervene quickly and utilize ongoing relationships in the community for rapid resolution of discrimination complaints. Rapid resolution is needed as the infected individual may well die in the time interval that a typical case is processed.

RECOMMENDATIONS

For state and local governments, the Commission recommends:

- 9-9 If not now the case, states should amend their disability laws to prohibit discrimination against persons with disabilities, including persons with HIV infection who are asymptomatic or symptomatic, and persons with AIDS, in public and private settings including employment, housing, public accommodations, and governmental services.
- 9-10 State-sponsored HIV education campaigns should include anti-discrimination components.
- 9-11 Arbitration, mediation, and accelerated settlement procedures and programs should be developed and utilized to

assist in the speedy resolution of HIV-related discrimination complaints. Mediators and arbitrators should be trained to deal with the special circumstances surrounding HIV-related discrimination cases.

Community Response

One of the primary barriers between those infected with HIV and those not infected is the widespread belief that HIV infection is someone else's problem—there is no need to become educated about it. Individuals in large and small communities across the country are discovering that this is not the case, as they have learned to accommodate individuals with HIV infection living in their midst. In those communities which have developed HIV-related policies and guidelines for health care settings, the workplace, and the schools, and had their programs in place before the first case of HIV infection appeared, fears were reduced and individuals with HIV infection have been accepted. In some cases, where community leaders have not educated the community and not developed policies in advance, the result has been discrimination fueled by fear and ignorance, leading to divisiveness in the community and suffering for the family and friends of the infected individual.

To prevent discrimination, the primary tools at the local level are comprehensive, participatory educational programs, advance planning, and preparation. Educational programs about the transmission of the virus, the laws against discrimination, and the reasons for compliance should be developed by employers, school systems, and health care providers. Education should be provided in simple language for the layman and it should come from a person who has the confidence of those being offered the information. Local officials in government, business, public health, schools, and religious and community organizations should assume a leadership role in this effort.

RECOMMENDATIONS

Specifically, the Commission recommends:

- 9-12 Organizations representing health professionals should adopt a public policy stating that their members have an ethical obligation to treat patients with HIV infection in a non-discriminatory fashion. These organizations should develop education programs for their members

which include education on non-discrimination.

- 9-13 Religious leaders should take an active role in the anti-discrimination education effort with members of their parish or congregation. In addition, religious institutions should develop outreach programs for individuals in their community with HIV infection and should involve the congregation or parish members in volunteer activities.
- 9-14 Employers should develop an HIV education program for all employees. Education programs to combat discrimination should emphasize two goals: information about transmission to prevent the further spread of HIV infection and education about legal issues—such as how to ensure confidentiality and prevent discrimination. This approach should be used in all workplace settings.
- 9-15 Employers should have each department or office review and revise policies and procedures in light of medical and legal information related to HIV infection, and, where applicable, interact with the community to further public education about HIV infection. This last step may be most applicable to the public sector.

HIV and the Schools

The Commission has heard testimony about the experiences, both good and bad, of a number of HIV-infected schoolchildren. Important lessons can be learned from those model communities which have policies in place regarding HIV infection in advance of the first case, and have been able to accept the HIV-infected individual in their schools without fear and discrimination. In some school districts, a well-coordinated system of educational programs has produced an enhanced sense of community pride and satisfaction from having worked together to fashion an enlightened, rational policy on HIV infection for the schools. The Commission has been impressed with the courage and compassion which school and public health officials have displayed in planning and preparing for a positive outcome. A number of common principles emerge from the experiences of these model communities. The recommendations in this section should be implemented in conjunction with the school-based education recommendations in the education chapter of this report.

RECOMMENDATIONS

Specifically, the Commission recommends:

- 9-16 Each school system should establish a board-developed policy, with accompanying guidelines, for dealing with an individual with HIV infection in the school before it is confronted with the first case. The Centers for Disease Control or other public health guidelines should be utilized but the policy should be flexible and allow each case to be dealt with on an individual basis, based on medical facts.
- 9-17 Educational materials about the transmission of the disease and the anti-discrimination laws should be developed and disseminated and, where necessary, explained fully by legal and medical experts. Age-appropriate materials on these topics should be developed for students.
- 9-18 School officials should identify a decision-making structure to review all HIV policies and procedures and to deal with each individual case. Legal, medical, and public health consultants from the community should be involved.
- 9-19 Open public meetings should be scheduled, featuring school officials, medical and legal consultants, and community officials, to discuss the board's policies and the rationale for its decisions. School officials must be prepared to educate the entire community, including parents, public officials, clergy, pediatricians, students, and media representatives, about the reasons for the board's decisions. Support and counseling should be offered to employees, parents, or children who are troubled by the board's decision.
- 9-20 In any communications about specific HIV-infected individuals, the confidentiality of the schoolchild or staff member should be maintained to minimize the opportunity for discriminatory behavior.
- 9-21 A team should be formed with responsibility for reviewing all aspects of the case on an ongoing basis and monitoring medical or legal developments that might affect school district decisions.
- 9-22 School officials should actively participate in community education efforts so that they support acceptance of HIV-infected individuals in the schools in a non-discriminatory manner.

- 9-23 Educational associations should disseminate information to their members on the policies and procedures used by those communities which have accepted an HIV-infected individual in their schools without fear and discrimination.

HIV and Health Care Settings

The Commission has heard testimony that some hospitals and some health care workers in hospitals have been unwilling to care for HIV-infected persons or have provided inappropriate care because of fear. Steps must be taken to eradicate this fear because these institutions are critical sources of care and are leaders in community attitudes.

Over the next five to 10 years, even more community-based health care facilities, such as group homes, nursing homes, hospices, and mental health facilities, will be needed in many communities to care for patients with HIV infection. Long-range planning for these facilities must be undertaken now in order to avoid fearful and discriminatory reactions from the community.

RECOMMENDATIONS

Specifically, the Commission recommends:

- 9-24 Hospitals and providers of health care to HIV-infected patients should establish a mandatory education program for all hospital employees, including an anti-discrimination component and professional, confidential counseling for all employees. Health care workers need to be reminded about the social context of HIV infection and the need for confidentiality and protection of private medical information.
- 9-25 Health care providers dealing with patients with HIV should make available a patient care advocate, if one does not yet exist, to regularly contact individuals with HIV, so that patients could confidentially report treatment problems. Health care professionals who have repeated, substantiated complaints made against them, and who resist education, should be formally reprimanded and placed on probation. In general, the Commission feels that remedies such as this should be short-term in nature and could gradually be phased out.
- 9-26 State and local governments and health care providers should develop long-range plans now to anticipate the need for community-based health care facilities, and should develop a strategy to

educate community members to accept facilities and prevent discriminatory responses.

- 9-27 Those working to educate a community in preparation for acceptance of patients with HIV infection should develop a strategy to prevent discrimination. Some important points to include are: allowing time for education; knowing the legal issues involved; mobilizing political, community, and religious leaders for support; bringing in legal and public health experts; meeting with people who have concerns and listening to their concerns.

Senator WEICKER. Thank you very much. Before I proceed to questions with Admiral Watkins, those that are in wheelchairs, I would like to get as many as possible up here. This is a tremendous statement by the entire community. I think we have the entire community right in this hearing room. [Applause.]

If you want to just come forward, that will enable more that are in the back to be in a comfortable position, as comfortable as possible during such as this. I think it is terrific that you are all here.

Admiral Watkins, one question that I have is that the words that I hear all over the place are well, we like that Presidential Commission report, but we do not like the antidiscrimination aspect of it. We can take the report, but we do not want that antidiscrimination aspect of it. Have you heard this, also?

Mr. WATKINS. Yes, I have, Senator Weicker.

Senator WEICKER. That is what we are contending with here. That is why it is such a privilege to have you here, because it is not just a question of discrimination against AIDS, which is the most recent discrimination, but the decades old discrimination that so many have suffered with here in this room.

I could not help but think, with all the concern for the ritual of the Pledge of Allegiance, how many people think about those last words, indivisible with liberty and justice for all? And justice for all. That is what the Americans with Disabilities Act is all about, justice for all.

So instead of being a ritual, let us make it a reality. [Applause.] Congressman Owens.

Mr. OWENS. I have no questions, Admiral, but since you first came to my office for a brief introductory session, I have been quite pleased with the way you have moved in this city and the Nation as a whole, to establish a certain kind of calm and a return to reason on this whole issue. I want to congratulate you on a magnificent job that you have done.

We recently passed legislation related to AIDS on the House level. It may have some shortcomings, but I think that the positive, upbeat nature of that legislation is due primarily to the fact that you established an environment in which we could work; an environment where anybody who was not a reasonable person was isolated. In several votes that we took, we isolated those unreasonable and hysterical people.

I think you are to be congratulated for helping to establish that atmosphere which made possible the passing of the current legislation.

Mr. WATKINS. Thank you, Congressman Owens.

Senator WEICKER. Thank you, Congressman. Congressman Jeffords.

Mr. JEFFORDS. Admiral, it is good to see you again. I deeply appreciate the earlier conversation we had on the dynamics of the work force, which put me a little ahead of the curve in understanding, and I appreciate that, and your dedication to public service after work as a tremendous member of our naval establishment.

Congressman Waxman introduced a bill earlier this year, and I joined him on that, on counseling and testing and discrimination. I just want to alert everyone that all we could get out was counseling and testing. The problems of discrimination, the inability to ar-

ticulate anything which we could get past the House on the floor debate, many of these things indicate that that is going to be the most serious problem that we face when we get to ADA, is how we can work in to ensure the rights of those that have AIDS.

I appreciate very much your very excellent testimony on that. I want to alert my colleagues that it is going to be no easy task and hopefully we will find a rational way to deal with this. Your statements are going to be so helpful in that regard, and I thank you for that.

Mr. WATKINS. Thank you, Mr. Jeffords.

Senator WEICKER. There will be further questions for response to the record, more particularly those of the Chairman, Senator Harkin, who I might add, without his help, without his hard driving on this issue, we would not be here today. He is a magnificent chairman.

He has specific questions for you, Admiral Watkins, which I would appreciate your responding for the record.

Mr. WATKINS. Thank you, Mr. Chairman.

Senator WEICKER. Thank you very, very much for all you have done for the Nation. Thank you. [Applause.]

Now we have a panel of witnesses, Mary Linden from Morton Grove, IL; Dan Piper from Ankeny, IA, accompanied by his mother, Sylvia; Jade Caleyory from Corona Del Mar, CA; and Lakisha Griffin, from Talladega, AL.

I think that we will go in order of how I called the witnesses. Please be relaxed. You are among friends, both in front and behind you. I think we want, and America wants, to hear your story. Please proceed. Mary, you are the first witness.

STATEMENTS OF MARY LINDEN, MORTON GROVE, IL; DAN PIPER, ANKENY, IA, ACCOMPANIED BY SYLVIA PIPER, ANKENY, IA; JADE CALEGORY, CORONA DEL MAR, CA; AND LAKISHA GRIFFIN, ALABAMA SCHOOL FOR THE BLIND, TALLADEGA, AL

Ms. LINDEN. I am deeply honored to be asked to speak before the committee. The Americans with Disabilities Act is the greatest act ever passed in the 20th century, I believe, sir.

You see before you a woman who, until 1987, did not even believe that she could help with anything or even change her own outlook. My father had always chosen my path, before his death in 1964. There was no accessible housing for him to use for me, so he put both my mother and myself in a retirement home. Upon her death, I moved to their adjacent nursing home. His access still provides for my care.

His words, "As long as I am paying for your keep, you take my orders" still go through my mind every time new challenges offer themselves.

At 7 years of age, I entered the Jesse Spalding School for the Crippled, a venerable institution of the Chicago school system, a segregated institution of the Chicago school system which is still in operation today. I was there and they never even taught me to write. I learned to print after, I taught myself to print after I finished high school, with a class rank of 9 out of a class of 45, in 1951.

No career plans or educational plans were made for me because the school and my parents thought I was too disabled to compete. I have been after my education for 20 years. I got most of it after transportation became accessible, after a fashion that is. It is not. I have got 61 hours of credit.

But we cannot get from Morton Grove to Northeastern University because the two transportation organizations will not unite, so discrimination still exists. I want my 4 year degree so that I can go and have Executive Director Jim DeJong of the Coalition for Citizens with Disabilities [CCDI] in Illinois, for the most precious thing in the world, a paying job.

I beg of you to pass this act, so that other children will not have to go through what I went through, will not be stared at, will not be limited as to how many times they can see things. It will not be once every 6 months that we get to go shopping. If we pass it, we can go stare at the glass windows any time we want to.

The youngsters here will have much more chance than I did, but they should have a chance to work and to contribute as much as they can.

I thank you.

[The prepared statement of Ms. Linden follows:]

Testimony of Mary Ella Linden
before the
Senate Subcommittee on the Handicapped
September 27, 1988

on the
Americans with Disabilities Act (ADA)

Ladies and Gentlemen, I am deeply honored to speak before you in support of the Americans with Disabilities Act of 1988. This legislation is very much needed, not only for the provisions it contains, but also for the principle it embodies: freedom from discrimination on the basis of a disability which will give us the opportunity to participate in American society as equal members, as fully human beings.

When the Act becomes law, people with disabilities will have several accepted, legal, legitimate channels through which to air their needs and grievances. There will no longer be a necessity for those demonstrations which the noninvolved world may find so distasteful. Freer access to job opportunities will allow people with disabilities to be seen as human beings with the same needs, drives, and desires as the nonimpaired in the workplace. Perhaps people will learn not to stare so hard, too.

You see before you a woman who did not learn until August 10, 1987, that she had the strength to help with anything or to change her own outlook. My father had always chosen my path until his death in 1964. There was no alternative housing situation for my father to use for me after his death, but a nursing home. And so, at the age of 34, I was placed in a retirement home with my mother upon his death. And upon her death I was

placed in the adjacent nursing home. His estate still provides for my care. His words, "As long as I'm paying the bills, you take my orders", have echoed through my mind whenever new challenges have offered themselves.

I was born in Chicago in 1930, attended segregated public schools, and graduated from high school in 1950 with a class rank of ninth out of forty five. But no plans were made for me for a career or for higher education, because I was considered too crippled to compete -- by both the school and my parents. In fact, the school never even took the time to teach me to write! I taught myself to print in 1951 -- after I had graduated from the public school system. However, I can still neither read nor write in cursive. It is very embarrassing to have to ask someone to read a letter or a professor's comments. The effects of the school's failure to teach me are still evident today. Fortunately I had been taught to use the typewriter by a very creative and resourceful aunt. This skill has enabled me to obtain sixty-one hours of college credit. But I am getting ahead of myself.

Both of my parents were children of Swedish immigrants -- eager to succeed and to be American. They believed the doctors who made surgical adjustments on my leg and heel chords in successive operations between the ages of 18 months and three years. I spent most of that time in the hospital. When I was six years old, a specialist told my parents that the doctors had cut too much and that I would never be able to walk. Nowadays a malpractice suit might have been brought against the surgeons or even the doctor who delivered me, but not in the 1950s and certainly not by my parents!

When I was seven years old I entered the Jesse Spalding School for the Crippled, a venerable institution even then of the Chicago public school system which is still in existence today. I always attended segregated

schools, rode to and from school in a cab (paid for by the school system) and had little or none of the usual childhood activities, especially those involving socialization. As an only child, I had no sibling to play with, to interact with, to learn from, or just to be with. The few school activities that did occur, my parents did not encourage me to attend. And shopping expeditions -- which all children love -- were not often possible. Twice a year I went to the dentist, went shopping, and to a restaurant. Otherwise I saw little of the "outside world" and they saw little of me, as was the custom. The accessibility of public accommodations, especially in public meeting places, will open the doors for all people with disabilities and the general public will finally begin to see us as we are and learn not to stare, cringe, or otherwise react to our mere presence among them. But, back to school, the teachers in the sight saving class were unable to show a pupil with one usable hand how to form the letters of the alphabet. The embarrassment of trying to write on the blackboard in front of the other students who could write is something I still dread to remember. After the teachers had declared me unable to acquire writing skills, my patient aunt taught me how to use a typewriter during my tenth summer. A lack of training in activities of daily living skills meant that I had to learn them on my own.

The years from my graduation from high school in 1951 until 1987 are one big blur of discrimination. In 1951 I studied history by a correspondence course. Each of the two courses took two years to finish because I had not learned correct study habits in the public school system. Over those many years I have managed to acquire sixty-one hours of college credit, much of it when accessible public transportation finally became available through the Rail Corridor Access System. The regional transit authority provides a lift equipped bus that will travel along the same route

as the suburban train system. However, at this time I am unable to enroll in a four year college and complete my degree because of the inability of the transit systems to cooperate within the same regional authority! I want to complete my degree so that I can go to Director Jim DeJong of the Coalition of Citizens with Disabilities in Illinois and ask him for the most precious thing in the world, a paying job! More than anything else I want to devote the rest of my life to the Coalition and its work on behalf of people with disabilities.

I beg you to pass this bill. Let each of us make as tangible a contribution to American society as we can. The ADA will make things possible for today's children with disabilities that I never even dreamed were possible for me. It is deeply needed for many reasons, chief among these is that it will show people with disabilities, as well as the whole community, that we are entitled to become full human beings, participating in our community. No longer will a person need to grow up without knowing how to write because teachers did not take the time to show them how to form their letters. The increased transportation services demanded under ADA will make possible much greater integration of the whole community. There will be no cases like mine where the disability alone determines where we live and what we do. God only knows how many contributions society has missed because there were no provisions for the disabled to move about freely and to determine their own lives. I pray that the Americans with Disabilities Act will be passed as soon as possible so that we may become another "melted" minority. Thank you very much for your patience and for this opportunity to speak today.

Senator WEICKER. Mary, I thank you. That is courage and optimism. Just great. Just great.

Our next witness is Jade Caleyory from Corona Del Mar. Jade, nice to have you with us.

Mr. CALEGORY. Thanks.

Hi. My name is Jade Caleyory. I am 12 years old and I go to Corona Del Mar High School, CDM for short, in California. I am in the seventh grade and I just started this new school last week. I have been mainstreamed since the second grade.

You see, I was born with spina bifida and I have had lots of operations. I started kindergarten on a gurney and had to go to a separate school. But now that I am OK enough, I go to a regular school. So I wanted to thank you all for passing that law, 94-142, so I can go to a school with all of my friends.

CDM is my third regular school. When I was a little kid, I got called names and was teased a lot because of my disability. I know now that it was just because those kids did not understand, but the kids at my new school are smart enough to know that I am not different because of my disability.

But still, sometimes when I meet new people, I wish they would talk to me first, before they ask what is wrong with me, or what happened to me. It makes me feel like my wheelchair is more important than I am.

Anyway, I was born in 1976, 200 years after the Constitution promised freedom and independence for all of us, no matter what. Thanks to you, and the people who sat in those seats before you, I am lucky to grow up in a world that is different than when you folks were kids. Thanks to you, people are not separated as much by their age, religion, color of their skin, disability, whether they are men or women, stuff like that. Things are getting better, but it sure does take a long time.

Even though some things have gotten better, there is more that can and should be done. It is kind of like my grades in school. They are good, but I know that if I work harder, they can get even better. [Applause.]

I guess that is why I am here today, not because America's 36 million citizens are physically challenged, but because we are also politically challenged.

Although there are over 4.5 million other kids with disabilities, there are only a few of us who have the chance to work and pay taxes. I guess I am luckier than a lot of other kids with disabilities, I work as an actor.

My movie, "Mac and Me" is out right now. Maybe you have seen it. I like it because it shows that kids with disabilities are not any different and can do the same things as other kids without disabilities, if given a chance. It is the first movie to star a kid with a disability, and it is a great family film full of adventures. I even got to do some of my own stunts.

I also think "Mac and Me" is terrific because it shows a kid with a disability giving help instead of just getting help, and nobody tries to cure me, or take away my disability by the end of the movie. [Applause.]

That gives people the idea that it is okay to be disabled and just be accepted for who you are. I hope there will be more non-disabled

movie roles for disabled actors. We could be anybody, because after all we are, in real life.

R.J. Louis, who produced "Mac and Me", auditioned only disabled kids for the role. He knew disabled kids could be good actors. He gave us a chance.

At least one-half million dollars from "Mac and Me" is going to the Ronald McDonald Children's Charities to help kids with cancer. McDonald's is a good friend to the disability community. McJobs helps mentally retarded people train for a job. McDonald's has made seven TV commercials with disabled actors and was the first to have braille menus for blind customers.

McDonald's is a great company. They are a good example of how a big company should help people with disabilities become more independent. But if other companies cannot learn from McDonald's, then this American With Disabilities Act can teach them that 36 million Americans with disabilities are an important part of this world, too.

Orion Pictures wanted to advertise those theaters showing "Mac and Me" that were accessible to people using wheelchairs, but the theater owners would not let them. Here is this great family movie and a lot of people from the disability community do not even know if they can get into the theater to see it. I do not think that is fair.

I learned in my school that you are the Congress and that you have the power and the responsibility to change the laws that make life better for everyone. TV and movies have the power and responsibility to change the attitudes that also makes life better for those of us with disabilities. Without new laws like this one, and new attitudes, 36 million of America's citizens will be stuck without equal rights, and that is not fair.

Aside from acting, I like racing in my wheelchair. I have won 5K and 10K races. After my mom and I go jogging on the beach back in California, we sometimes take the bus back home, or at least we try to. Most of the buses do not have lifts on them. Some of the drivers are very rude and get mad if I want to take the bus. Can you believe that?

I work and part of my taxes pay for public buses and then they get mad just because I am using a wheelchair. I do not think that is fair or right. I am important, too.

If I really have to, I could get out of my wheelchair and climb up the stairs, but I do not think I should have to. Maybe another person using a wheelchair is trying to go to work or school and they should not have to crawl up the stairs and get dirty. Or maybe they cannot even get out of their wheelchair by themselves.

Anyway, I was thinking, if all of the buses had lifts on them, it would be better for all of us. It is hard for people to feel good about themselves if they have to crawl up the stairs of a bus, or if the driver passes by without stopping. They could be late to work or school and that is not even their fault.

I guess my teacher was right about history repeating itself. I learned in school that black people had problems with buses, too. They had to sit in the back of the bus, but some of us with disabilities cannot even get on the bus at all. Black people had to use sep-

arate drinking fountains and those of us using wheelchairs cannot even reach some drinking fountains. We get thirsty, too.

Black people had to go to separate theaters, schools, restaurants, and some of us have to, also. That is not because we want to, but because we cannot get in. That means that we do not have a choice. I think that everybody should be able to have choices, do you not?

In "Mac and Me", my family moves from Chicago to Los Angeles, and as we talk about the new house, we talk about lowered counters, no stairs, and wide hallways. I am excited that Congress has already dealt with things like accessible housing in passing the Fair Housing Act. That is neat. Thanks.

Because of "Mac and Me", I have been traveling around the country and I noticed that Chicago and New York are harder to get around. There are not as many cuts in the curbs, and the bathrooms in the hotels are not made for those of us using wheelchairs. I hope that you will help us make this world more open to people with disabilities.

You can help us make that happen. We have a right to have a world where people do not build houses and schools with steps and no ramps, buses without lifts, curbs without cuts, TV and movies without captions. I am not old enough to vote yet, but if I were, I would vote for this bill. I am sure that some of the people from your States and hometowns who voted for you were disabled. They would vote for this bill, too.

This is our future and just like Martin Luther King 25 years ago, we have a dream, too. The Americans with Disabilities Act of 1988 can help to make that dream a reality. Thanks for listening and helping us with our political challenge to make this world a better place to live for all of us with disabilities. [Applause.]

Senator HARKIN [presiding]. Thank you very much.

Bobby Silverstein, who a lot of you know here, our staff director, saw the movie last weekend. I have two young kids and this weekend I am home, so I get to go see it this weekend. Now I really want to see it.

I apologize to many of you for having been gone for a short period of time, especially those who have testified. As so often happens around here, things conflict. I am on the Appropriations Committee and we had to wrap up a certain item that I was involved in, so I apologize for having been gone for a small amount of time.

I also want to do two more things. I want to recognize a group of individuals, citizens, who have come down here from New Jersey. I understand they all got on the train this morning and came down here, a group of about 40 or more citizens, some of whom use chairs. Over 100, 170.

Raise your hands. All of those of you who came down on that train this morning. Look at that.

[A show of hands.] [Applause.]

I welcome you here and we really thank you for taking the time and the energy to come down to this important hearing.

Second, I do not know what your time element is right here, but I want to publicly say thank you to Senator Weicker for his many years of championing the cause of many Americans, not just those with disabilities, but those who perhaps find themselves at a disad-

vantage one way or another, and fighting for the underdog. I know of no more eloquent nor determined individual in the entire Congress than Senator Weicker, in what I call fighting for the underdog and not the topdog.

I just want to publicly say thank you for your many years of service and thank you for chairing this subcommittee before I took over, and also for you and your staff's work in really making this subcommittee work well and getting this legislation through. He really deserves our thanks. [Applause.]

Now I would like to turn to two individuals that I hold in very high esteem, Dan Piper and his mother, Sylvia, from Ankeny, IA.

I want you to know, Dan, that I often use you as an example when I go around the country, talking about what early intervention can do. Dan, to me, represents a prime example of why we must push very hard on early intervention. I think you will shortly see what I mean.

We welcome you here, Dan, and welcome your mother, Sylvia. Please proceed as you so desire.

Ms. PIPER. OK. Dan, how old are you?

Mr. PIPER. I am 17.

Ms. PIPER. What is your address?

Mr. PIPER. 406 N.E. Sherman Drive, Ankeny, Iowa.

Ms. PIPER. Dan, you attend Ankeny High School. Do you have friends at Ankeny High School?

Mr. PIPER. Yes. I have Jeff Bachman, Cory Heagle, Jayme Martin, Chris Piper, Aaron Baugher, Melissa Berry and Melissa Berry is a nice girl.

Ms. PIPER. That is Dan's girlfriend and he is also mentioning his brother. It is interesting to note, he considers him a friend today.

Dan, have you had any jobs?

Mr. PIPER. Yes. I work at a job. I work at Parkview Junior High.

Ms. PIPER. Where else have you worked?

Mr. PIPER. I worked at Walmart, Hardee's, Dillows other stuff.

Ms. PIPER. When you are an adult, and you are not going to school anymore, do you want to work?

Mr. PIPER. Yes.

Ms. PIPER. Where would you like to work when you are an adult, and earn some money?

Mr. PIPER. I want to earn money in a video store.

Ms. PIPER. Dan, where would you like to live?

Mr. PIPER. I want to live in an apartment, number 3999.

Ms. PIPER. Where would the apartment be?

Mr. PIPER. Des Moines.

Ms. PIPER. That is interesting. Dan's father and I are kind of gearing his adult life in Ankeny, but he is obviously choosing otherwise.

I would like to share with you and do appreciate the opportunity. At the time of Dan's birth in 1979, his father and I were advised by the attending physician and pediatrician to place Dan in an institution. It was a very difficult time for his father and I and the grief overrode logical decision making.

Dan's development was described as hopeless. His dad and I rejected this recommendation, and Dan has been living at home with his family since his birth. I might mention here that his birthday is

Sunday, and that is a really important moment to him. He will be turning 18, age of majority.

Dan received services through the Child Study Center at 6 months of age. Our area education agency provided an in-home teacher until age 4, when Dan was enrolled in a segregated pre-school program in Des Moines. His integrated educational experience began at 8 years of age until the present.

Dan, despite an IQ of 39, is a typical teenager who has just entered his fourth year of quality integrated special education in the Ankeny School District, which is his home community. This was only achieved through intense advocacy efforts by his father and me, coupled with representatives from ARC/Iowa, the Association for Retarded Citizens.

In Ankeny, Dan finally has had the opportunity to form friendships with his nondisabled peers who live in his community. He serves as manager for the football team. He was elected as his regular ed homeroom representative for the Pep Club. He attends all school and community functions. Dan participates in music, art, physical education, industrial arts, and home economics in regular ed classrooms with his nondisabled peers.

Since Dan is now rapidly approaching the end of his school years, the major thrust of his educational experience is onsite vocational training within cooperative businesses in Ankeny.

Positive relationships with regular education high school students resulted in Dan's favorite activity, The Greasers, a lip sync group of high school students featuring Dan as lead performer. The group makes appearances at various functions within the Des Moines area. This is an ideal opportunity for a young man who has speech problems to express himself with the arts.

Dan, a young man with Down Syndrome, is considered medically fragile. He is dependent upon insulin and a rigid diet to respond to his diabetic condition. Dan has learned to administer his own injections in spite of the doubts held by the adults in his life, and his parents are included as doubters.

Transition into adulthood holds many fears for Dan's father, his brothers Larry and Chris, and me. Dan can work and can live independently in the community with services, but how many doors will be closed to employment and community living when his parents are no longer around to break down those barriers?

Our family has served as effective advocates for Dan. Many children, with whom I have contact, do not have the luxury of consistent support. The reality is that, while our advocacy has proven successful, we will soon face the private sector where there are no assurances.

We have invested in Dan's future. The State of Iowa has invested in Dan's future. And the Ankeny Public School District has made an investment in Dan's future. We fear that he will be denied employment based on disability rather than capability. He has already encountered discrimination with employment.

Dan indicates that he chooses to live in an apartment, of course in Des Moines as opposed to our choice in Ankeny. Will the landlord decide, because Dan has mental retardation, that he is incapable of independent living? Will he be denied access to transporta-

tion? Will restaurants refuse service? Will hotels refuse accommodations?

Senators and Representatives, are we going to allow this investment of time, energy and dollars, not to mention Dan's ability and quality of life, to cease when he reaches age 21? Over a decade ago, the U.S. Congress enacted Public Law 94-142, which guaranteed Dan the right to special education, and 504 to address disabilities in the public sector. It is now time to expand handicapped antidiscrimination to the private sector so that Dan's and our visions for his adult life and the lives of many others can finally become a reality.

We implore you to enact the Americans With Disabilities Act as quickly as possible. Thank you. [Applause.]

Senator HARKIN. We are going to hold the questions until we finish the panel, but I just say that I saw Dan this summer at the fair grounds. Jade, you better look out, he is coming.

Our last witness is Lakisha Griffin from the Alabama School for the Blind in Talladega, AL. Lakisha will describe her background. She's had no schooling until recently. Her positive experience at her current school, where she is an A student, and her hopes for the future.

Lakisha, I hope I pronounced your first name correctly. We welcome you here and you are among friends. Please proceed to tell us about your experiences and what you would like us to know about this bill.

Ms. GRIFFIN. Good morning, Mr. Chairman. My name is Lakisha Griffin from Lafayette, AL. I am 14 years old and a seventh grader at the Alabama School for the Deaf and Blind in Talladega, AL. With me today is Ms. Dot Nelson, who is a house parent at my school.

I am glad to talk with you today regarding the need for the Americans with Disabilities Act. I understand that this proposed law would protect blind and other disabled people from being treated badly because of our handicap. Discrimination is a big word, but I can tell you that it is real, and I hope Congress will do something about it.

I am the youngest of six children. Until 2 years ago, I was educated at home by my two older sisters. Lafayette is a small rural town in Alabama, and my family did not know much about opportunities for blind people like me. All of my friends at home were sighted. Sometimes the other kids would not want to play with me, and sometimes even their parents acted sort of funny toward me.

I am not sure why this happened, except that many people sometimes do not like people who are different.

My life changed a lot in 1986, when I enrolled at the Alabama School for the Deaf and Blind in Talladega. I made many new friends, both blind and sighted, and I have been on both the A and B honor rolls. I also learned braille at the Alabama School, and that has opened up a new world of knowledge for me. I also like math and English.

When I grow up, I want to go to college to become a teacher. I want to teach braille to other blind people, since the knowledge of braille has been so useful to me.

I know that I can become a braille teacher if I study hard. My parents have worked hard in the textile mill, and I know that I must also work hard to get ahead in life. I hope to be the first person in my family to go to college. I am worried, however, that people will treat me differently because I am blind, black, and female. Some people will think that I cannot be a teacher, but I know I can.

I do not need sympathy. I do not need prejudice. I do need a fair chance to get a job and live independently. Discrimination against blind and other disabled people must be eliminated, and the Americans With Disabilities Act will help that happen. People pay attention when it is the law.

Please pass the Americans with Disabilities Act now so that I and other young people can look forward to a fair chance tomorrow.

Thank you. [Applause.]

Senator HARKIN. I think for the benefit of those who are sitting back there in the back, Lakisha went through that whole thing from her memory. That is really brilliant.

Well, you are just all outstanding. What can I say? You are tremendously outstanding, every one of you.

I would recognize, if you want to, Senator Weicker for any questions or comments you might have for the panel.

Senator WEICKER. I have no questions at all. I cannot say anything that will better express to America what needs to be done and what each of our panelists has stated. I am so proud of you. I really am.

Senator HARKIN. Congressman Owens.

Mr. OWENS. I have no questions. I want to just congratulate and thank the witnesses. Your being here will help us a great deal in the passage of this legislation. Thank you very much.

Senator HARKIN. Congressman Jeffords.

Mr. JEFFORDS. I just have one question. One of the most controversial aspects of 94-142 was the mainstreaming aspect. I wondered if you could give us some reflections on the reaction to the mainstreaming and whether it has improved, from your observations, as far as the acceptability in the schools, since the initiation of the 94-142 from your own history? Jade.

Mr. CALEGORY. You mean, like is it easy to get into the school?

Mr. JEFFORDS. How are the young people reacting, perhaps from your observations not only to yourself, but other disabled that might have come into your school since the time you started?

Mr. CALEGORY. How did the young people react to me?

Mr. JEFFORDS. Yes, and others that you have observed? And has it improved over the course of time?

Mr. CALEGORY. In junior high and in my new school, they do not treat me different or anything. They just treat me like I am one of them.

Mr. JEFFORDS. Did you observe any change in the other schools that you were in, over the course of time, or were you still kind of treated different?

Mr. CALEGORY. Any other of my schools, was I treated differently?

Mr. JEFFORDS. Yes.

Mr. CALEGORY. I think so. I was a little bit teased, like I said in my speech, that I was teased because of my disability and just stuff like that, in some of my elementary schools. But the teachers were good about it, and stuff like that. It was just the kids did not understand.

I am with the Easter Seals now and I think what we are trying to do is educate them so they will not tease kids with disabilities, so they will not tease them anymore, so they know what is going on and they can make friends with them.

Mr. JEFFORDS. Thank you.

Senator HARKIN. Thank you. I just have a couple of questions, maybe just to further elaborate on a couple of things, and why this bill is so necessary.

Mary, I am sorry I missed your testimony. However, I have read it. You have really had a rough time. What I would like to ask you is you are now 58 years young?

Ms. LINDEN. Yes, I just turned.

Senator HARKIN. How would your life be different today?

Ms. LINDEN. I think I would be a 30-year veteran of the Chicago school system, or one from the suburbs, because my family, my mother, my father and all my aunts, were teachers. Of course, you follow in your family's profession. By now I would be worried about my retirement.

I think I would have been in one of the teacher's union because I love politics, but I do not know. That is about it.

If the transportation were better, I would right now be too busy to come here because I would be working for my degree at Northeastern, because I want to go up and get my job. And Mr. DeJong needs a fully educated woman, not a half one. That is where I would be right now.

Senator HARKIN. So I guess, Mary, what you are saying is that not only will future generations benefit from this bill, but you will, also?

Ms. LINDEN. Oh, yes, sir. The day the bill is passed, the very day that you gentlemen have fixed it up so they can use it, my attorney will put a lawsuit through the Federal courts to sue the RTA and the CTA for whatever I have to.

Senator HARKIN. I like your attitude.

Ms. LINDEN. I will get my education, I swear. I would intend to sue them, because there is no reason for this. They have a transit authority and it provides provisions for handicapped people in the city of Chicago and the suburbs, but there is no way in the world that we can get into the city of Chicago or out of it.

And would you believe we have to be home at seven o'clock at night? My gosh, the shows do not even start until 8:30. [Applause.]

Senator HARKIN. Mary, I just had a letter here.

Mr. Chairman, I hope you will express my deep regret for missing the hearing this morning. I am particularly sorry not to be able to welcome Mary Linden, the witness from Illinois. I had the opportunity to meet her yesterday, and I know the committee will benefit from her testimony.

The subject of this hearing is important, not just for Americans with disabilities, but to all Americans. I look forward to reading the testimony of all the witnesses. Thank you very much, Senator Paul Simon from Illinois.

He could not be here, but you saw him yesterday, right?

Ms. LINDEN. Yes, we did and I thank him very, very much.

Senator HARKIN. Jade, do you see the day coming when you will get a role that will be advertised as child actor and not as child actor with disability?

Mr. CATEGORY. Right now my mom had my agent, if she got information for a part for someone with blue eyes or someone to play basketball or something, that she would send me out for it. So right now I am going out for any part that comes out, whether it is for someone with blue eyes, or something like that.

Senator HARKIN. I am going to see that movie this weekend. It is down in our neighborhood and I am going to go see it. "Mac and Me."

Lakisha, I was very moved by your testimony and by what you have had to overcome and what you are overcoming. I have all the confidence in the world that you are going to be the first person in your family to go to college, and that you will indeed be a braille teacher. We know you are going to do it, do we not? [Applause.]

Is this your first trip to Washington?

Ms. GRIFFIN. Yes, it is.

Senator HARKIN. I want you to know that within the last year, we have prevailed upon the Sergeant of Arms and we now have braille maps of the entire Capitol and indeed of all of the downtown monuments and surrounding area. Have you gotten those yet?

Ms. GRIFFIN. No, I have not.

Senator HARKIN. As soon as you get done here, how about getting a set of those, OK?

Ms. GRIFFIN. OK.

Senator HARKIN. I am sure that you can get taken around the Capitol and make sure that you take in everything that you can while you are here, OK?

Ms. GRIFFIN. OK.

Senator HARKIN. We have those for anyone else here who needs them, we have braille maps now of the entire Capitol and of all the downtown monuments and the mall. If you have any problems getting them, you come see me or see one of my staff. I will make sure you get them.

Dan Piper, like I said, Dan, I use you a lot in my speeches around the country. You are getting to be pretty famous, Dan Piper from Ankeny, IA. I just have to tell you, you are not only a source of pride and joy to your parents, but a unique sense of pride and joy to me and to a lot of people.

The State of Iowa has had an early intervention program—I hope you do not mind if I be a little chauvinistic here—since 1975, I think. Since the mid-1970's anyway. We have got a good support group in Iowa. This is a great example of what can be done with early intervention.

Dan, I know from your mother, and also from your own testimony, that you are going to be 18 pretty soon and you are thinking of moving away. Are you not kind of afraid that might break your mother's heart, moving away from Ankeny?

Mr. PIPER. Oh, no. Just me and my dad is.

Ms. PIPER. I did not know he was taking his father with him.

Senator HARKIN. At least you will invite her to come visit you, right?

Mr. PIPER. Yes, and my girlfriend.

Senator HARKIN. I will not get into that, all right?

I just want you to know I am the father of two young people, and I am not looking forward to the day when they leave home either, so I know how your mother feels.

Dan, your hopes for the future are real hopes, and I know that you can accomplish a lot. Let me ask your mother a question.

Mr. PIPER. All right, go ahead.

Senator HARKIN. Is that OK?

Mr. PIPER. Sure.

Senator HARKIN. Ms. Piper, do you agree with Ms. Parrino, when she says that the Americans With Disabilities Act should be looked at as bringing about cost savings to our Nation, rather than additional costs?

Ms. PIPER. Definitely. In our circumstances, we certainly have spent a lot of time and energy, as I stated, in seeing to it that Dan is appropriately trained to be a tax payer rather than a tax recipient. However, with discrimination, we are looking at a future that may very well hold nothing more than sheltered employment for him, which is certainly an opportunity for some people.

However, he has a desperate need for growth and is capable. Our concern is that he will be sitting at home, on our living room couch, watching television for the rest of his life. That is not acceptable, with all of the money that has been poured into his education. There is no reason he cannot be a tax payer.

Senator HARKIN. And it is not acceptable with—look at him. My gosh, look how good he is. Danny, you can do a lot of things.

Mr. PIPER. That is right.

Senator HARKIN. You sure can. We are going to make sure that you are able to do those things, too. You are a great source of pride.

Is this your first trip to Washington? This is your first time here, is it not?

Mr. PIPER. Yes.

Senator HARKIN. I think so, yes. Make sure you get around and see the monuments and everything like that, OK?

Mr. PIPER. Yes.

Senator HARKIN. You do not mind if I keep using you as an example, do you? You do not mind if I keep talking about you, do you?

Mr. PIPER. Yes.

Senator HARKIN. As long as I say good things, right?

Mr. PIPER. Yes, you got it. [Laughter.]

Senator HARKIN. All of you are just great. Thank you so much. You have made our day and made our year and hopefully we will make this bill get through next year.

Thank you all, and now we will call our second panel. [Applause.]

Our second panel is Judith Heumann, World Institute on Disability at Berkeley, CA; Gregory Hlibok—if I mispronounce that, you tell me—Gregory Hlibok from Gallaudet University; Belinda

Mason, Tobinsport, IN; and W Mitchell from Denver, CO. Please come up.

We welcome you all to the hearing, and some of you for coming a long, long distance. I will just go in the order in which I called you. Judith Heumann. Judy is the mother of the disability rights and independent living movement. She has a masters in public health and she's going to discuss the history of the movements and personal examples of discrimination and the need for the bill.

STATEMENTS OF JUDITH HEUMANN, WORLD INSTITUTE ON DISABILITY, BERKELEY, CA; GREGORY HLIBOK, GALLAUDET UNIVERSITY, WASHINGTON, DC; BELINDA MASON, TOBINSPOET, IN; AND W. MITCHELL, DENVER CO

Ms. HEUMANN. Good morning, Senator. I got a little alarmed. I thought you were about to tell me I was a mother. I did not know I had any children.

Senator HARKIN. No, I wondered what that momentary disturbance was. No, the mother of the disability rights and independent living movement.

Ms. HEUMANN. After taking a redeye here, I did not know something had happened.

It is really a privilege to be here with all of you today. My name is Judy Heumann. I am the oldest of three children born to an immigrant family. Like most other Americans, I was born without a disability. When I was 1½ years old, I contracted polio. Becoming disabled changed my family's life and mine forever.

My disability has made me a target for arbitrary and capricious prejudices from any person with whom I come into contact. Over the years, experience has taught us that we must be constantly aware of people's attempts to discriminate against us. We must be prepared at every moment to fight this discrimination.

The average American is not, nor should they have to be, prepared to fight every day of their life for basic civil rights. All too many incidents of discrimination have gone by undefended because of lack of protection under the law.

In the past, disability has been a cause for shame. This forced acceptance of second-class citizenship has stripped us as disabled people of pride and dignity. This is not the way we, as Americans, should have to live our lives.

When I was 5 my mother proudly pushed my wheelchair to our local public school, where I was promptly refused admission because the principal ruled that I was "a fire hazard." I was forced to go onto home instruction, receiving 1 hour of education twice a week for 3½ years. Was this the America of my parents' dreams?

My entrance into mainstream society was blocked by discrimination and segregation. Segregation was not only on an institutional level, but also acted as an obstruction to social integration. As a teenager, I could not travel with my friends on the bus because it was not accessible. At my graduation from high school, the principal attempted to prevent me from accepting an award in a ceremony on stage simply because I was in a wheelchair.

When I was 19, the house mother of my college dormitory refused me admission into the dorm because I was in a wheelchair

and needed assistance. When I was 21 years old, I was denied an elementary school teaching credential because of "paralysis of both lower extremities sequelae of poliomyelitis." At the time I did not know what sequelae meant. I went to the dictionary and looked it up and found out that it was because of. So it was obviously because of my disability that I was discriminated against.

At the age of 25, I was told to leave a plane on my return trip to my job here in the U.S. Senate because I was flying without an attendant. In 1981, an attempt was made to forcibly remove me and another disabled friend from an auction house because we were "disgusting to look at." In 1983, a manager at a movie theater attempted to keep my disabled friend and myself out of his theater because we could not transfer out of our wheelchairs.

These are only a few examples of discrimination I have faced in my 40-year life. I successfully fought all of these attempted actions of discrimination through immediate aggressive confrontation or litigation. But this stigma scars for life. Many disabled persons experience discrimination of the same magnitude but not every one of us possesses the intestinal fortitude and has the support of family and friends required to face up to these daily societal barriers.

Sadly, these are not isolated examples true only in the past tense. This is an ongoing social phenomenon which haunts our lives at every minute.

I have been told throughout my life to be understanding of these people's actions. "They do not know any better." Neither I nor any one of the 42 million other people with disabilities can wait for the 200 million nondisabled Americans to become educated to the fact that disability does not negate our entitlement to the same constitutional rights as they have.

Just as other civil rights legislation has made previously sanctioned discrimination illegal, so too will the passage of the Americans With Disabilities Act of 1988 outlaw protectivist, paternalistic, ignorant discrimination against all persons with disabilities.

We, as disabled persons, are here today to ensure for the class of disabled Americans the ordinary daily life that non-disabled Americans too often take for granted: the right to ride a bus or a train; the right to any job for which we are qualified; the right to enter any theater, restaurant or public accommodation; the right to purchase a home or rent an apartment; the right to appropriate communication.

Whether you have HIV infection, cancer, heart disease, back problems, epilepsy, diabetes, polio, muscular dystrophy, cerebral palsy, multiple sclerosis, are deaf or blind, discrimination affects all of us the same. Simply put, we are here today to say that people in our society have been raised with prejudicial attitudes that have resulted in extreme discrimination against the 42 million persons with disabilities in the United States.

Discrimination is intolerable. The U.S. Congress is to be commended for its introduction of the Americans With Disabilities Act. The passage of this monumental legislation will make it clear that our Government will not longer allow the largest minority group in the United States to be denied equal opportunity.

You have all heard our testimony today. But you have also been aware of these stories for many years. As elected Representatives, you must act without delay to end these reprehensible acts of discrimination. To do any less is immoral. [Applause.]

Senator HARKIN. Belinda Mason from Tobinsport, IN. Welcome, Belinda, and please proceed.

Ms. MASON. That is Tobinsport, IN.

Senator HARKIN. What is it?

Ms. MASON. Tobinsport. The 75 citizens of Tobinsport would be awful disappointed if word got out in the U.S. Senate that they were in Tobinsport.

Senator HARKIN. We will correct the record, be assured. Tobinsport lives on.

Ms. MASON. Thank you. I thank you all for having me today and I hope you all are listening good and taking note of all this, because we represent a part of society that is unfortunately often invisible, particularly the disability that I am speaking out, HIV infection is invisible and a hidden disability.

I am just going to read from prepared stuff because I am recovering from a stroke and my brain will not let me remember anything for long enough to really spit it out well unless it is written down and I can read it.

My name is Belinda Mason and I live in Tobinsport, IN. I am 30 years old and I work as a free-lance writer. My husband, who is a college instructor, and I have two small children, a daughter who is 5 and a son almost 2.

Until early last year, my family and I had an average life near one of America's thousands of average small country towns. We juggled our jobs, our daughter, and our credit card payments. Our pleasures were simple and common, a walk in the woods, a new song on the radio, or a cookout with other young families.

But then my life changed dramatically. While delivering our healthy son, I suffered serious complications, including cardiac arrest and a stroke. Because of massive hemorrhaging, I received numerous transfusions of blood products. One unit was later found HIV positive and in March 1987, my own blood first tested positive for antibodies to the HIV virus, the virus that causes AIDS.

I also maintained residual damage from my stroke in the form of partial paralysis on my left side, and a tendency to be stupid when I am tired. That is a joke. [Laughter.] Thank you.

With that diagnosis, I became a person with a "hidden disability," a disability just like epilepsy and diabetes and tens of other disabilities. And just like people with those other hidden disabilities, I became subject to irrational and unjustified discrimination.

The average life I once enjoyed has vanished. And since I have been living with HIV, I have learned a terrible truth about America, that it is not a good place to be different or to be ill, in spite of what we teach in government class.

Shortly before the news of my HIV infection became public, but long after the rumor mill had assured that everyone in town already knew about it, I took my girl to the local public pool. I remember the day very well because we had something to celebrate. I had learned that I was sick enough to qualify for AZT, a drug that

has been found to prolong the lives of people with HIV infection. It was our first breath of hope.

I was still recovering from the stroke, but I could drive again. I could not swim yet, but I slid into the children's pool for a couple of hours and watched my daughter play. I remember thinking that maybe I would live, and that maybe my life would settle back to normal.

I was recognized by most of the adults in the town because I had worked as a reporter and was therefore visible in a place where everyone knew everybody else anyway. This was the other adults at the pool. Later I learned that the town closed the pool for a week. The official story was that a cigarette butt had been found in the filter. I have always thought that it was because I was in the water for a few hours, though, just watching my daughter swim.

There are other incidents like this that I have submitted in my written testimony.

A woman in another part of Kentucky had managed a school cafeteria for a number of years. Her adult son, who was living in California, became ill with AIDS. The woman went to California to bring her son home, so she could care for him. But when she returned, she was abruptly fired from her job.

Apparently, even the perception that you are associated somehow with HIV, whether or not you have it, is grounds for ill treatment. This has to change. We need a law that will protect all people, even those perceived to be infected simply because they are helping those who are ill.

A man passing through a central Kentucky town was stopped for drunk driving. After he told the arresting officers that he had AIDS, the man's car was driven to a parking lot of the jail. Instead of putting the man in jail, the officers locked him inside his car to spend the night. The car was eventually surrounded by sightseers, staring and pointing at the man.

As a board member of the National Association of People with AIDS, I know these and many other stories.

When we look in the mirror that AIDS and HIV holds up to our society, we can see how scared we are of each other, of death and even of life. We can see how little tolerance, let alone compassion, that we often show.

HIV disease is blind to race, age, gender, and sexual orientation. It no longer affects other people. Beyond risk groups, immune deficiency is a disease of individuals, our friends, our sisters, our lovers, and our children. People who are just like us because they are us. And because HIV affects us all, it makes no difference how one gets HIV. The fact is that the discrimination is the same and the protections must be the same.

Living with HIV is particularly stressful for people in America's small towns and rural communities. Until we can be counted on to demonstrate fair and equitable treatment, legislation like this is essential.

There are some things that legislation, by its nature, cannot and will not do. For example, this bill probably will not change anything for Stella McKee, a Kentucky woman whose husband David, a hemophiliac, died just when we were learning about what AIDS

was all about. Stella carried home many bowls of untouched food from church potluck dinners.

And this bill probably would not have helped me when my next door neighbor in Indiana, a registered nurse, carried a petition to every neighbor on the block, demanding that my family and I move. You cannot legislate good manners. But you can legislate recourse for some forms of discrimination. By legislating that protection, perhaps you may also help promote reason and foster more decent treatment. The truth is that sometimes legislation precedes and enhances humanity.

I thank you for having me here today and I urge you to pass the Americans with Disabilities Act as quickly as possible. It will make a real and incredible difference in the lives of millions of people, and just some of those are the ones you see today. Thank you. [Applause.]

Senator HARKIN. Greg Hlibok, a student leader from Gallaudet University, welcome to the subcommittee and please proceed.

Mr. HLIBOK. Thank you very much for giving me the opportunity to testify here today. As she just said, people who have HIV are often invisible because you cannot tell by their race or their appearance. It applies to deaf people as well. You cannot tell if a person is deaf unless you see them signing.

My name is Greg Hlibok. I am president of the student body government at Gallaudet University. Last March's victory in getting a deaf president for Gallaudet sent a message to the world. The focus was on what deaf people can do, and not what they cannot do.

As Dr. King Jordan says, "deaf people can do everything, except hear." How can we prove ourselves that we are capable if we are not given equal opportunities. It is society itself that creates the barriers by not giving us these opportunities.

Very often discrimination appears on a daily basis in our lives. We face that all the time, every day. We have many experiences in being turned down for jobs, denied promotions. For example, my own deaf brother had to hire and pay for an interpreter himself so he could interview for a job.

I have been denied medical treatment because doctors misunderstood us and could not communicate with us. They refuse to hire a qualified interpreter. We have tried contacting police stations very often, but often they do not know how to use TTYs, or they do not have it in our stations.

I remember when I was young and I was going home, and I did not have any money with me. I was going home from school. I tried to contact my parents through public service, but there was no way to do that, no relay service. There were no TTYs around, so I had to walk the 3 miles in the snow to get home. Good thing I did not get pneumonia. Also, in San Diego, CA, there is a deaf woman there who died of a heart attack because her husband tried to reach the police through 911 but could not get through.

We have waited for 124 years to get a deaf president at Gallaudet, but we were still told that we were not ready. Hearing people told us that we were not ready and were unable to communicate and work through Congress and work with the hearing world. In the past we felt that there was nothing that we could do, that we

had to accept this fate, and that those were just false excuses and discrimination. We put up with this for a very long time.

Last March showed that our tolerance and patience has run out. I said last March that we wanted a deaf president and we got one. President King's appointment shows that deaf people are capable of holding a responsible job and leading us. He has already proven his success in the past six months.

Now we want our civil rights. The Americans with Disabilities Act would give us the legal tools to fight discrimination. Legal rights women and minorities have already been brought to bear, and now it is time to remove communication barriers and provide reasonable accommodation.

For example, captions, TTYs, qualified interpreters, note takers, and visual aids, and these type of things would reduce the communication barriers that we face. It is not simply just accommodations, but we would like to participate equally and to be effective in society, not to be ignored.

We do not want sympathy, we want support. Because we can help ourselves if things are accessible for us. All we ask for is that you let us guide our own destinies. We urge that communication barriers be identified and the kinds of situations be specified. For example, there are people who have many different disabilities all over the world, and they are fighting against discrimination of all kinds. We can no longer wait. Civil rights must happen now.

[The prepared statement of Mr. Hlibok follows:]

STATEMENT OF GREG HLIBOK, PRESIDENT OF THE STUDENT BODY GOVERNMENT
AT GALLAUDET UNIVERSITY, BEFORE THE SENATE SUBCOMMITTEE ON THE
HANDICAPPED ON THE AMERICANS WITH DISABILITIES ACT OF 1988

My name is Greg Hlibok and I am President of the Student Body Government at Gallaudet University. Our victory at Gallaudet last March resulting in the appointment of our first deaf president sent the world a message. Focus on what deaf people can do - not what we can't do. As Dr. King Jordan said "Deaf People Can Do Anything...Except Hear". How can we prove ourselves that we are capable if we are not being given an equal opportunity. Its society that has created barriers.

Many of us confront discrimination every day. We have experienced the disappointment of being turned down for a job or promotion because we were told the communication barriers were too great. My own deaf brother was told he had to pay for his own interpreter on his job. We have been denied medical treatment at hospitals because the staff could not understand us and refused to provide qualified interpreters. We have tried to call the police for help using our telecommunications devices for the deaf, but the police hang up on us, because they had no TDDs. I remember when I was fifteen I left school without money to take the bus home. I had no way to call my parents or the police. I had to walk the 3 miles home in the snow. In one case in San Diego, a deaf woman died of a heart attack because the police did not respond when her husband called 911. We have waited for 124 years to have a deaf President chosen at Gallaudet. But we were told we were not ready, and that we could not work with Congress and the hearing world. In the past we felt there

was nothing we could do but accept these false excuses and discrimination and keep patiently plodding on. But, as we showed vividly last March, our patience has run out. I said last March, "we want a deaf president who can show the world a deaf person can lead a major university. We want one now". And we got it! President King's appointment shows that deaf people are capable of holding responsible jobs and of leadership. King Jordan has shown for 6 months that he is successful.

Now we want our civil rights. The Americans with Disabilities Act will give us the legal tools to fight discrimination, the legal rights woman and minorities already have. This bill would require removal of communication barriers and "reasonable accommodation to assure effective communication." The kinds of accommodations listed in the Act such as captioning, TDDs, qualified interpreters and note takers, and visual aids like flashing alarms would greatly reduce communication barriers. With simple accommodations, we can participate equally. We can be effective. We will not be excluded or ignored. We don't need any pity, we need your support. Because we can help ourselves only if things are accessible for us! I would urge that the Communication Barriers Section identify the kinds of situations where specific accommodations are required. Our example last March has inspired deaf people and all disabled people everywhere to fight against discrimination of any kind. We will no longer wait. We want our civil rights now.

Senator HARKIN. Thank you very much. I am going to take the opportunity to introduce to you first about whom Greg spoke, who has really showed us that there are no barriers that deaf people cannot overcome. The new president of Gallaudet University, Dr. King Jordan. Stand up, will you please. [Applause.]

Thank you very much. Next, W Mitchell from Denver, CO. Mr. Mitchell, welcome to the subcommittee and again, please proceed as you so desire.

Mr. MITCHELL. Thank you very much, Mr. Chairman. Good morning, Congressman. It is a pleasure being in front of you today. I am W Mitchell. I am the former mayor of Crested Butte, CO, a very beautiful town high in the mountains of Colorado. Do not get confused with Mount Crested Butte. That is the town that Bo Calloway owns. No, we are Crested Butte. We have a lot of Democrats in Crested Butte.

It is a little town that is nestled in the mountains of Colorado, about 9,000 feet above sea level. We are kind of at the end of a paved road, surrounded by all these 14,000 foot mountains. One of the things that is often said in Crested Butte is that you cannot get there from here.

It is very tough to get to other places in Colorado. Aspen is just 30 miles across the mountains, and yet it is about a 250 mile drive to get around all those mountains. You cannot get there from here. That's the challenge for millions of disabled Americans today—they can't get there from here.

In 1984, I ran for Congress. I was the Democratic nominee for the Third Congressional District in Colorado and I had to adopt a campaign that said "Oh yes, he can." In a lot of people's minds, a man who has been burned and who is in a wheelchair may not be able to represent them very well.

In fact, one of the charges that was first leveled at me was yes, Mitchell is a nice guy and perhaps speaks well, but what is he going to do to get to vote? How is he going to get to vote for our issues? How is he going to get to the floor of the House of Representatives in time? He will not even make the votes to stand up for our issues.

Well, having been back to Washington a number of times, I explained to those good people that most freshmen Congressmen wind up in the Cannon House Office Building. Between the Cannon House Office Building and the House of Representatives is a tunnel. The tunnel is mostly downhill going toward the House. I explained to them that the only Member of Congress that was going to beat me to vote for their interests was one on a skateboard. [Laughter.]

I did not get the most votes that year, my opponent did, a very worthy fellow. Fortunately, he was retired in the next election and now we have a good Democrat back there again.

Senator HARKIN. This is a nonpartisan hearing.

Mr. MITCHELL. Very nonpartisan, Senator. And if Senator Weicker and some of the other Republicans were still here, I would be singing a different tune, you can be sure of it.

I talk today to groups all over the country. I speak about the fact that it is not what happens to you, it is what you do in life. It is not the circumstances of birth or the accidents or injuries or ill-

nesses that we contract in life, it is what we do with the equipment that is given us, with the opportunities that are given us.

But unfortunately, I am one of the lucky ones. Fortunately for me, and fortunately for so many others, I had role models when I was growing up, of other people in wheelchairs. I knew you could become successful and be in a wheelchair. I had education and training before I was burned in 1971 and, as a result of an insurance settlement, was able to start a very successful business. So that when I was paralyzed, in 1975, I had wealth and I had income and I had opportunities already available to me.

But what about all of those who were not blessed with the good fortune that I have had in my life? What happens to all of those who do not have the luxury of a vehicle or an airplane or a business or means of support? What happens to those who, like the young man in Phoenix, AZ, who I visited recently, who was paralyzed on the day of his graduation from high school. But having no insurance and no money, is now in a nursing home instead of a spinal cord injury rehab hospital? What happens to him? Where does he get his education? Where does he get the tools and equipment that he will need to make himself a taxpayer, as we heard earlier, and not a tax receiver for the rest of his life?

What about all of those who, because of the absence of transportation or the absence of communication facilities, cannot even find the employer to present themselves as a qualified candidate for a job? How do they function in our society?

So I come today, Mr. Chairman, to speak for the Americans With Disabilities Act legislation. I cannot speak more eloquently than the witnesses who have proceeded me. All of them are more qualified, more capable of stating the case that all of us need to hear today.

But I would like to say to you that, while the 1970's were very much the age of the me-too-ism, of I've got mine, of all of the conflicts in this country, and while the 1980's are very much an era of great change in our society, with new technologies and new opportunities, the 1990's will be the era of creativity.

We must be creative as a society, creative in taking full use of all of our citizens and their great capabilities. As you and the Congressman have seen today, we have been presented with probably more talent than you were faced with in almost any other hearing that you may preside over. How are we going to use that talent and how are we going to realize that talent?

Mr. Chairman, I will remind you today, in my closing remark, the quote of Albert Schweitzer, who said to all humanity, "We do not live in a world all alone. Our brothers are here, too."

Please carry to your colleagues in the Senate and your colleagues in the House the message that we do not want a handout. We do not want a free ride. We just want to act normal in an amazing situation. Thank you, sir. [Applause.]

[The prepared statement of Mr. Mitchell follows:]

W MITCHELL
Denver, Colorado

Statement to the Senate Subcommittee on the Handicapped, and
the House Subcommittee on Select Education

September 27, 1988

It is often said that you can't get there from here. That seems to be the situation facing millions of Americans with disabilities. It isn't that once they get there they can't do the job. Often a lack of adequate training, transportation, communications or other factors -- discrimination being one of them -- perfectly capable and talented, but disabled, people are unable to get to a place from which they can lead productive lives. I count myself as one of the fortunate ones.

While growing up in a suburb of Philadelphia, two of my neighbors were war veterans with disabilities. One was a First World War veteran who had had both his legs amputated; the other was a man who had served in the Korean war and who had become paralyzed. Both had the benefit of training, vehicles, and accessible housing provided to them by their government. Both were able to go on to lead constructive and productive lives, contributing to their communities, and acting as role models to people like me so that later when I became disabled, I knew what could be done; I knew of the potentials and possibilities still open to me from having watched my neighbors all those years; I knew I had not come to a dead end.

When my disabilities occurred, I was able to overcome them through a combination of insurance, previous education and training, family and social support and success in business. Many others are not so lucky. Without the tools that I was equipped with, today I could very well be -- without adequate legislation to guarantee my civil rights-- among those who are tax receivers instead of tax payers.

In 1984 I ran for and won the Democratic nomination for Colorado's third congressional district. My campaign slogan was "Oh yes he can!" It was a statement to those who observed my campaign that my physical limitations were in fact, not a hindrance to my ability to represent the voters were they to send me to Washington. While my opponent received more votes than me that November, it was clear to me that both those voting for me and for my opponent did so not as a statement of my physical disability. In 1984 I asked people not to vote for me (or not to

not vote for me) because of my physical limitations. I told them I was just trying to act normal in an amazing situation.

Today I come before you to ask you to give millions of others like me not a special privilege, but just the same privilege afforded to all Americans, so that all of us here, now, and the millions that will follow can enjoy the same opportunities so many other Americans take for granted every day. But how does someone -- unable to get to school because of a lack of transportation, or to get to work because of inaccessible mass transit, or even find out about a job in the absence of communications equipment -- how does that someone become a participant in the American dream?

So many of the changes we need in order to correct discrimination and barriers to full opportunities are simple but yet often ignored: such as the southwest corner of the Capitol Building plaza where the lack of a curb cut requires someone in a wheelchair to compete with automobiles in the street for access to that building. In other cases it's just a matter of oversight. For instance, the hotel at which I'm staying spent \$56 million just two years ago on renovations. Yet there is not one accessible restaurant in the entire hotel.

I'm from Denver, Colorado, which has been doing a great job in making buildings and transportation more accessible. Still, many public officials continue to be insensitive to what life is like when you're unable to get a ride to work because of a broken lift on a bus or because an untrained operator driving that bus doesn't know how to manage the life.

Other times, lost opportunities can be blamed on insufficient funding for appropriate programs. One young man was paralyzed on his graduation day in Phoenix, Arizona this year but because of inadequate insurance he is in a nursing home instead of a spinal cord rehabilitation facility. That false economy may cost taxpayers literally hundreds of thousands of dollars, on just the one man, over the coming years. There are countless other examples that I know Congressman Coelho and the other sponsors of the ADA bill can make you aware of, though a simple trip home to your own states and districts and to visit with disabled persons will set the record straight: we aren't asking for a hand out. We're not even asking for a helping hand. We're just asking for the same opportunities so many Americans without disabilities take for granted and that Americans with disabilities deserve.

Senator HARKIN. That was very eloquent. What the heck, if you cannot get into the House, how about a run for the Senate? We could sure use you here, I will tell you that. Major would like to have you in the House, too.

Again, thank you all. I just have a couple of questions that I want to ask for record purposes, and to further get some thoughts from you on this.

Judith, I just wanted to ask you, do you, and if you do, why do you believe that we can now pass legislation like the ADA act, when previous attempts to expand antidiscrimination protections to cover the private sector have been unsuccessful?

Ms. HEUMANN. I personally think that the Gallaudet experience and the 1977 demonstrations in relationship to 504 and the subsequent Development of Independent Living centers and community-based organizations around the United States, and the real true emergency of a rights movement are going to compel the United States to recognize its responsibility.

It was mentioned by one of the speakers that disability has touched every person's life. I think that what is important for us to recognize is that when we go and work with various organizations who potentially are opponents to this form of legislation, that we need to make them recognize that the discrimination that affects us is also very directly affecting their family and very likely to affect them personally.

I think that all of you have seen that in the last 20 years there has been a monumental change throughout the United States and throughout the world. Disabled people are no longer going to allow ourselves to be discriminated against. The meetings that Justin Dart is holding around the United States, I think are quite compelling. States where you never found a lot of disabled people coming out, speaking on behalf of themselves, are having 200, 300, and 400 people coming out to meetings when there is no accessible transportation, little accessibility in their homes, lack of attendant services. People are still somehow getting out to talk about why we believe it is time for us to have our rights.

That is why I think this bill is going to pass.

Senator HARKIN. Mr. Mitchell, do you have any observations on that question? About the time being right, right now, to pass this one? You have been involved, obviously, in politics, which I was not aware of before. Would you agree with Judith that there has been enough changes, there is enough of a force, enough of a movement out there, that we have made enough minor steps that we can finally take a major step here?

Mr. MITCHELL. Senator, I absolutely agree. Going back to the different eras I talked about, we lived in the 1950's. The 1950's were a very secure era in this country. We really were able to function on a very small part of our potential in the 1950's and still dominate the world. We were number one. We drove American cars. We led the world in every single way and we were secure in every single way, using a very small part of our potential because we had such an overabundance of resources, whether it was natural or human resources, that no one could compete with us anywhere in the world.

Today we are not allowed that luxury. Today we have to use all of America's resources to be great. The resource that exists—and I hear the various numbers of 36 million or 42 million—but a giant portion of our population that is untapped today is the resource that is going to make the difference between America falling into a second position and no longer the leader of the world, and staying number one. We have to use every single ounce of energy that we have.

Again, just look at the people you have seen this morning and they are representative, not spectacularly better than the people that they are speaking for.

Senator HARKIN. Judy, you mentioned Justin Dart. I thought I saw him earlier. Justin Dart, a great leader in this effort, was former Commissioner of the Rehabilitation Services Administration, now chairing a task force.

Ms. HEUMANN. He was here, he had to leave, Mr. Chairman.

Senator HARKIN. He may have had to leave. Tell him we said hello. I just wanted to recognize him here in the audience.

Greg, it goes without saying that not only were a lot of us watching last spring, but I think the world indeed was watching. In fact, I must tell you a story.

I just recently returned from a trip to Europe in August. I had an occasion to meet a small group of deaf individuals who were in Europe at that time. This took place in Portugal. They were with some Portuguese who were deaf. It was just happenstance that I ran into them.

The first thing, when they found out who I was and where I was from, the first thing they wanted to talk about was what happened at Gallaudet University. These are people in Europe that knew of this, so it had a world-wide impact.

I just cannot tell you how proud we are of you and the student body, of Dr. Jordan, and what has transpired there.

As you know, my brother is deaf, and so I have, perhaps of all the disabilities, I am more cognizant of that than I am of perhaps others. I am aware of how deaf people have been discriminated against and how, in terms of accommodations and things.

I saw my brother last weekend, and I was staying in a hotel room and I noticed a little red light on. I wondered what that little red light was after I turned the lights out. It was to show that the smoke alarm was activated. But then I got to thinking, if I were deaf and the smoke alarm went off, I would never know it. I mean, I could tell it worked, but I could never know if it ever went off. Just another one of those things in accommodations where a small change would really help.

Let me just ask you a question about the bill, and about reasonable accommodations. How important, to ensuring equal opportunity for deaf people, is the provision of reasonable accommodations which are in the bill, reasonable accommodations? Have you had any experiences that you could relate to us?

Mr. HLIBOK. Sure. I have already given some examples about public services, how they should provide accommodations for deaf people. At Gallaudet University, that is a very good example, because they have all these accommodations for deaf people. For example, flashing lights in the rooms. There is a switch that you

could flash a light. So if a visitor comes, you flash a light from the outside of the door instead of knocking. It is very important for us.

We need accessibility in order to reach out to all of the people right now. There is a wall, a barrier, between us, between the deaf and hearing worlds. We are trying to break down that wall. So far, we have been doing it little by little. Once we completely destroy that wall, that barrier, then I think that we will be able to contribute a lot more.

There are 6,000 deaf Federal employees who contribute to the Federal Government, and there are many more hearing impaired people who could contribute to the private sector, if they are given the opportunity through Government tax revenues. They would be able to use the accommodations and be contributing members.

Senator HARKIN. Thank you. Where are you from?

Mr. HLIBOK. New York City.

Senator HARKIN. Thank you.

Belinda, you face many challenges as a person infected with HIV. How do you perceive the importance of this anti-discrimination legislation?

Ms. MASON. I think, like everybody else has already said, when you have a disability, you just have to overcome so much junk every day of your life, that having extra junk in your way is no good. I do not want to sound like a whiner about it, but it looks like to me that it would not be unreasonable to think that I could go to the cement pond with my daughter and swim and not have to have the whole community penalized for it and have to be made such an example of.

There are so many ways that we separate ourselves from each other, and as Admiral Watkins testified, people living with HIV have to overcome barriers every day that are imposed, that we have no control over, because we cannot make the research move any faster.

It is sad, but it is true, that people in agencies in the private sector, will not always do the right thing just because it is the right thing. Sometimes we have to make them. There is a lot of people in my area of the country living with HIV who face a lot more discriminatory acts than I have. One of those most important ones is jobs. People have lost their jobs.

It is enough that you got this lousy disease. It is like Congressman Coelho said, you come home from an office and you are still the same, but the whole world just shifts around you. You are not like a Kentucky basketball fan anymore. You are not a writer. You are not anything else. You turn into a person with a disease, a person with a disability. Whatever else that there was about you is just ignored.

If there are laws that make people treat you normally, then maybe they will. Maybe they will. I hope they will.

Ms. HEUMANN. Senator, I think that the law at least will give us protection. I do not think the law is going to change people overnight. But the laws, in fact, give us as disabled people the rights, and we then know that we can go out and speak to other disabled people and tell them that if these things happen to them, they should no longer turn around and leave, but there is an action that they can take.

I think actions and filing complaints and lawsuits begin to teach people right from wrong, which they have not learned in the past. I think 504 and 94-142 and many of these other pieces of legislation have begun to teach America that we are more like them. They still might not want to marry us or be with us, but they know that they cannot keep us out any longer. Most importantly, we will not let them. [Applause.]

Mr. OWENS. I think that would be a very good note to end on. I want to thank the witness and all of the witnesses that came before. We learned a great deal from you today. I hope that you understand that, just as Senator Kennedy said, we will pass this bill. It will become law. But I hope you will remember also the caution of Congressman Coelho, that it is not going to be easy.

It will not be easy to pass this bill because there are large numbers of Americans who consider themselves decent and reasonable people who, whenever you mention anything that might raise the cost of housing or public transportation, et cetera, begin to react in a mean-spirited way.

Some of these people are in very high places. In fact, one of our categories of great opposition is local administrators, local elected officials. The mayor of the city of New York sometimes conducts crusades against people with disabilities, when it comes to transportation access and housing access. They do it and appeal to the worst in people.

This we have ahead of us, and I hope you understand that. The bill now has 130 sponsors in the House of Representatives. To pass, a bill requires 218 people to vote yes. We have 130 at a point where the opposition has not yet openly manifested itself.

As we move closer toward passage, or toward the debate on the bill, you will have the people who will come forward with all the statistics to prove that it is far too costly. You will have the disabling amendments, amendments attempting to gut the heart of the bill. All those things are going to happen. We will need a great deal of support. I hope you understand that. There are difficult days ahead of us.

My final question to all of you is what can you do? In the spirit of Gallaudet, in terms of people with disabilities and the concerns of people with disabilities, there is a before Gallaudet and an after Gallaudet. After Gallaudet, the spirit has to keep moving on. The momentum is with us.

I want to congratulate Justin Dart, who is the chairman of a task force that, as I mentioned before, has been around the country. He has told me that the spirit of Gallaudet lives on. It is going to escalate as time goes on. We must make sure it escalates. I hope that you will understand.

I have one specific question to the hero of Gallaudet. Gregory Hlibok. What can we expect in terms of leadership from people of your generation, from students? A lot of energy is going to be needed, a lot of continued courage is going to be needed as we push forward for passage of this legislation. Are students prepared to continue to offer leadership? Are there efforts being made to guarantee that people of your generation are fully involved in this effort, understand what the bill is about, and are going forward to help us to mobilize to get its passage?

Mr. HLIBOK. I am sure, yes. One example, that happened last Thursday, was with 200 to 300 students at Gallaudet who took time off of their classes to go to Capitol Hill to pressure the legislature and the Congressmen to pass a bill, H.R. 4992, perhaps you have heard of that yourself?

Mr. OWENS. Yes, I have.

Mr. HLIBOK. I am sure that we are ready, when the time is right.

Mr. OWENS. Thank you very much. I want to again thank all of you and tell you there are difficult days ahead. We will be closely working with you. The energy, the creativity, all that is needed to get passage of this bill, exists among you. That leadership is there and we appreciate it and will be expecting to work in partnership with you. Thank you.

Senator HARKIN. Thank you very much, Congressman Owens. [Applause.]

I see some people want to say something. I am going to have to exercise a little bit of jurisdiction here. I would like to hear from some people just for a few minutes, but I will tell you that we have to cut this off shortly, and I will tell you why.

The buses to Gallaudet for the task force meeting will be departing from Second Street and Constitution at 1 p.m. That is now. Where is Second and Constitution? That is right outside. Traffic will be stopped until the boarding is complete, so I do have to wrap this up. I am sure the bus will be there for a little bit, for those of you, but you are very anxious to say something.

Please identify yourself for the record.

Ms. COOPER. I am Assemblywoman Delores Cooper, Second District Atlantic, representing the State of New Jersey and all of the New Jersey delegation. New Jersey, will you stand up, please?

Senator, on behalf of the New Jersey delegation and all of the professionals, providers, care givers, I have a little gift for you. New Jersey and you, perfect together, because we know that bill is going to pass. Am I right. [Applause.]

Senator HARKIN. Thank you, very much. That is wonderful. And thank you for coming down.

Yes, right here.

Ms. SHAPIRO. I would like to say something. My name is Mary Shapiro. I saw "Mac and Me" and I think you should all see it because it will get more people to understand about people in wheelchairs and understand what they are going through.

Plus, I think the bill should go through because it will make the other people understand about us and all, because I went to a thing in Philadelphia, PA, I got a shirt that says "A real difference." That is a project in every state, about being a nation and about what we have and all that stuff. [Applause.]

Senator HARKIN. Thank you very much.

Two more. This guy over here has been trying to get my attention for a long time.

Mr. ROSENFELD. I am Ed Rosenfeld with the Spinal Cord Injury Network, Metropolitan Washington. I would like to know who is pro and who is on the fence or just not doing anything, and we will get to work on them.

Senator HARKIN. If you did not hear the question, he wanted to know—I did not catch your name.

Mr. ROSENFELD. Ed Rosenfeld.

Senator HARKIN. Ed Rosenfeld from where?

Mr. ROSENFELD. The Spinal Cord Injury Network, Metropolitan Washington.

Senator HARKIN. He wanted to know about who is not on board and who is on the fence and everything. We have a list here. I would hope that it would be made available to you someplace here, maybe going out the door or something, of all the cosponsors of the bill in the House and in the Senate.

We have 25 cosponsors in the Senate and 113 in the House. You can see we are missing 75 in the Senate and about 300 and some in the House. All I can tell you is that we will try to get these lists out to you. You should contact those who are not on the list to have them get on it as a cosponsor.

You may hear, well, it is not going anywhere this year. That is not the point. Get on it this year, you are on it, and we will get it back in the new Congress next year.

But we do have these lists and they are available to you if you just ask Bobby or someone here, we will get you the list of the cosponsors. Who is not on here is who you have to go after.

Senator HARKIN. Yes, the woman in white.

Ms. STOW. I am Florence Stow from Bancroft School in Hanfield, NJ. I think that capabilities should be acknowledged just like we, treated like us, not carried down half ramps, treated just like normal people. They should have respect and should go and live where they want to, and do what we do.

They should have a great deal of respect. Thank you. [Applause.]

Senator HARKIN. Thank you all very much for your eloquence, and for coming. Let me just say this.

This bill is not going anywhere this year. The Congress, the 100th Congress is about to adjourn. But we enter into the 101st Congress next year and the bill will be reintroduced right away.

We have a long road to go. I am not going to sit here or stand here and kid you that somehow this thing is going to get through right away. There are roadblocks and a lot of problems out there.

So what it is going to take is it is going to take persistence. A lot of persistence on my part, a lot of persistence on your part. You are the ones who can make this bill happen. You have to connect up with your friends, your families, the different agencies, organizations that you belong to, and you have got to make this your top priority.

It is going to be a tough battle. I am convinced we can do it. The history of the United States has been a constant evolution of opening more doors, of breaking down barriers, of extending basic human rights to more and more people. Sometimes we do not always live up to those words that we have in the Declaration of Independence and in our Bill of Rights. But we constantly try to live up to them. We said that all men, and I am sure they meant all women, too, if they were here today, were created equal.

And yet, for almost 100 years after, we had slavery. We did not even get the Civil Rights Act until 1964. Women did not have the right to vote until what, 1920, was it not?

But it has been a constant progress towards expanding our concept of basic human rights. But with each one of those hurdles we

had to cross, it took a lot of effort, a lot of time. I am hopeful it will not take that time for this bill. We have laid the groundwork. We have made the initial steps. Now we just need to take that final step of breaking down the final barrier in our country of discrimination.

I guess I am reminded that when I think about how tough it is going to be, and how much work it is going to take, I am reminded of Rosa Parks who got off that bus in Alabama and said she was not going to ride in the back of the bus anymore. She led the bus boycott as some of you remember, at least those of you who are as old as I am. I do not know how long that bus boycott went on, but they all walked to work. They walked to their places of employment and they walked home, some of them 3, 4, 5 miles a day, rather than take the buses.

After it was all over with, they broke the back of the bus company and were entitled to sit anywhere they wanted to on the bus. When it was all over with, someone asked Rosa Parks how she felt. She said well, "it has been a long tough battle, my feet are tired but my soul is at rest."

Let us work hard so that when we finally win this battle, we can all say together, and paraphrase Rosa Parks, our bodies are tired, but our soul is at rest.

Thank you. [Applause.]

[Additional material supplied for the record follows:]

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BEFORE THE

JOINT HEARING

SENATE SUBCOMMITTEE ON THE HANDICAPPED

HOUSE OF REPRESENTATIVES SUBCOMMITTEE ON SELECT EDUCATION

TESTIMONY OF THE ORGANIZATION FOR USE OF THE TELEPHONE (OUT)

ON SENATE BILL 2345 AND HOUSE BILL 4498

On behalf of The Organization for Use of the Telephone (OUT), I express our appreciation for the opportunity to testify on this landmark legislation. My name is David Saks. I serve as Director of OUT.

OUT is an all-volunteer non-profit national advocacy organization working on behalf of people with impaired hearing. We have focused our efforts primarily on improving telephone reception with hearing aids. Since our members have various degrees of hearing loss, we have a direct interest in the above referenced Joint Hearing. We will confine our testimony to the provisions of S. 2345 and H.R. 4498 which deal with hearing and communication.

People whose hearing impairments are to varying degrees compensated for by the use of hearing aids are the victims of discrimination in many aspects of their lives. Of the issues being addressed by this legislation, discrimination in places of public accommodation and employment are particularly critical to them. Hospital patients who find themselves in rooms with unusable telephones because the phones are not hearing aid-compatible (HAC)--or, depending on severity of hearing loss, not equipped with amplifiers or telecommunications devices for the deaf (TDD). Hotel and motel guests who, although paying for rooms with telephone service, find the same discriminatory lack of usable means of communication. Picture the hapless restaurant patron or airport customer who, upon being paged, is confronted with an unusable telephone while non-impaired passengers all around him enjoy convenient telephone communication.

Since we are especially concerned with the removal of these barriers to telephone communication, we urge the subcommittees to make more specific the provisions which bear on the use of voice telephones. Neither the Telecommunications for the Disabled Act of 1982 (Disabled Act) nor the Hearing Aid Compatibility Act of 1988 (HAC Act) remove pre-existing communication barriers, except for emergency phones and coin-operated payphones. There are an estimated 50,000,000 voice telephones in use in the United States which are not HAC, thus unusable with telecoil-equipped hearing aids. These are not touched by the two laws cited above. (See attachment A)

Many of these non-HAC phones are necessarily in places of

Senator HARKIN. The hearing will be adjourned. We will see you early next year, when we really start moving this.

[Whereupon, at 1:06 p.m., the subcommittee hearing was adjourned.]Folios 174 to 176 Insert here

public accommodation. We hope and believe that it is the committees' intent to remove as many of these discriminatory barriers as are within their reach. To enhance chances of this coming about, we make the following recommendations:

1. At Section 8(h)(3)(A) TYPES OF REQUIREMENTS--add "hearing aid-compatible telephones." This will assure that places of public accommodation, transportation terminals and facilities, employers and others will provide usable voice telephones to patrons, travelers and employees, thereby rectifying present serious discrimination.

2. At Section 8(h)(3)(C)--Please make stronger the language requiring assistive listening systems, particularly induction loop amplification (ILA). People who need and use telecoil-equipped hearing aids in order to hear in hearing rooms and other facilities where public business is conducted and decided upon, conference rooms, auditoria, theaters, houses of worship, etc. are denied access to these places by the absence of assistive listening systems. ILA is the least expensive of the more desirable systems and the only system which can be used without an external receiver. The listener merely flips the hearing aid switch from M (microphone) to T (telephone) and receives a clear, sharp signal. External ILA receivers are available for people who do not have telecoil-equipped aids. (See attachment B)

3. At Section 8(h)(3)(E)--delete "handsets" at end of paragraph. Amplifiers no longer are confined to handsets: one piece phones have built-in amplifiers, public payphones have case-mounted amplifiers; many phones still use amplifier handsets. The use of "telephone handsets" will limit the applicability of the provision. (See attachment C)

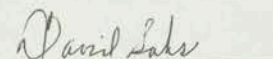
4. We urge you to consider some such word as "effective" or "required" or "necessary" in place of "reasonable" when used in the phrase "reasonable accommodation." "Reasonable" gives to anti-consumer regulatory agencies broad leeway for interpretation. In some cases, you will find your actual intent thwarted by convoluted interpretation which barely stays within the letter of the law. The legislation needs a more specific and stronger word than "reasonable."

In summary, we urge you to make more specific, at least as

specific as other requirements, the provisions designed to eliminate communication barriers which daily face people who use voice telephones with hearing aids.

Respectfully submitted.

Organization for Use of
the Telephone, Inc.



David Saks, Director

September 27, 1988

(Note: In the interest of economy, appendix material accompanying this statement was retained in the files of the committee.)

take out bankruptcy clause

11

100TH CONGRESS
2D SESSION

S. 2345

To establish a clear and comprehensive prohibition of discrimination on the basis of handicap.

IN THE SENATE OF THE UNITED STATES

APRIL 28, 1988

Mr. WEICKER (for himself, Mr. HARKIN, Mr. SIMON, Mr. STAFFORD, Mr. KENNEDY, Mr. DODD, Mr. MATSUNAGA, Mr. CHAFEE, Mr. KERRY, Mr. PACKWOOD, Mr. LEAHY, Mr. INOUE, Mr. CRANSTON, and Mr. DOLE) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

A BILL

To establish a clear and comprehensive prohibition of discrimination on the basis of handicap.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3

4 SECTION 1. SHORT TITLE.

5 This Act may be cited as the "Americans with Disabil-
6 ities Act of 1988".

7 SEC. 2. FINDINGS AND PURPOSES.

8 (a) FINDINGS.—Congress finds that—

1 (1) some 36,000,000 Americans have one or more
2 physical or mental disabilities, and this number is in-
3 creasing as the population as a whole is growing older;

4 (2) historically, society has tended to isolate and
5 segregate persons with disabilities, and, despite some
6 improvements, such forms of discrimination against
7 persons with disabilities continue to be a serious and
8 pervasive social problem;

9 (3) discrimination against persons with disabilities
10 persists in such critical areas as employment, housing,
11 public accommodations, education, transportation, com-
12 munication, recreation, institutionalization, health serv-
13 ices, voting, and access to public services;

14 (4) every day, people with disabilities encounter
15 various forms of discrimination, including outright in-
16 tentional exclusion, the discriminatory effects of archi-
17 tectural, transportation, and communication barriers,
18 overprotective rules and policies, refusal to make modi-
19 fications to existing facilities and practices, exclusion-
20 ary qualification standards and criteria, segregation,
21 and relegation to lesser services, programs, activities,
22 benefits, jobs, or other opportunities;

23 (5) census data, national polls, and other studies
24 have documented that people with disabilities, as a
25 group, occupy an inferior status in our society, and are

1 severely disadvantaged socially, vocationally, economi-
2 cally, and educationally;

3 (6) persons with disabilities are a discrete and in-
4 sular minority who have been saddled with restrictions
5 and limitations, subjected to a history of purposeful un-
6 equal treatment, and relegated to a position of political
7 powerlessness in our society, based on characteristics
8 that are beyond the control of such persons and result-
9 ing from stereotypic assumptions not truly indicative of
10 the individual ability of such persons to participate in,
11 and contribute to, society;

12 (7) the Nation's proper goals regarding persons
13 with disabilities are to assure equality of opportunity,
14 full participation, independent living, and economic
15 self-sufficiency for such citizens; and

16 (8) the continuing existence of unfair and unneces-
17 sary discrimination and prejudice denies people with
18 disabilities the opportunity to compete on an equal
19 basis and to pursue those opportunities for which our
20 free society is justifiably famous, and costs the United
21 State billions of dollars in unnecessary expenses result-
22 ing from dependency and nonproductivity.

23 (b) PURPOSE.—It is the purpose of this Act—

1 (1) to provide a clear and comprehensive National
2 mandate for the elimination of discrimination against
3 persons with disabilities;

4 (2) to provide a prohibition of discrimination
5 against persons with disabilities parallel in scope of
6 coverage with that afforded to persons on the basis of
7 race, sex, national origin, and religion;

8 (3) to provide clear, strong, consistent, enforceable
9 standards addressing discrimination against persons
10 with disabilities; and

11 (4) to invoke the sweep of congressional authority,
12 including its power to enforce the fourteenth amend-
13 ment, to regulate commerce, and to regulate interstate
14 transportation, in order to address the major areas of
15 discrimination faced day-to-day by people with disabili-
16 ties.

17 SEC. 3. DEFINITIONS.

18 For purposes of this Act:

19 (1) ON THE BASIS OF HANDICAP.—The term “on
20 the basis of handicap” means because of a physical or
21 mental impairment, perceived impairment, or record of
22 impairment *substantially limiting a major life activity.*

*incorp
504
sub*

23 (2) PHYSICAL OR MENTAL IMPAIRMENT.—The
24 term “physical or mental impairment” means—

*add new definition
of physical or mental impairment
(person in employment)*

Qualifying Handicap = person who can perform the essential task of the particular job in question or in other context a person

of 2345 15

5

1 (A) any physiological disorder or condition,
2 cosmetic disfigurement, or anatomical loss affect-
3 ing one or more systems of the body, including
4 the following—

- 5 (i) the neurological system;
6 (ii) the musculoskeletal system;
7 (iii) the special sense organs, and respi-
8 ratory organs, including speech organs;
9 (iv) the cardiovascular system;
10 (v) the reproductive system;
11 (vi) the digestive and genitourinary sys-
12 tems;
13 (vii) the hemic and lymphatic systems;
14 (viii) the skin; and
15 (ix) the endocrine system; or

16 (B) any mental or psychological disorder,
17 such as mental retardation, organic brain syn-
18 drome, emotional or mental illness, and specific
19 learning disabilities.

20 (3) PERCEIVED IMPAIRMENT.—The term “per-
21 ceived impairment” means not having a physical or
22 mental impairment as defined in paragraph (2), but
23 being regarded as having or treated as having a physi-
24 cal or mental impairment.

too vague
take out

keep
same as
504

(4) RECORD OF IMPAIRMENT.—The term "record of impairment" means having a history of, or having been misclassified as having, a physical or mental impairment.

(5) REASONABLE ACCOMMODATION.—The term "reasonable accommodation" means providing or modifying devices, aids, services, or facilities, or changing standards, criteria, practices, or procedures for the purpose of providing to a particular person with a physical or mental impairment, perceived impairment, or record of impairment the equal opportunity to participate effectively in a particular program, activity, job, or other opportunity.

SEC. 4. SCOPE OF DISCRIMINATION PROHIBITED.

(a) IN GENERAL.—No person shall be subjected to discrimination on the basis of handicap in—

(1) employer practices, employment agency practices, labor organization practices, and training programs covered by title VII of the Civil Rights Act of 1964;

(2) the sale or rental of housing covered by title VIII of the Civil Rights Act of 1968;

(3) any public accommodation covered by title II of the Civil Rights Act of 1964;

Keep same as 504

no standard to add it to in only job related requirements

on persons job so it won't apply to employment.

under 504 - 504 you don't have standards in employment context

one - make an unqualified person qualified

in accommodations

lack of job and should not count as discrimination.

under standards for accommodations

1 (4) transportation services rendered by a person,
2 company, or agency engaged in the principal business
3 of transportation of persons, goods, documents, or data;

4 (5) the actions, practices, and operations of a
5 State, or agency or political subdivision of a State; and

6 (6) broadcasts, communications, or telecommuni-
7 cations services provided by a person, company, or
8 agency engaged in the principal business of broadcast-
9 ing or of communication by wire, as defined in subsec-
10 tions (a) and (c) of section 153 of the Communications
11 Act of 1934, as amended (47 U.S.C. 153(a) and (c)).

12 (b) CONSTRUCTION.—

13 (1) REHABILITATION ACT.—Nothing in this Act
14 shall be construed to affect or change the nondiscrim-
15 ination provisions contained in title V of the Rehabili-
16 tation Act of 1973 (29 U.S.C. 790 et seq.), or to affect
17 or change regulations issued by Federal agencies pur-
18 suant to title V of such Act.

19 (2) OTHER LAWS.—Nothing in this Act shall be
20 construed to invalidate or limit any other Federal law
21 or any law of a State or political subdivision of a State
22 or jurisdiction that provides greater protection of rights
23 for persons with physical or mental impairments, per-
24 ceived impairments, or records of impairment than are
25 afforded by this Act.

1 **SEC. 5. FORMS OF DISCRIMINATION PROHIBITED.**

2 (a) **IN GENERAL.**—Subject to the standards and proce-
3 dures established in sections 6 through 9 of this Act, the
4 actions or omissions described in this subsection constitute
5 discrimination on the basis of handicap.

6 (1) **SERVICES, PROGRAMS, ACTIVITIES, BENE-**
7 **FITS, JOBS, OR OTHER OPPORTUNITIES.—**

8 (A) **IN GENERAL.**—It shall be discriminatory
9 to subject a person, directly or through contrac-
10 tual, licensing, or other arrangements, on the
11 basis of handicap, to any of the following:

12 (i) Denying the opportunity to partici-
13 pate in or benefit from a service, program,
14 activity, benefit, job, or other opportunity.

15 (ii) Affording a person an opportunity to
16 participate in or benefit from a service, pro-
17 gram, activity, benefit, job, or other opportu-
18 nity that is not equal to that afforded others.

19 (iii) Providing a person with a service,
20 program, activity, benefit, job, or other op-
21 portunity that is less effective than that pro-
22 vided to others.

23 (iv) Providing a person with a service,
24 program, activity, benefit, job, or other op-
25 portunity that is different or separate, unless
26 such action is necessary to provide the

9

1 person with a service, program, activity,
2 benefit, job, or other opportunity that is as
3 effective as that provided to others.

4 (v) Aiding or perpetuating discrimina-
5 tion by providing significant assistance to an
6 agency, organization, or person that discrimi-
7 nates.

8 (vi) Denying a person the opportunity to
9 participate as a member of planning or advi-
10 sory boards.

11 (vii) Otherwise limiting a person in the
12 enjoyment of any right, privilege, advantage,
13 or opportunity enjoyed by others.

14 *add of* (B) LEVELS OF ACHIEVEMENT.—For pur-
15 *scot* poses of this section, services, programs, activi-
16 ties, benefits, jobs, or other opportunities, to be
17 *be* equally effective, are not required to produce the
18 identical result or level of achievement for persons
19 with physical or mental impairments, perceived
20 impairments, or records of impairment, and per-
21 sons without such impairments, but such services,
22 programs, activities, benefits, jobs, or other oppor-
23 tunities shall afford persons with such impair-
24 ments an equal opportunity to obtain the same
25 result, to gain the same benefits, or to reach the

scratch job?

*job = not receiving
services you are
giving services*

*delete jobs
bc you are not
required to produce
the same result*

1 same level of achievement, in the most integrated
2 setting appropriate to the needs of the person.

3 (C) OPPORTUNITY TO PARTICIPATE.—Not-
4 withstanding the existence of separate or different
5 programs or activities provided in accordance with
6 this section, a person with a physical or mental
7 impairment, perceived impairment, or record of
8 impairment shall not be denied the opportunity to
9 participate in such programs or activities that are
10 not separate or different.

11 (D) ADMINISTRATIVE METHODS.—A person,
12 company, or agency may not, directly or through
13 contractual or other arrangements, utilize criteria
14 or methods of administration—

15 (i) that have the effect of discrimination
16 on the basis of handicap;

17 (ii) that have the purpose or effect of
18 defeating or substantially impairing the ac-
19 complishment of the objectives of the serv-
20 ices, programs, activities, benefits, jobs, or
21 other opportunities provided with respect to
22 persons with physical or mental impairments,
23 or records of impairment; or

24 (iii) that perpetuate the discrimination of
25 others who are subject to common adminis-

trative control or are agencies of the same
State.

(2) BARRIERS.—It shall be discriminatory—

(A) to establish or impose; or

(B) to fail or refuse to remove;

any architectural, transportation, or communication
barriers that prevent the access or limit the participa-
tion of persons on the basis of handicap.

(3) ACCOMMODATION.—It shall be discriminatory
to fail or refuse to make a reasonable accommodation
to permit an individual with a physical or mental im-
pairment, perceived impairment, or record of impair-
ment to apply, have access to, or participate in a pro-
gram, activity, job, or other opportunity.

(4) STANDARDS AND CRITERIA.—It shall be dis-
criminatory to impose or apply any qualification stand-
ards, selection criteria, or eligibility criteria that—

(A) screen out or disadvantage an individual
because of a physical or mental impairment, per-
ceived impairment, or record of impairment; or

(B) ~~disproportionately~~ screen out or disad-
vantage persons with particular types of physical
or mental impairments, perceived impairments, or
records of impairment;

make
within this definition
of reasonable
accommodation
(parallel to def.)

1 unless such criteria or standards can be shown to be
2 necessary and substantially related to ability to perform
3 or participate in essential components of the particular
4 service, program, activity, benefit, job, or other oppor-
5 tunity.

6 (5) **RELATIONSHIPS OR ASSOCIATIONS.**—It shall
7 be discriminatory to exclude or otherwise deny equal
8 services, programs, activities, benefits, jobs, or other
9 opportunities to a person because of the relationship to,
10 or association of, that person with another person who
11 has a physical or mental impairment, perceived impair-
12 ment, or record of impairment.

13 (b) **ACTIONS NOT DISCRIMINATORY.**—It shall not be
14 considered to be discrimination on the basis of handicap to
15 exclude or otherwise deny equal services, programs, activi-
16 ties, benefits, jobs, or other opportunities to a person—

17 (1) for reasons entirely unrelated to the existence
18 of or consequences of a physical or mental impairment,
19 perceived impairment, or record of impairment; or

20 (2) based on a legitimate application of qualifica-
21 tion standards, selection criteria, performance stand-
22 ards, or eligibility criteria that are both necessary and
23 substantially related to the ability to perform or partici-
24 pate in the essential components of the particular job,
25 program, activity, or opportunity, and such perform-

1 ance or participation cannot be accomplished by a rea-
2 sonable accommodation.

3 **SEC. 6. DISCRIMINATION IN HOUSING.**

4 **(a) IN GENERAL.**—Notwithstanding the requirements of
5 section 5(a), it shall be an act of discrimination in regard to
6 housing—

7 (1) to discriminate in the sale or rental, or to oth-
8 erwise make unavailable or deny, a dwelling to any
9 buyer or renter because of a physical or mental impair-
10 ment, perceived impairment, or record of impairment
11 of—

12 (A) such buyer or renter;

13 (B) a person residing in or intending to
14 reside in such dwelling after it is sold, rented, or
15 made available; or

16 (C) any person associated with such buyer or
17 renter; and

18 (2) to discriminate against any person in the
19 terms, conditions, or privileges of the sale or rental of
20 a dwelling, or in the provision of services or facilities
21 in connection with such dwelling, because of a physical
22 or mental impairment, perceived impairment, or record
23 of impairment of—

24 (A) such person;

1 (B) a person residing in or intending to
2 reside in such dwelling after it is so sold, rented,
3 or made available; or

4 (C) any person associated with such person.

5 (b) REMOVAL OF BARRIERS IN HOUSING.—For pur-
6 poses of subsection (a), discrimination includes—

7 (1) a refusal to permit, at the expense of a person
8 with a physical or mental impairment, perceived im-
9 pairment, or record of impairment, reasonable modifica-
10 tions of existing premises occupied, or to be occupied,
11 by such person if such modifications may be necessary
12 to afford such person full enjoyment of the premises;

13 (2) a refusal to make reasonable accommodations
14 in rules, policies, practices, or services, when such ac-
15 commodations may be necessary to afford such person
16 equal opportunity to use and enjoy a dwelling; or

17 (3) a failure to design and construct qualified mul-
18 tifamily dwellings for first occupancy after the date
19 that is 80 months after the date of enactment of this
20 Act, in such a manner that—

21 (A) the public and common use portions of
22 such dwelling are readily accessible to, and usable
23 by, persons with physical and mental impair-
24 ments;

1 (B) all the doors into and within all premises
2 within such dwellings are sufficiently wide to
3 allow passage by persons in wheelchairs; and

4 (C) all premises within such dwellings con-
5 tain basic universal features of adaptive design.

6 (c) DEFINITION.—As used in this section the term
7 “qualified multifamily dwellings” means—

8 (1) buildings consisting of two or more units if
9 such buildings have one or more elevators; and

10 (2) those units in other buildings consisting of two
11 or more units that are on the ground floor.

12 SEC. 7. LIMITATIONS ON THE DUTIES OF ACCOMMODATION

13 AND BARRIER REMOVAL.

Fundamental or Substantial

14 (a) EXISTENCE THREATENING ALTERATIONS.—

15 (1) IN GENERAL.—The failure or refusal to
16 remove architectural, transportation, and communica-
17 tion barriers, and to make reasonable accommodations
18 required under section 5(a) shall not constitute an un-
19 lawful act of discrimination on the basis of handicap if
20 such barrier removal or accommodation would funda-
21 mentally alter the essential nature, or threaten the ex-
22 *or make a*
substantial modification of
istence of, the program, activity, business, or facility in
23 question.

24 (2) OTHER ACTION.—In the event that barrier re-
25 moval is not required because it would result in a fun-

Δ to

503/504

standard of

① cost related

② program size & funding

③ safety and use by others

make it a reasonable accommodation definition (parallel)

add in reasonable accomodation

16

1 fundamental alteration or threaten the existence of a pro-
2 gram, activity, business, or facility, there shall continue
3 to be a duty to conform to other requirements of this
4 Act and to take such other actions as are necessary to
5 make a program, activity, or service, when viewed in
6 its entirety, readily accessible to and usable by persons
7 with physical and mental impairments, perceived im-
8 pairments, or records of impairment.

9 (b) TIME FOR ALTERATIONS.—

10 (1) IN GENERAL.—If substantial modifications to
11 existing buildings and facilities are necessary in order
12 to remove architectural, transportation, and communi-
13 cation barriers, as required under section 5(a), such
14 modifications shall, unless required earlier by other law
15 or regulation, be made within a reasonable period of
16 time, not to exceed 2 years from the date of enactment
17 of this Act.

18 (2) EXCEPTION.—Regulations promulgated pur-
19 suant to section 8 of this Act may allow up to 5 years
20 from the date of enactment of this Act where reason-
21 ably necessary for the completion of such modifications
22 to particular classes of buildings and facilities.

23 (c) MASS TRANSPORTATION.—

24 (1) IN GENERAL.—If substantial modifications to
25 existing platforms and stations of mass transportation

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*2 years 2 yrs
1 year = 1 year
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language = 18
504 section (84.2)
504 7204*

*will be
a problem
esp. private
sector*

1 systems are necessary in order to remove architectural,
2 transportation, and communication barriers, as required
3 under section 5(a), regulations promulgated pursuant to
4 section 8 of this Act may, unless required earlier by
5 other law or regulation, allow a reasonable period of
6 time, in no event to exceed 10 years from the date of
7 enactment of this Act, for such modifications to be
8 made.

9 (2) EFFECT.—Paragraph (1) shall not affect the
10 duty of providers of transportation services to conform
11 to other requirements of this Act, including the re-
12 quirement of removing other types of architectural,
13 transportation, and communication barriers, and the
14 application of such requirements to vehicles and rolling
15 stock.

16 SEC. 8. REGULATIONS.

17 (a) ARCHITECTURAL AND TRANSPORTATION BAR-
18 RIERS COMPLIANCE BOARD.—Within 6 months of the date
19 of enactment of this Act, the Architectural and Transporta-
20 tion Barriers Compliance Board shall issue minimum guide-
21 lines, to supplement the existing Minimum Guidelines and
22 Requirements for Accessible Design, to establish require-
23 ments for the architectural, transportation, and communica-
24 tion accessibility of buildings, facilities, vehicles, and rolling
25 stock subject to the requirements of this Act.

1 (b) ATTORNEY GENERAL.—

2 (1) IN GENERAL.—Within 1 year of the date of
3 enactment of this Act, the Attorney General shall pro-
4 mulgate regulations for the implementation and en-
5 forcement of the requirements of this Act as it applies
6 to States and agencies and political subdivisions of
7 States.

8 (2) MINIMUM GUIDELINES.—The Attorney Gen-
9 eral of the United States shall coordinate the timely
10 development of regulations required under this section
11 and shall issue, within 6 months of the date of enact-
12 ment of this Act, minimum guidelines for the develop-
13 ment of such regulations.

14 (c) EQUAL EMPLOYMENT OPPORTUNITY COMMIS-
15 SION.—

16 (1) EMPLOYER PRACTICES.—

17 (A) IN GENERAL.—Within 1 year of the date
18 of enactment of this Act, the Chairman of the
19 Equal Employment Opportunity Commission shall
20 promulgate regulations for the implementation and
21 enforcement of the requirements of this Act as it
22 applies to employer practices, employment agency
23 practices, labor organization practices, and job
24 training programs.

1 (B) PROHIBITIONS.—The regulations pro-
2 mulgated under subparagraph (A) shall prohibit
3 discrimination in regard to job application proce-
4 dures, the hiring and discharge of employees, em-
5 ployee compensation, advancement, job training,
6 and other terms, conditions, and privileges of
7 employment.

8 (2) REQUIREMENTS.—The regulations promulgat-
9 ed under subparagraph (A) shall include, a requirement
10 of outreach and recruitment efforts to increase the
11 work force representation of individuals with physical
12 or mental impairments, or records of impairment, and
13 shall establish a process and timelines for the develop-
14 ment, implementation, and periodic revision of such
15 outreach and recruitment efforts.

16 (3) PREEMPLOYMENT INQUIRIES.—

17 (A) IN GENERAL.—The regulations promul-
18 gated under paragraph (1)(A) shall include a re-
19 quirement that employers may not conduct a
20 preemployment medical examination and may not
21 make a preemployment inquiry of an applicant as
22 to whether such applicant has a physical or
23 mental impairment, perceived impairment, or
24 record of impairment, or as to the nature or se-
25 verity of such impairment.

1 (B) PERMITTED INQUIRIES.—An em-
2 ployer—

3 (i) may make a preemployment inquiry
4 into the ability of an applicant to satisfy le-
5 gitimate qualification standards, selection cri-
6 teria, performance standards, or eligibility
7 criteria as permitted under section 5(b)(2);

8 (ii) may condition an offer of employ-
9 ment on the results of a medical examination
10 conducted prior to the entrance to duty of
11 the applicant, if—

12 (I) all entering employees are sub-
13 jected to such an examination regard-
14 less of physical or mental impairment,
15 perceived impairment, or record of im-
16 pairment; and

17 (II) the results of such an exami-
18 nation are used only in accordance with
19 the requirements of this section;

20 (iii) taking remedial action to correct
21 the effects of past discrimination, or engaged
22 in outreach and recruitment efforts to in-
23 crease the participation of persons with phys-
24 ical or mental impairments, may invite em-
25 ployment applicants to indicate whether, and

1 to what extent, such applicants have a physi-
2 cal or mental impairment, if—

3 (I) the employer states clearly on
4 any written questionnaire used for em-
5 ployment purposes, or makes clear
6 orally if no written questionnaire is
7 used, that the information requested is
8 intended for use solely in connection
9 with such remedial action or outreach
10 and recruitment activities; and

11 (II) the employer states clearly
12 that the information is being requested
13 on a voluntary basis, that such informa-
14 tion will be kept confidential as provid-
15 ed in subparagraph (C), that refusal to
16 provide such information will not sub-
17 ject the applicant or employee to any
18 adverse treatment, and that such infor-
19 mation will be used only in accordance
20 with the requirements of this section.

21 (C) CONFIDENTIALITY.—Information as to
22 the medical condition or history of the applicant,
23 obtained in accordance with this paragraph shall
24 be collected and maintained on separate forms

1 that shall be accorded the same confidentiality as
2 are medical records, except that—

3 (i) supervisors and managers may be in-
4 formed of restrictions on the work or duties
5 of persons with physical or mental impair-
6 ments and of necessary accommodations for
7 such persons;

8 (ii) first aid and safety personnel may be
9 informed, where appropriate, if such a condi-
10 tion may require emergency treatment; and

11 (iii) government officials investigating
12 compliance with this Act shall be provided
13 relevant information on request.

14 (d) SECRETARY OF HOUSING AND URBAN DEVELOP-
15 MENT.—Within 1 year of the date of enactment of this Act,
16 the Secretary of Housing and Urban Development shall pro-
17 mulgate regulations for the implementation and enforcement
18 of the requirements of this Act as it applies to sellers, land-
19 lords, and other providers of housing.

20 (e) SECRETARY OF TRANSPORTATION.—

21 (1) IN GENERAL.—Within 1 year of the date of
22 enactment of this Act, the Secretary of Transportation
23 shall promulgate regulations for the implementation
24 and enforcement of the requirements of this Act as it

Keep

1 applies to State and local transit systems and to those
2 engaged in the business of transportation.

3 (2) STANDARDS.—The regulations promulgated
4 under paragraph (1) shall include standards regarding
5 the accessibility of vehicles and rolling stock that are
6 consistent with the requirements of paragraph (3).

7 (3) REQUIREMENTS.—With respect to State and
8 local transit systems, rail and light rail services, and
9 bus companies, the standards issued under paragraph
10 (2) shall—

11 (A) ensure that all vehicles or rolling stock
12 that are purchased, leased, renovated, or other-
13 wise placed into service later than one year after
14 the date of enactment of this Act shall be accessi-
15 ble to and usable by persons with physical or
16 mental impairments, including wheelchair users;

17 (B) permit a reasonable period of time, not to
18 exceed 7 years, for such transportation operators
19 to purchase, acquire, or modify sufficient vehicles
20 and rolling stock so that the peak fleet of such op-
21 erators has at least 50 percent of vehicles and
22 rolling stock that are accessible to and usable by
23 persons with physical or mental impairments, in-
24 cluding wheelchair users; and

*local option
para transit*

*need local
option long.*

(C) ensure that the use of paratransit and other specialized transportation services for persons with physical or mental impairments shall be used as a supplement to other forms of transportation, but shall not affect the requirement that transportation systems and services available to members of the public shall be accessible to and usable by persons with physical or mental impairments, including wheelchair users.

(f) SECRETARY OF COMMERCE.—Within 1 year of the date of enactment of this Act, the Secretary of Commerce shall promulgate regulations for the implementation and enforcement of the requirements of this Act as it applies to places of public accommodation.

(g) FEDERAL COMMUNICATIONS COMMISSION.—Not later than 1 year after the date of enactment of this Act, the Chairman of the Federal Communications Commission shall promulgate regulations for the implementation and enforcement of this Act as such applies to those engaged in the business of broadcasting or of communicating by wire. When promulgating regulations concerning television broadcast stations, the Chairman shall include requirements for progressively increasing the proportion of programs, advertisements, and announcements that are captioned.

(h) EFFECTIVE COMMUNICATION.—

local option
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Paul

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1 (1) **REGULATIONS.**—Regulations promulgated
2 under this section shall include requirements for the
3 prohibition or removal of communication barriers, and
4 for making reasonable accommodations to assure effective
5 communication with a particular person who has a
6 physical or mental impairment, perceived impairment,
7 or record of impairment.

8 (2) **COMMUNICATION BARRIERS.**—As used in this
9 section the term "communication barriers" means the
10 absence of devices, services, systems, or signage and
11 information media, or modifications of devices, services,
12 systems, or signage and information media that are
13 necessary to achieve effective communication with persons
14 with a physical or mental impairment, perceived
15 impairment, or record of impairment in regard to a
16 service, program, activity, benefits, job, or other opportunity.
17

18 (3) **TYPES OF REQUIREMENTS.**—Under appropriate
19 circumstances, the prohibition or removal of communication
20 barriers or making a reasonable accommodation may require—
21

22 (A) the provision and maintenance of devices
23 such as Telecommunications Devices for the Deaf,
24 visual aids such as flashing alarms and indicators,
25 decoders, and augmentative communication de-

1 vices for nonvocal persons such as language
2 symbol or alphabet boards;

3 (B) the provision of such services as inter-
4 preting, reading, audio or video taping, and note-
5 taking, by qualified personnel;

6 (C) the development and effective operation
7 of such systems as captioning, assistive listening
8 systems, including audio induction loops, and in-
9 frared, FM or AM communications, and telephone
10 relay services system;


11 (D) the development and effective use of al-
12 ternative signage and information media, such as
13 brailled or audio information, and visual alerts for
14 audio announcements and other information; and

15 (E) the modification of devices, services, sys-
16 tems, and signage and information media, such as
17 audio input/output on a computer terminal, adapt-
18 ed software, flashing lights as an attachment to a
19 telephone, and amplifiers on telephone handsets.

20 SEC. 9. ENFORCEMENT.

21 (a) ADMINISTRATIVE ACTIONS.—

22 (1) IN GENERAL.—Any person who believes that
23 he or she or any specific class of individuals is being or
24 is about to be subjected to discrimination on the basis
25 of handicap in violation of this Act, shall have a right,



1 by himself or herself, or by a representative, to pursue
2 such administrative enforcement procedures and reme-
3 dies as are available in connection with the regulations
4 issued pursuant to section 8 of this Act.

5 (2) REMEDY.—Agencies enforcing such regula-
6 tions shall have the authority to order all appropriate
7 remedial relief, including compliance orders, cutoff of
8 Federal funds, rescission of Federal licenses, monetary
9 damages, and back pay.

10 (b) CIVIL ACTIONS.—

11 (1) RIGHT TO FILE.—Any person who believes
12 that he or she or any specific class of individuals is
13 being or is about to be subjected to discrimination on
14 the basis of handicap in violation of this Act, shall
15 have a right, by himself or herself, or by a representa-
16 tive, to file a civil action for injunctive relief, monetary
17 damages, ^{or back pay} or both in a district court of the United
18 States. *or any other appropriate remedial relief*

19 (2) ADMINISTRATIVE ENFORCEMENT.—The ex-
20 haustion of administrative enforcement procedures and
21 remedies as contemplated in section 9(a) shall not be a
22 prerequisite to the filing of a civil action under this
23 subsection, except in regard to employer practices, em-
24 ployment agency practices, labor organization prac-
25 tices, and training programs, covered by section 4(a)(1)

1 of this Act, for which such exhaustion shall be required
2 unless—

3 (A) administrative enforcement procedures
4 and remedies as contemplated in section 9(a) are
5 not available; or

6 (B) such enforcement procedures are not con-
7 cluded within 180 days after the filing of a com-
8 plaint of discrimination prohibited under this Act.

9 (c) ADDITIONAL EVIDENCE.—In any action brought
10 under this section, the court shall receive the records of the
11 administrative proceedings, shall hear additional evidence at
12 the request of a party, and, basing its decision on the prepon-
13 derance of the evidence, shall grant such relief as the court
14 determines is appropriate.

15 (d) JURISDICTION.—The district courts of the United
16 States shall have jurisdiction of actions brought under this
17 Act without regard to the amount in controversy.

18 (e) IMMUNITY.—A State shall not be immune under the
19 eleventh amendment to the Constitution of the United States
20 from suit in Federal court for a violation of this Act. In a suit
21 against a State for a violation of the requirements of this Act,
22 remedies (including remedies both at law and in equity) are
23 available for such a violation to the same extent as such rem-
24 edies are available for such a violation in a suit against any
25 public or private entity other than a State.

1 (f) ATTORNEY'S FEES.—In any action or administrative
2 proceeding commenced pursuant to this section, the court, or
3 agency, in its discretion, may allow the prevailing complain-
4 tants party, other than the United States, a reasonable attor-
5 ney's fee in addition to costs, and the United States shall be
6 liable for costs the same as a private person.

7 (g) BURDEN OF PROOF.—In any administrative pro-
8 ceeding or civil action brought under this Act, the burden of
9 proving the legitimacy of any qualification standard, selection
10 criteria, or eligibility criteria at issue in a case, and of prov-
11 ing the defense that a particular reasonable accommodation
12 or removal of an architectural, transportation, or communica-
13 tion barrier would fundamentally alter or threaten the exist-
14 ence of the program, activity, business, or facility in question,
15 shall be on the person, agency, or entity alleged to have com-
16 mitted an act of discrimination, and shall not be on the com-
17 plainant.

18 SEC. 10. EFFECTIVE DATE.

19 This Act shall become effective on the date of
20 enactment.



*NAHB
Man Siller (P)*

BRIEFING BOOK

The Americans with Disabilities Act of 1988

A Draft Bill



National Council on the Handicapped

INTERNAL NCH DOCUMENT
NOT FOR DISTRIBUTION

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National Council on the Handicapped

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THE AMERICANS WITH DISABILITIES ACT OF 1988

FACT SHEET

-- The Americans with Disabilities Act of 1988 was a key recommendation of the National Council on the Handicapped in its 1986 report, Toward Independence.

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

-- The Act covers employers engaged in commerce who have 15 or more employees; housing providers covered by Federal fair housing laws; public accommodations; transportation companies; those engaged in broadcasting or communications; and State and local governments.

-- The Act specifically defines discrimination, including various types of intentional and unintentional exclusion; segregation; inferior or less effective services, benefits or activities; architectural, transportation, and communication barriers; failing to make reasonable accommodations; and discriminatory qualifications and performance standards.

-- The Act specifies those actions that do not constitute discrimination. They include unequal treatment wholly unrelated to a disability or that which is the result of legitimate application of qualifications and performance standards necessary and substantially related to the ability to perform or participate in the essential components of a job or activity.

-- The Architectural and Transportation Barriers Compliance Board will issue minimum accessibility guidelines. Other regulations will be issued by the Attorney General, the U.S. Equal Employment Opportunity Commission, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Federal Communications Commission, and the Secretary of Commerce.

-- The Act will not repeal Sections 503 and 504 of the Rehabilitation Act of 1973 and all regulations issued under those sections will remain in full force and effect.

-- Enforcement procedures include administrative remedies, a private right of action in Federal court, monetary damages, injunctive relief, attorney's fees, and cutoffs of Federal funds.

SUMMARY OF THE AMERICANS WITH DISABILITIES ACT OF 1988

This bill implements a principal recommendation of the National Council on the Handicapped in its report Toward Independence that called for enactment of a comprehensive law prohibiting discrimination against people with disabilities. The essence of the proposed Act is a prohibition of discrimination on the basis of handicap that is broad in scope and specific in defining the types of discrimination prohibited. It will guarantee the right to be free from discrimination in such areas as employment, housing, public accommodations, travel, communications, and activities of State and local governments.

Currently, Sections 501 through 504 of the Rehabilitation Act of 1973, as amended, prohibit discrimination on the basis of handicap by agencies of the Federal Government, by Federal contractors, and by Federal grantees. The Americans with Disabilities Act will create a new, free-standing prohibition of discrimination on the basis of handicap that will apply to important areas of discrimination not addressed by the Rehabilitation Act. It will cover employers who engage in interstate commerce and have 15 or more employees, housing providers covered by Federal fair housing laws, public accommodations, transportation companies, those engaged in broadcasting or communications, and State and local governments.

The bill specifically delineates the various forms of discrimination that are prohibited, including various types of: intentional or unintentional exclusion; segregation; unequal, inferior, or less effective services, benefits, or activities; architectural, transportation and communication barriers; failing to make reasonable accommodations; and discriminatory qualifications and eligibility standards. It also specifies that certain actions do not constitute discrimination. These include unequal treatment that is wholly unrelated to a person's disability, or is the result of the legitimate application of qualifications and performance standards that are necessary and substantially related to the ability to perform or participate in the essential components of the job or activity in question.

Under the bill, the Architectural and Transportation Barriers Compliance Board will issue minimum guidelines for accessibility. Regulations in the relevant areas will be issued by the appropriate agencies, including: the U.S. Equal Employment Opportunity Commission (employment), the Secretary of Housing and Urban Development (housing), the Secretary of Transportation, (transportation), the Secretary of Commerce (public accommodations), the Federal Communications Commission (communications), and the Attorney General (State and local governments and coordination of the regulations to be issued by the other agencies). Existing provisions of Sections 501 through 504 of the Rehabilitation Act of 1973 and their implementing regulations will remain in effect.

Enforcement procedures available for acts of discrimination in violation of this Act include administrative remedies, a private right of action in Federal court, monetary damages, injunctive relief, attorney's fees, and cutoffs of Federal funds.

III

The Americans with Disabilities Act of 1988

SECTION-BY-SECTION SUMMARY

Section 1 -- Short Title

Provides that the law may be cited as the Americans with Disabilities Act of 1988.

Section 2 -- Findings and Purpose

Subsection (a) presents Congressional findings about people with disabilities, their disadvantaged status in our society, the seriousness of discrimination against them, and the costliness of such discrimination to our country.

Subsection (b) provides a statement of the overall purposes of the Act centering on the establishment of a clear and comprehensive National mandate for the elimination of discrimination against persons with disabilities.

Section 3 -- Definitions

Provides definitions of key terms used in the Act, including "on the basis of handicap," "physical or mental impairment," and "reasonable accommodation." The former are defined consistently with their definition in existing regulations under Section 504 of the Rehabilitation Act of 1973. The definition of "reasonable accommodation" is drawn from Accommodating the Spectrum of Individual Abilities, a report issued by the U. S. Commission on Civil Rights.

Section 4 -- Scope of Discrimination Prohibited

Tells what persons and agencies are prohibited from discriminating against persons with disabilities. Provides broad scope of coverage in line with other types of civil rights laws. Includes, among others, employers engaged in commerce and having 15 or more employees, housing providers covered by Federal Fair Housing laws, public accommodations, transportation companies, those engaged in broadcasting or communications, and State and local governments.

Section 5 -- Forms of Discrimination Prohibited

Subsection (a) tells what actions constitute discrimination prohibited by the law. These include various types of intentional and unintentional exclusion; segregation; inferior or less effective services, benefits, or activities; architectural, transportation, and communication barriers; failing to make reasonable accommodations; and discriminatory qualifications and performance standards.

Subsection (b) specifies that certain actions do not constitute discrimination. These include unequal treatment that is wholly unrelated to a person's disability, or is the result of the legitimate application of qualifications and performance standards that are necessary and related to the ability to perform or participate in the essential components of the job or activity involved.

Section 6 -- Discrimination in Housing

This section provides standards regarding the application of nondiscrimination requirements in housing. The standards are drawn from the current version of the disability portions of the Federal Fair Housing Amendments bill in the Senate Judiciary Committee. Their primary focus is upon accessibility in future design and construction of housing.

Section 7 -- Limitations on the Duties of Accommodation and Barrier Removal

Subsection (a) provides that barrier removal or reasonable accommodations are not required to be made if to do so would fundamentally alter or threaten the existence of the program, business, activity, or facility in question.

Subsection (b) permits a reasonable period of time, not to exceed two years, for making substantial modifications to existing buildings and facilities in order to remove barriers. This period may be extended up to five years through regulations governing particular classes of buildings and facilities.

Subsection (c) provides that regulations may permit a reasonable period of time, not to exceed ten years, for making substantial modifications to existing platforms and stations of mass transportation systems.

Section 8 -- Regulations

Subsection (a) calls for the Architectural and Transportation Barriers Compliance Board to issue minimum

guidelines for accessibility of buildings, facilities, vehicles, and rolling stock. The remainder of the Section calls for Federal agencies to issue regulations for implementing and enforcing the requirements of the Act, including the following:

Employment	Equal Employment Opportunity Commission
Housing	Secretary of Housing & Urban Development
Transportation	Secretary of Transportation
Public accommodations	Secretary of Commerce
Communications	Federal Communications Commission
State and local governments, and coordination	Attorney General (Department of Justice)

Section 9 -- Enforcement

Establishes enforcement procedures for the requirements of the Act. These include administrative remedies, a private right of action, monetary damages, injunctive relief, attorney's fees, and cutoffs of Federal funding.

Section 10 -- Effective Date

Provides that the Act shall take effect on the date of its enactment.

3/18/88

NATIONAL COUNCIL ON THE HANDICAPPED

**THE AMERICANS WITH DISABILITIES ACT
OF 1988
A DRAFT BILL**

To establish a clear and comprehensive prohibition of discrimination on the basis of handicap.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Americans with Disabilities Act of 1988".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.--Congress finds that--

(1) some 36,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

(2) historically, society has tended to isolate and segregate persons with disabilities, and, despite some improvements, such forms of discrimination against persons with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against persons with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communications, recreation, institutionalization, health services, voting, and access to public services;

(4) every day, people with disabilities encounter various forms of discrimination, including outright, intentional exclusion and the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, refusal to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(5) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(6) persons with disabilities are a discrete and insular minority who have been saddled with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such persons and resulting from stereotypic assumptions not truly indicative of the individual ability of such persons to participate in, and contribute to, society;

(7) the Nation's proper goals regarding persons with disabilities are to assure equality of opportunity, full participation, independent living, and, wherever possible, economic self-sufficiency for such citizens; and

(8) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) PURPOSE.--It is the purpose of this Act--

(1) to provide a clear and comprehensive National mandate for the elimination of discrimination against persons with disabilities;

(2) to provide a prohibition of discrimination against persons with disabilities parallel in scope of coverage with that afforded to persons on the basis of race, sex, national origin, and religion;

(3) to provide clear, strong, consistent, enforceable standards addressing discrimination against persons with disabilities; and

(4) to invoke the sweep of congressional authority, including its power to enforce the fourteenth amendment, to regulate commerce, and to regulate interstate transportation, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

SEC. 3. DEFINITIONS.

For purposes of this Act:

(1) ON THE BASIS OF HANDICAP.-- The term "on the basis of handicap" means because of a physical or mental impairment, perceived impairment, or record of impairment.

(2) PHYSICAL OR MENTAL IMPAIRMENT.--The term "physical or mental impairment" means --

(A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more systems of the body including the following:

- (i) the neurological system;
- (ii) the musculoskeletal system;
- (iii) the special sense organs, and respiratory organs, including speech organs;

- (iv) the cardiovascular system;
- (v) the reproductive system;
- (vi) the digestive and genitourinary systems;
- (vii) the hemic and lymphatic systems;
- (viii) the skin; and
- (ix) the endocrine system; or

(B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(3) PERCEIVED IMPAIRMENT.--The term "perceived impairment" means not having a physical or mental impairment as defined in paragraph (2), but being regarded as having or treated as having a physical or mental impairment.

(4) RECORD OF IMPAIRMENT.--The term "record of impairment" means having a history of, or having been misclassified as having, a physical or mental impairment.

(5) REASONABLE ACCOMMODATION.--The term "reasonable accommodation" means providing or modifying devices, services, or facilities, or changing standards, criteria, practices, or procedures, for the purpose of providing to a particular person with a physical or mental impairment, perceived impairment, or record of impairment the equal opportunity to participate effectively in a particular program, activity, job, or other opportunity.

SEC. 4. SCOPE OF DISCRIMINATION PROHIBITED.

(a) IN GENERAL.--No person shall be subjected to discrimination on the basis of handicap in regard to--

(1) employer practices, employment agency practices, labor organization practices, and training programs covered by Title VII of the Civil Rights Act of 1964;

(2) the sale or rental of housing covered by Title VIII of the Civil Rights Act of 1968;

(3) any public accommodation covered by Title II of the Civil Rights Act of 1964;

(4) transportation services rendered by a person, company, or agency engaged in the principal business of transportation of persons, goods, documents, or data;

(5) the actions, practices, and operations of a State, or agency or political subdivision of a State; and

(6) broadcasts, communications, or telecommunications services provided by a person, company, or agency engaged in the principal business of broadcasting or of communication by wire, as defined in Section 153 of the Communications Act of 1934, as amended (47 U.S.C. 153 (a) and (c)).

(b) CONSTRUCTION.--

(1) REHABILITATION ACT.--Nothing in this Act shall be construed to affect or change the nondiscrimination provisions contained in Title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.), or to affect or change regulations issued by Federal agencies pursuant to Title V of such Act.

(2) OTHER LAWS.--Nothing in this Act shall be construed to invalidate or limit any other Federal law or any law of a State or political subdivision of a State or jurisdiction that provides greater protection of rights for persons with physical or mental impairments, perceived impairments, or records of impairment than are afforded by this Act.

SEC. 5. FORMS OF DISCRIMINATION PROHIBITED.

(a) IN GENERAL.--Subject to the standards and procedures established in sections 6 through 9 of this Act, the actions or omissions described in this subsection constitute discrimination on the basis of handicap.

(1) SERVICES, PROGRAMS, ACTIVITIES, BENEFITS, JOBS, OR OTHER OPPORTUNITIES.--

(A) IN GENERAL.--It shall be discriminatory to subject a person, directly or through contractual, licensing, or other arrangements, on the basis of handicap, to any of the following:

(i) Denying the opportunity to participate in or benefit from a service, program, activity, benefit, job, or other opportunity.

(ii) Affording a person an opportunity to participate in or benefit from a service, program, activity, benefit, job, or other opportunity that is not equal to that afforded others.

(iii) Providing a person with a service, program, activity, benefit, job, or other opportunity that is less effective than that provided to others.

(iv) Providing a person with a service, program, activity, benefit, job, or other opportunity that is different or separate, unless such action is necessary to provide the person with a service, program, activity, benefit, job, or other opportunity that is as effective as that provided to others.

(v) Aiding or perpetuating discrimination by providing significant assistance to an agency, organization, or person that discriminates.

(vi) Denying a person the opportunity to participate as a member of planning or advisory boards.

(vii) Otherwise limiting a person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others.

(B) LEVELS OF ACHIEVEMENT.--For purposes of this section, services, programs, activities, benefits, jobs, or other opportunities, to be equally effective, are not required to produce the identical result or level of achievement for persons with physical or mental impairments, perceived impairments, or records of impairment, and persons without such impairments, but such services, programs, activities, benefits, jobs, or other opportunities shall afford persons with

such impairments an equal opportunity to obtain the same result, to gain the same benefits, or to reach the same level of achievement, in the most integrated setting appropriate to the needs of the person.

(C) OPPORTUNITY TO PARTICIPATE.--Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, a person with a physical or mental impairment, perceived impairment, or record of impairment shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(D) ADMINISTRATIVE METHODS.--A person, company, or agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration--

(i) that have the effect of discrimination on the basis of handicap;

(ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the services, programs, activities, benefits, jobs, or other opportunities provided with respect to persons with physical or mental impairments, or records of impairment; or

(iii) that perpetuate the discrimination of others who are subject to common administrative control or are agencies of the same State.

(2) BARRIERS.--It shall be discriminatory--

(A) to establish or impose; or

(B) to fail or refuse to remove;

any architectural, transportation, or communication barriers that prevent the access or limit the participation of persons on the basis of handicap.

(3) ACCOMMODATION.--It shall be discriminatory to fail or refuse to make a reasonable accommodation to permit an individual with a physical or mental impairment, perceived impairment, or record of impairment to apply, have access to, or participate in a program, activity, job, or other opportunity.

(4) STANDARDS AND CRITERIA.--It shall be discriminatory to impose or apply any qualification standards, selection criteria, or eligibility criteria that--

(A) screen out or disadvantage an individual because of a physical or mental impairment, perceived impairment, or record of impairment; or

(B) disproportionately screen out or disadvantage persons with particular types of physical or mental impairments, perceived impairments, or records of impairment;

unless such criteria or standards can be shown to be necessary and substantially related to ability to perform or participate in essential components of the particular service, program, activity, benefit, job, or other opportunity.

(5) RELATIONSHIPS OR ASSOCIATIONS.--It shall be discriminatory to exclude or otherwise deny equal services, programs, activities, benefits, jobs, or other opportunities to a person because of the relationship to, or association of, that person with another person who has a physical or mental impairment, perceived impairment, or record of impairment.

(b) ACTIONS NOT DISCRIMINATORY.--It shall not be considered to be discrimination on the basis of handicap to exclude or otherwise deny equal services, programs, activities, benefits, jobs, or other opportunities to a person--

(1) for reasons wholly unrelated to the existence of or consequences of a physical or mental impairment, perceived impairment, or record of impairment; or

(2) based on a legitimate application of qualification standards, selection criteria, performance standards, or eligibility criteria that are both necessary and substantially related to the ability to perform or participate in the essential components of the particular job, program, activity, or opportunity, and such performance or participation cannot be accomplished by a reasonable accommodation.

SEC. 6. DISCRIMINATION IN HOUSING.

(a) IN GENERAL.--Notwithstanding the requirements of section 5(a), it shall be an act of discrimination in regard to housing--

(1) to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a physical or mental impairment, perceived impairment, or record of impairment of--

(A) such buyer or renter;

(B) a person residing in or intending to reside in such dwelling after it is so sold, rented, or made available; or

(C) any person associated with such buyer or renter; or

(2) to discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a physical or mental impairment, perceived impairment, or record of impairment of--

(A) such person;

(B) a person residing in or intending to reside in such dwelling after it is so sold, rented, or made available; or

(C) any person associated with such person.

(b) REMOVAL OF BARRIERS IN HOUSING.--For purposes of subsection (a), discrimination includes--

(1) a refusal to permit, at the expense of a person with a physical or mental impairment, perceived impairment, or record of impairment, reasonable modifications of existing premises occupied, or to be occupied, by such

person if such modifications may be necessary to afford such person full enjoyment of the premises;

(2) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

(3) a failure to design and construct qualified multifamily dwellings for first occupancy after the date that is 30 months after the date of enactment of this Act, in such a manner that--

(A) the public and common use portions of such dwelling are readily accessible to, and usable by, persons with physical and mental impairments;

(B) all the doors into and within all premises within such dwellings are sufficiently wide to allow passage by persons in wheelchairs; and

(C) all premises within such dwellings contain basic universal features of adaptive design.

(c) DEFINITION.--As used in this section the term "qualified multifamily dwellings" means--

(1) buildings consisting of two or more units if such buildings have one or more elevators; and

(2) those units in other buildings consisting of two or more units that are on the ground floor.

SEC. 7. LIMITATIONS ON THE DUTIES OF ACCOMMODATION AND BARRIER REMOVAL.

(a) EXISTENCE THREATENING ALTERATIONS.--

(1) IN GENERAL.--The failure or refusal to remove architectural, transportation, and communication barriers, and to make reasonable accommodations required under section 5(a) shall not constitute an unlawful act of discrimination on the basis of handicap if such barrier removal or accommodation would fundamentally alter the essential nature or threaten the existence of the program, activity, business, or facility in question.

(2) OTHER ACTION.--In the event that barrier removal is not required because it would result in a fundamental alteration or threaten the existence of a program, activity, business, or facility, there shall continue to be a duty to conform to other requirements of this Act and to take such other actions as are necessary to make a program, activity, or service, when viewed in its entirety, readily accessible to and usable by persons with physical and mental impairments, perceived impairments, or records of impairment.

(b) TIME FOR ALTERATIONS.--

(1) IN GENERAL.--If substantial modifications to existing buildings and facilities are necessary in order to remove architectural, transportation, and communication barriers, as required under section 5(a), such modifications shall, unless required earlier by other law or regulation, be made within a reasonable period of time, not to exceed 2 years from the date of enactment of this Act.

(2) EXCEPTION.--Regulations promulgated pursuant to section 8 of this Act may allow up to 5 years from the date of enactment of this Act where reasonably necessary for the completion of such modifications to particular classes of buildings and facilities.

(c) MASS TRANSPORTATION.--

(1) IN GENERAL.--If substantial modifications to existing platforms and stations of mass transportation systems are necessary in order to remove architectural, transportation, and communication barriers, as required under section 5(a) of this Act, regulations promulgated pursuant to section 8 of this Act may, unless required earlier by other law or regulation, allow a reasonable period of time, in no event to exceed 10 years from the date of enactment of this Act, for such modifications to be made.

(2) EFFECT.--Paragraph (1) shall not affect the duty of providers of transportation services to conform to other requirements of this Act, including the requirement of removing other types of architectural, transportation, and communication barriers, and the application of such requirements to vehicles and rolling stock.

SEC. 8. REGULATIONS.

(a) ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD.--Within 6 months of the date of enactment of this Act, the Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines, to supplement the existing Minimum Guidelines and Requirements for Accessible Design, to establish requirements for the architectural, transportation, and communication accessibility of buildings, facilities, vehicles, and rolling stock subject to the requirements of this Act.

(b) ATTORNEY GENERAL.--

(1) IN GENERAL.--Within 1 year of the date of enactment of this Act, the Attorney General shall promulgate regulations for the implementation and enforcement of the requirements of this Act as it applies to States and agencies and political subdivisions of States.

(2) MINIMUM GUIDELINES.--The Attorney General of the United States shall coordinate the timely development of regulations required under this section and shall issue, within 6 months of the date of enactment of this Act, minimum guidelines for the development of such regulations.

(c) EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.--

(1) EMPLOYER PRACTICES.--

(A) IN GENERAL.--Within 1 year of the date of enactment of this Act, the Equal Employment Opportunity Commission shall promulgate regulations for the implementation and enforcement of the requirements of this Act as it applies to employer practices, employment agency practices, labor organization practices, and job training programs.

(B) PROHIBITIONS.--The regulations promulgated under subparagraph (A) shall prohibit discrimination in regard to job application procedures, the hiring and discharge of employees, employee compensation, advancement, job training, and other terms, conditions, and privileges of employment.

(2) REQUIREMENTS.--The regulations promulgated under subparagraph (A) shall include a requirement of outreach and recruitment efforts to increase the workforce representation of individuals with physical or mental impairments, or records of impairment, and shall establish a process and timelines for the development, implementation, and periodic revision of such outreach and recruitment efforts.

(3) PREEMPLOYMENT INQUIRIES.--

(A) IN GENERAL.-- The regulations promulgated under paragraph (1)(A) shall include a requirement that employers may not conduct a preemployment medical examination and may not make a preemployment inquiry of an applicant as to whether such applicant has a physical or mental impairment, perceived impairment, or record of impairment, or as to the nature or severity of such impairment.

(B) PERMITTED INQUIRIES.--An employer--

(i) may make a preemployment inquiry into the ability of an applicant to satisfy legitimate qualification standards, selection criteria, performance standards, or eligibility criteria as permitted under section 5(b)(2);

(ii) may condition an offer of employment on the results of a medical examination conducted prior to the entrance to duty of the applicant, if--

(I) all entering employees are subjected to such an examination regardless of physical or mental impairment, perceived impairment, or record of impairment; and

(II) the results of such an examination are used only in accordance with the requirements of this section;

(iii) taking remedial action to correct the effects of past discrimination, or engaged in outreach and recruitment efforts to increase the participation of persons with physical or mental impairments, may invite employment applicants to indicate whether, and to what extent, such applicants have a physical or mental impairment, if--

(I) the employer states clearly on any written questionnaire used for employment purposes, or makes clear orally if no written questionnaire is used, that the information requested is intended for use solely in connection with such remedial action or outreach and recruitment activities; and

(II) the employer states clearly that the information is being requested on a voluntary basis, that such information will be kept confidential as provided in subparagraph (C), that refusal to provide such information will not subject the applicant or employee to any adverse treatment, and that such information will be used only in accordance with the requirements of this section.

(C) CONFIDENTIALITY.--Information, as to the medical condition or history of the applicant, obtained in accordance with this paragraph shall be collected and maintained on separate forms that shall be accorded the same confidentiality as are medical records, except that--

(i) supervisors and managers may be informed of restrictions on the work or duties of persons with physical or mental impairments and of necessary accommodations for such persons;

(ii) first aid and safety personnel may be informed, where appropriate, if such a condition may require emergency treatment; and

(iii) government officials investigating compliance with this Act shall be provided relevant information on request.

(d) SECRETARY OF HOUSING AND URBAN DEVELOPMENT.--Within 1 year of the date of enactment of this Act, the Secretary of Housing and Urban Development shall promulgate regulations for the implementation and enforcement of the requirements of this Act as it applies to sellers, landlords, and other providers of housing.

(e) SECRETARY OF TRANSPORTATION.--

(1) IN GENERAL.--Within 1 year of the date of enactment of this Act, the Secretary of Transportation shall promulgate regulations for the implementation and enforcement of the requirements of this Act as it applies to State and local transit systems and to those engaged in the business of transportation.

(2) STANDARDS.--The regulations promulgated under paragraph (1) shall include standards regarding the accessibility of vehicles and rolling stock that are consistent with the requirements of paragraph (3).

(3) REQUIREMENTS.--With respect to State and local transit systems, rail and light rail services, and bus companies, the standards issued under paragraph (2) shall--

(A) ensure that all vehicles or rolling stock that are purchased, leased, renovated, or otherwise placed into service after one year from the date of enactment of this Act shall be accessible to and usable by persons with physical or mental impairments, including wheelchair users;

(B) permit a reasonable period of time, not to exceed 7 years, for such transportation operators to purchase, acquire, or modify sufficient vehicles and rolling stock so that the peak fleet of such operators has at least 50 percent of vehicles and rolling stock that are accessible to and usable by persons with physical or mental impairments, including wheelchair users; and

(C) ensure that the use of paratransit and other specialized transportation services for persons with physical or mental impairments shall be used as a supplement to other forms of transportation, but shall not affect the requirement that transportation systems and services available to members of the public shall be accessible to and usable by persons with physical or mental impairments, including wheelchair users.

(f) SECRETARY OF COMMERCE.--Within 1 year of the date of enactment of this Act, the Secretary of Commerce shall promulgate regulations for the implementation and enforcement of the requirements of this Act as it applies to places of public accommodation.

(g) FEDERAL COMMUNICATIONS COMMISSION.--Within 1 year of the date of enactment of this Act, the Federal Communications Commission shall promulgate regulations for the implementation and enforcement of this Act as it applies to those engaged in the business of broadcasting or of communication by wire. In regard to television broadcast stations, such regulations shall include requirements for progressively increasing the proportion of programs, advertisements, and announcements that are captioned.

(h) EFFECTIVE COMMUNICATION.-- Regulations promulgated under this section shall include requirements for the prohibition or removal of communication barriers, and for making reasonable accommodations to assure effective communication with a particular person with a physical or mental impairment, consistent with the following:

(1) COMMUNICATION BARRIERS.--The term "communication barriers" means:

the absence of devices, services, systems, or signage and information media, or modifications of devices, services, systems, or signage and information media that are necessary to achieve effective communication with persons with a physical or mental impairment in regard to a service, program, activity, benefit, job, or other opportunity.

(2) EXAMPLES OF REQUIREMENTS.--In appropriate circumstances, prohibition or removal of communication barriers or making a reasonable accommodation may require:

(A) the provision and maintenance of such devices as Telecommunications Devices for the Deaf (TDDs), visual aids such as flashing alarms and indicators, decoders, and augmentative communication devices for nonvocal persons such as language symbol or alphabet boards;

(B) the provision of such services as interpreting, reading, audio or video taping, and notetaking, by qualified personnel;

(C) the development and effective operation of such systems as captioning; assistive listening systems, including audio induction loops, and infrared, FM, or AM communications; and telephone relay services systems;

(D) the development and effective use of alternative signage and information media, such as brailled or audio information, and visual alerts for audio announcements and other information; and

(E) the modification of devices, services, systems, and signage and information media, such as audio input/output on a computer terminal, adapted software, flashing lights as an attachment to a telephone, and amplifiers on telephone handsets.

SEC. 9. ENFORCEMENT.

(a) ADMINISTRATIVE ACTIONS.--

(1) Any person who believes that he or she or any specific class of individuals is being or is about to be subjected to discrimination on the basis of handicap in violation of this Act, shall have a right, by himself or herself, or by a representative, to pursue such administrative enforcement procedures and remedies as are available in connection with the regulations issued pursuant to Section 8 of this Act.

(2) REMEDY.--Agencies enforcing such regulations shall have the authority to order all appropriate remedial relief, including compliance orders, cutoff of Federal funds, rescission of Federal licenses, monetary damages, and back pay.

(b) CIVIL ACTIONS.--

(1) RIGHT TO FILE.-- Any person who believes that he or she or any specific class of individuals is being or is about to be subjected to discrimination on the basis of handicap in violation of this Act, shall have a right, by himself or herself, or by a representative, to file a civil action for injunctive relief, monetary damages, or both in a district court of the United States.

(2) ADMINISTRATIVE ENFORCEMENT.--The exhaustion of administrative enforcement procedures and remedies as contemplated in section 9(a) shall not be a prerequisite to the filing of a civil action under this subsection, except in regard to employer practices, employment agency practices, labor organization practices, and training programs, covered by section 4(a)(1) of this Act, for which such exhaustion shall be required unless --

(A) administrative enforcement procedures and remedies as contemplated in section 9(a) are not available; or

(B) such enforcement procedures are not concluded within 180 days after the filing of a complaint of discrimination prohibited under this Act.

(c) ADDITIONAL EVIDENCE.--In any action brought under this section, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(d) JURISDICTION.--The district courts of the United States shall have jurisdiction of actions brought under this Act without regard to the amount in controversy.

(e) IMMUNITY.--A State shall not be immune under the eleventh amendment to the Constitution of the United States from suit in Federal court for a violation of this Act. In a suit against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in a suit against any public or private entity other than a State.

(f) ATTORNEY'S FEES.--In any action or administrative proceeding commenced pursuant to this section, the court, or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee in addition to costs, and the United States shall be liable for costs the same as a private person.

(g) BURDEN OF PROOF.--In any administrative proceeding or civil action brought under this Act, the burden of proving the legitimacy of any qualification standard, selection criteria, or eligibility criteria at issue in a case, and of proving the defense that a particular reasonable accommodation or removal of an architectural, transportation, or communication barrier would fundamentally alter or threaten the existence of the program, activity, business, or facility in question, shall be on the person, agency, or entity alleged to have committed an act of discrimination, and shall not be on the complainant.

SEC. 10. EFFECTIVE DATE.

This Act shall become effective on the date of enactment.

TALKING POINTS

- A. Name of Proposed Act
-- The Americans with Disabilities Act.
- B. Where Does It Come From?
-- Was a key recommendation in the Council's statutorily mandated report to Congress and the President -- Toward Independence.
-- Based upon views of persons with disabilities heard by the Council at consumer forums all around the country.
- C. Need for the Act
-- Numerous statutes, rules and regulations prohibiting discrimination on the basis of handicap exist but provide inadequate protection.
-- Civil rights protections available to other minorities and women are not available to persons with disabilities; comparable coverage is missing in regard to discrimination in:
- housing
- public accommodations
- employment by employers in the private sector
- transportation
- activities of State and local governments
- broadcasting, communications, or telecommunications services.
-- Piecemeal approach has led to inconsistencies in coverage and interpretation of statutes.
-- No comprehensive national policy against discrimination on the basis of handicap has ever emerged.
- D. What will this Act do?
-- This Act will prohibit discrimination against people with disabilities.
-- It will guarantee the right to be free from discrimination in such areas as employment, housing, public accommodations, travel, communications, and activities of State and local governments.
- E. Whom will it cover?
-- This Act prohibits discrimination on the basis of handicap in:
-- employment covered by Title VII
-- sale or rental of housing covered by Title VIII
-- public accommodations
-- activities of State and local governments
-- transportation services
-- broadcasting, communications, or telecommunications services

F. Who will enforce it?

- Architectural and Transportation Barriers Compliance Board will issue minimum accessibility guidelines
- Regulations in the relevant areas will be issued by:
 - Attorney General (State and local governments)
 - U.S. Equal Employment Opportunity Commission
 - Secretary of Housing and Urban Development
 - Secretary of Transportation
 - Secretary of Commerce (public accommodations)
 - Federal Communications Commission

G. Enforcement Procedures

- Enforcement procedures include administrative remedies, a private right of action, monetary damages, injunctive relief, attorney's fees and cutoffs of Federal funds.

H. Effect on Secs. 503 & 504 of the Rehabilitation Act of 1973

- This Act will not repeal Sections 503 and 504 of the Rehabilitation Act.
- Regulations under Sections 503 and 504 of the Act remain in full force and effect.
- Definition of "physical and mental impairment" is identical to the definition in current regulations under Section 504.
- Other definitions have been replaced by the simple phrase "on the basis of handicap," paralleling the language of other civil rights statutes.
- A concise definition of "reasonable accommodation" is included.

I. Similarities and Differences with Other Civil Rights Laws

- Fundamental rights guaranteed by this Act are the same as those underlying other civil rights statutes.
- The coverage is parallel but different standards must apply.
- This Act specifically defines discrimination as:
 - denying the opportunity to participate in a service, program, activity, benefit or job;
 - providing unequal or less effective services, programs, activities, benefits or jobs;
 - providing assistance to an entity that discriminates;
 - limiting a right, privilege, advantage or opportunity;
 - failing to make reasonable accommodations;
 - architectural, transportation and communication barriers;
 - discriminatory qualifications, standards, or eligibility criteria;
 - denial of equal opportunity based on a relationship or association with persons with disabilities.

J. Amending Section 504 and Other Statutes: A Simpler Approach?

- Amending Section 504 would involve a risk of opening up for reconsideration and possible weakening of hard fought gains under Section 504.
- Amending existing civil rights laws to add disability to the types of discrimination prohibited has been opposed by traditional civil rights groups as endangering the existing protections and raising the possibility of refighting old battles.
- Piecemeal legislative and regulatory overhaul will leave inconsistencies and fragmentation.

K. Council's Involvement

- Congress directed the Council to assess to what extent Federal programs:
 - provide incentives or disincentives to the establishment of community-based services for individuals with disabilities
 - promote the full integration of such individuals in the community, schools and the workplace
 - contribute to the independence and dignity of such individuals
- In studies of numerous Federal laws, regulations and programs, the Council heard over and over that discrimination is the primary problem people with disabilities face.
- The Council concluded that the best means of eradicating discrimination and achieving the goals implicit in its mandates is the enactment of a strong, unequivocal law banning discrimination against people with disabilities.

LISTING OF SAMPLE QUESTIONS AND ANSWERS

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SAMPLE QUESTIONS AND ANSWERS

NEED FOR THE BILL

Q: Why is this bill necessary?

A: Although there are a number of statutes, rules and regulations that prohibit discrimination on the basis of handicap or against people with disabilities, too many gaps in coverage and inconsistencies exist, and too few situations and people are covered. Basic societal guarantees that include the pursuit of employment and educational opportunities, the enjoyment of public facilities, transportation and accommodations are still denied too many of our citizens because nondiscrimination on the basis of handicap has not been a clear, national policy.

IDEA FOR THE BILL

Q: Where did the idea for the equal opportunity bill originate?

A: The Council recognized the need for a comprehensive civil rights law for Americans with disabilities in Toward Independence. The Council has heard countless testimonies from people with disabilities concerning the discrimination which they face on a day to day basis. Moreover, parents of disabled children and youth have often been overwhelmed by the barriers

which their children face in their attempts to achieve equality. This proposed legislation attempts to redress the inherent inequalities which exist in our society for Americans with disabilities.

COUNCIL'S STATUTORY AUTHORITY

Q: Is proposing such a bill within the Council's statutory mandate?

A: In the 1986 Amendments to the Rehabilitation Act, Congress added to the duties of the Council, " (8) provide to the Congress on a continuing basis advice, recommendations, legislative proposals and any additional information which the Council or the Congress deems appropriate." Congress also directed the Council to assess to what extent Federal programs (a) provided incentives or disincentives to the establishment of community-based services for individuals with disabilities; (b) promoted the full integration of such individuals in the community, schools and the workplace; and, (c) contributed to the independence and dignity of such individuals. After lengthy study of these issues, the Council concluded that the best means of achieving the goals implicit in those mandates is the enactment of a strong, unequivocal law banning discrimination against people with disabilities.

SECTION 504

Q: Doesn't the Rehabilitation Act of 1973 provide sufficient coverage?

A: Section 504 of the Rehabilitation Act, as amended, is a landmark piece of legislation that has provided, and will continue to provide, opportunities for many people with disabilities. Section 504 does not, however, prohibit discrimination by private employers, in housing, public accommodations and interstate transportation or by State and local governments. This bill will accomplish these goals.

Q: How does this bill differ from Section 504?

A: This bill uses the term "on the basis of handicap," paralleling language in other civil rights statutes and making proof of class membership less critical. It also defines discrimination, specifically proscribing, for example, the failure to make reasonable accommodations, and the use of discriminatory qualifications standards. The primary difference, however, is that this bill has much more comprehensive coverage, encompassing many types of programs and activities not subject to Section 504.

Q: Will this Act repeal Section 504?

A: No. "The Americans with Disabilities Act" specifically provides that it will not affect or change Section 504. It also leaves intact all Section 504 regulations that have been issued.

CIVIL RIGHTS RESTORATION ACT

Q: How does this bill relate to the Civil Rights Restoration Act?

A: The Civil Rights Restoration Act, enacted in March, 1988, over President Reagan's veto, clarifies the prohibition of discrimination in any program or activity of an entity receiving Federal funds by defining "program or activity" to mean all of the operations of any such entity. The Restoration Act affects the Rehabilitation Act of 1973, the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and the Age Discrimination Act of 1975. In a 1984 decision, Grove City College v. Bell, the United States Supreme Court had interpreted the phrase "program or activity" narrowly to refer only to the specific activity or portion of an institution receiving the Federal funds and not the entire organization or institution. Under the Court's ruling, a college could, for example, discriminate in a program not receiving any Federal money and would not risk losing any Federal money that it received for other programs. The Restoration Act restored the broad scope of coverage and interpretation of the statutes affected by the Court's decision. The Council testified in support of the broadened interpretation established in the Restoration Act. The Americans with Disabilities Act does not affect the prohibition of discrimination on the basis of handicap in programs or activities that receive Federal financial assistance, but prohibits such discrimination in many other

types of services, programs, activities, benefits, jobs or other opportunities that are not currently covered by Section 504.

COMPARABILITY TO CIVIL RIGHTS LAWS

Q: What value is there in having parallel coverage with other civil rights laws?

A: The basic rights underlying this Act are the same as those underlying other civil rights statutes. They include the rights to be free from discrimination in employment, housing, travel, public accommodations and activities of State and local governments. The legal standards to be applied to discrimination on the basis of handicap, however, must differ from those addressing other types of discrimination.

UNINTENTIONAL DISCRIMINATION

Q: Why does the bill prohibit unintentional discrimination?

A: So many of the things that exclude people with disabilities from participation in society are the result of unconscious acts. Each flight of stairs constructed is surely not a deliberate attempt to exclude people with mobility impairments but, in fact, it does. Unfortunately, these barriers have as deleterious an effect on people with handicaps as ruling certain jobs off-limits to people with hearing or visual impairments. Such unintentional discrimination limits the lives of Americans with disabilities and ultimately requires them to live as second class citizens.

COST OF IMPLEMENTATION

Q: What will this bill cost the Federal Government to implement?

A: Very little, actually. This bill creates no new programs or agencies. Those agencies that currently have the responsibility for enforcing nondiscrimination provisions of other statutes will, as they do with those, promulgate regulations under and enforce the provisions of this Act. The bill also contains timelines by which to make necessary modifications or alterations.

Q: Won't the costs of providing accommodations such as readers, equipment, modifications in work hours, and making workplaces accessible outweigh any benefits derived from employment of people with disabilities?

A: No. According to a recent Lou Harris poll conducted in conjunction with the Council and the President's Committee on Employment of the Handicapped, eight out of ten managers say that the costs of employing both disabled and nondisabled people are about the same. Furthermore, numerous other studies have shown, and the Council has concluded, that increased earnings by people with disabilities and additional tax revenues are certainly more cost-effective than maintaining people in a dependent situation.

NUMBER OF PEOPLE COVERED

Q: Approximately how many people will be affected by this Act?

A: In Toward Independence, the Council reviewed existing data and concluded that the most reliable estimates are that approximately 36 million Americans have one or more physical or mental disabilities. That number is expected to increase as the population as a whole grows older. This is the figure cited in the "Findings" section of this Act.

DISABILITY AND POVERTY

Q: Is there a correlation between disability and poverty?

A: Absolutely. According to the Harris poll, half of all the disabled people surveyed had incomes of \$15,000 or less compared to a quarter of the nondisabled population.

TYPES OF DISABILITIES COVERED

Q: What types of disabilities are covered under the bill?

A: The definition of "physical or mental impairment" contained in the bill is identical to the definition in Section 504 regulations. That definition lists certain diseases or conditions that are covered under 504 and will be under this bill as well. The definition is intended to be very broad.

COVERAGE OF PEOPLE WITH AIDS

Q: Will people who have AIDS be covered by this Act?

A: AIDS is not explicitly mentioned in the bill. Persons are protected under this bill if they are subjected to discrimination because of a physical or mental impairment, perceived impairment, or record of impairment. In defining these terms, the bill relies upon definitions currently in effect in regulations issued under Section 504 of the Rehabilitation Act. The definition of "physical or mental impairment" under the Rehabilitation Act does not delineate AIDS specifically, but recent interpretations and court decisions have concluded that, in particular circumstances, AIDS, AIDS Related Complex, and seropositivity may constitute an impairment. Therefore, in particular situations a person with these conditions may qualify as an individual with a physical or mental impairment, perceived impairment, or record of impairment. Clearly those people with AIDS who develop other physical or mental impairments as the disease progresses would be covered under the Act. Coverage is, however, but one aspect of the Act. Under this bill it is not discriminatory to apply legitimate standards or criteria that may exclude a person from a job, program, activity or other opportunity on the basis of handicap. There are instances in which the presence of an infectious disease or an impairment resulting from that disease could operate as an exclusion without violating the law.

COST OF MODIFICATIONS

Q: Won't the modifications and accommodations this Act mandates be prohibitively expensive for businesses?

A: The Harris poll found that the costs of accommodations rarely drive the cost of employment above the average range of costs for all employees. One study showed that most accommodations (81%) cost less than \$500 and that half cost nothing.

SMALL BUSINESSES

Q: How will the bill affect small business owners?

A: Small business owners will not be adversely affected by the bill. The bill specifies that any modification or barrier removal that would fundamentally alter the essential nature or threaten the existence of a business would not be required. In addition, the bill provides two to five years, depending on circumstances, for businesses to make substantial modifications to existing buildings. Moreover, an increased volume of sales as a result of accessibility for disabled Americans could be expected. For businesses opening up in new locations, accessibility features included in the original construction program would constitute only one-tenth of 1 percent of the total construction cost. In some states, local codes and ordinances already require these accommodations. It is

anticipated that when small business owners realize how useful such barrier elimination can be, they will be in support of the bill because of its applicability as a sound and valuable business practice.

OPPONENTS

Q: Who do you think will oppose this bill?

A: Opposition may be expected from managerial and planning professionals who have not yet been exposed to the value of eliminating unnecessary barriers which daily confront 36 million Americans with disabilities. Some potential opponents may be concerned about the cost of implementing the bill. Their fears will be alleviated when they learn that this bill creates no new programs or agencies and that the conversion of tax-users into taxpayers strengthens the economy of the country.

SUPPORTERS

Q: Who will be among those supporting this bill?

A: In conjunction with disability groups, we hope to enlist the support of the civil rights community and groups that deal with issues affecting elderly persons, a population more likely to have disabled members. Remember that unlike race, sex, and national origin, disability is often not an immutable characteristic. As anyone may end up as a person with a

temporary or permanent disability, we anticipate the support for this bill will be wide-ranging. In fact, the Council has worked with countless individuals and groups to enlist their support of this proposed legislation.

EMPLOYMENT

Q: Will this bill require affirmative action programs for people with disabilities?

A: This bill, noting both past and present discrimination, includes among its findings that discrimination against people with disabilities persists in employment and that they are, as a group, severely disadvantaged vocationally and economically. Based on those findings, the bill requires employers having 15 or more employees to engage in outreach and recruitment efforts.

Q: Are we talking about quotas?

A: No. The extent of discrimination on the basis of handicap cannot be measured as simply or precisely as in the case with race or sex, for example, and would render strict numerical analysis unusable. While underrepresentation of blacks or women in a workforce could certainly be considered an indicia of discriminatory practices at some point in the process, similar underrepresentation of people with specific impairments would not on its face indicate the presence or absence of unlawful discrimination. Qualifications criteria that are reasonably

necessary and related to the ability to participate in the essential components of a job may lawfully exclude people with certain disabilities from certain jobs. Each situation must be examined carefully. A criterion that applicants possess a high level of visual acuity may lawfully exclude those with visual impairments; the same criterion may not be used to exclude everyone with a physical or mental impairment. Identifying underrepresentation in this area will require further study and analysis in order to determine whether it is the result of legitimate, job-related criteria; refusal to make reasonable accommodations; or barriers that make participation difficult or impossible.

Q: Won't employers have to lower their standards?

A: Absolutely not. At most, employers will have to reexamine their criteria for recruitment, hiring and promotion to ensure that essential components of each job are clearly defined and that the qualifications to perform each component are reasonable and related to the job. If recent history is indicative, what they will end up with is a streamlined, more efficient program and a larger, more diverse pool from which to draw, both boons to good management.

HIRING COSTS

Q: Aren't the costs associated with hiring disabled people very high?

A: Harris found that the overwhelming majority of managers in private industry polled reported that the cost of employing a disabled employee is about the same as the cost of employing a nondisabled employee.

TYPES OF ACCOMMODATIONS

Q: What types of accommodations are most often required?

A: By far, the most common accommodation is the removal of architectural barriers. Half of the companies polled by the Harris researchers reported purchasing special equipment and half also adjusted work hours or restructured jobs.

COST SAVINGS

Q: Are there areas in which this Act will actually save money?

A: Certainly providing opportunities for people with handicaps to be hired and promoted will raise overall income levels, generate tax revenues and lessen outlays of public assistance. In addition, maintaining people in a dependent state costs far more than promoting economic self-sufficiency.

HOUSING

Q: Aren't the costs of providing accessible housing prohibitive?

A: No. In fact, the General Accounting Office concluded in a report to Congress that "the additional cost for accessibility features included in the original construction program may only be one-tenth of 1 percent of total construction cost."

HOUSING MODIFICATIONS REQUIRED

Q: What types of modifications are required under this Act?

A: This Act focuses on making future housing accessible, rather than focusing on retrofitting existing housing. It requires that public and common use portions of certain multifamily dwellings be accessible and usable; that doors be wide enough for people in wheelchairs to use; and, that all premises within covered dwellings have basic universal features of adaptive design.

HOUSING AMENDMENTS

Q: What are the differences between the section of this Act that addresses discrimination in housing and the amendments to the Fair Housing Act pending before Congress?

A: There are no differences between this section 6 of this Act and the Senate Judiciary Committee's current version of the Fair

Housing Amendments. The section was included in this Act to provide consistency in this vital area and, as the Act does throughout, to explain with specificity what constitutes discrimination.

PUBLIC ACCOMMODATIONS

Q: Do people with disabilities have problems with public accommodations such as restaurants?

A: Many people with disabilities do not have access to, for example, restaurants, places of entertainment, or cultural activities of their choice. In addition to obvious problems with steps and inaccessible restrooms, some of these places may segregate people with disabilities or refuse admittance to a guide or service dog. This bill prohibits such discrimination in public accommodations.

COMMUNICATION BARRIERS

Q: What does the bill say about communication barriers affecting people with hearing impairments, visual impairments, and other impairments that can impede the ability to communicate?

A: The bill requires the taking of appropriate steps to remove communication barriers, through providing or modifying appropriate devices, services, systems, or information media. It provides examples of methods which can be used to enhance

communication, including TDDs, captioning, interpreters and readers, amplifiers on telephone handsets, brailled or taped information, and others.

CAPTIONING OF TELEVISION PROGRAMS

Q: What requirements does the bill establish in regard to the captioning of television programs?

A: The bill gives the Federal Communications Commission the responsibility to issue regulations under the Act in regard to broadcasters and others in the communications industry.

Regarding the issue of captioning, the bill provides that the F.C.C. regulations shall include requirements for "progressively increasing the proportion" of captioned programs. This approach was adopted rather than having the bill try to set a specific percentage or number of hours per week of captioned programming.

AIR TRAVEL

Q: Is anyone claiming that people with disabilities are being denied access to air travel?

A: The effect of barriers throughout transportation systems often precludes someone with a disability from using them at all. People with disabilities are also often provided disparate or unequal treatment that either demeans or segregates to such an extent that someone unable to take full advantage of an opportunity may forgo it completely. To take air travel as an

example, people with disabilities who attempt to fly are often not even permitted to choose their own seats; usually have their wheelchairs taken from them and replaced with tottering, unsafe devices; may have to be carried to and from the boarding area to the plane; and, often cannot use the restrooms, which may preclude flying altogether. This bill will prohibit discrimination by any company engaged in interstate transportation.

MASS TRANSPORTATION COSTS

Q: Aren't the costs of making urban transportation systems accessible prohibitive?

A: The costs vary widely according to the scope of the service provided, the number of people who use it and the maintenance required. There are, however, enough localities with successful, accessible public transit systems in place that an assessment of their collective and individual successes certainly suggests that cost-effective alternatives are viable and available. Furthermore, limiting the ability of people with disabilities to travel in and around urban areas negatively affects employment and educational opportunities. The Department of Transportation has estimated that approximately \$800 million in net benefits to society would result from eliminating transportation barriers.

SUCCESSFUL ADAPTATION EXAMPLE

Q: Have any local governments successfully adapted their systems?

A: Many have. In Toward Independence, the Council cited Seattle, Washington; Champaign-Urbana, Illinois; Dayton, Ohio; significant and, Pennsylvania; and Palm Beach, Florida as examples of localities that have made significant and successful efforts to provide accessible transportation. To focus on one widely-discussed accomplishment, the city of Seattle, Washington, created a cost-effective transit system responsive to a wide range of identified needs. After modifying many of its bus zones, Seattle Metro began equipping many of its buses with lifts. The system is now 53 percent accessible and averages 242 one-way lift trips per day. The Metro system also operates subsidized taxi and van programs.

SYSTEM COSTS

Q: Are cost figures available for the initial outlay and maintenance of Seattle's system?

A: Seattle Metro estimates its start-up costs at \$171,000. Maintenance of lift-equipped buses is \$355 per bus per year; operating costs per lift trip in 1984 was \$3.46. Metro's average subsidy in its taxi program was \$2.89 per trip in 1982. The van program, operating primarily in suburban and rural areas, averaged \$4.15 per trip during the same time period.

TOWARD

INDEPENDENCE

An Assessment of Federal Laws and Programs Affecting
Persons With Disabilities — With Legislative Recommendations

Equal Opportunity Laws

- Recommendations**
- 1. Congress should enact a comprehensive law requiring equal opportunity for individuals with disabilities, with broad coverage and setting clear, consistent, and enforceable standards prohibiting discrimination on the basis of handicap.*

Such a statute should be packaged as a single comprehensive bill, perhaps under such a title as "The Americans with Disabilities Act of 1986." The recommendations which follow spell out more specifically the components which such a bill should contain in order to create a comprehensive and effective equal opportunity law for individuals with disabilities.

- 2. The equal opportunity law for persons with disabilities should prohibit discrimination on the basis of handicap by:*
 - a. The Federal Government, all of its agencies and departments, and the United States Postal Service.*
 - b. All recipients of Federal financial assistance, with coverage of all operations of the recipient and not just a particular program or activity.*
 - c. Federal contractors and subcontractors and Federal licensees.*
 - d. All employers engaged in an industry affecting commerce who have fifteen or more employees; employment agencies; and labor unions.*
 - e. All sellers, landlords, and other providers of housing covered by Title VIII of the Civil Rights Act of 1968.*
 - f. All public accommodations covered by Title II of the Civil Rights Act of 1964.*
 - g. All persons, companies, and agencies that engage in the business of interstate transportation of persons, goods, documents, or data.*
 - h. All persons, companies, and agencies that make use of the mails or interstate communications and telecommunications services for the business of selling, arranging, or providing insurance.*
 - i. States, counties, and local governments, pursuant to Congressional authority to enact legislation abrogating the States' immunity under the Eleventh Amendment in order to enforce the Fourteenth Amendment guarantee of Equal Protection of the Laws.*

3. *The law should provide a clear definition and standards for applying the prohibition of discrimination on the basis of handicap.*
4. *The law should delineate specific enforcement standards, procedures, and timelines for the implementation of equal opportunity requirements.*
5. *The Architectural and Transportation Barriers Compliance Board should be given the authority and responsibility to issue minimum guidelines for universal accessibility and other standards for the removal of architectural, transportation, and communication barriers in facilities, vehicles, programs, and activities covered by the equal opportunity law for people with disabilities.*

VIII

TOPIC PAPER A:

EQUAL OPPORTUNITY LAWS

National Council on the Handicapped

February, 1986

ACKNOWLEDGMENT

This is one of a series of ten topic papers developed by the National Council on the Handicapped as part of its Special Report to the President and Congress: TOWARD INDEPENDENCE: An Assessment of Federal Laws and Programs Affecting Persons with Disabilities--With Legislative Recommendations. The members of the National Council on the Handicapped wish to expressly acknowledge with appreciation the special contribution made to this paper by Robert L. Burgdorf Jr.

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I. INTRODUCTION

The right to freely and fairly pursue personal, social, and economic opportunities is paramount in any free society. Equal opportunity is a cornerstone of the legal, political, and economic systems of the United States -- the Land of Opportunity. Unfortunately, Americans with disabilities have often not been allowed access to the opportunities for which our society is justly famous.

Disability -- like birth, death, illness, accident, pain, happiness, and sadness -- is a normal part of human life. A majority of individuals who survive to adulthood will experience some form of significant temporary or permanent disability during their lifetimes. That a certain number of people will have disabilities is just as predictable and normal as that there will be tall people, short people, people with fair skin, black people, young people, and elderly people. Yet, because of their disabilities, millions of Americans find themselves denied opportunities that others take for granted and excluded unnecessarily from the productive mainstream of society.

President Reagan has recognized the importance of access to opportunities for persons with disabilities: "For only through opportunities to use the full range of their potential will our disabled citizens attain the independence and dignity that are their due." (President Reagan, 1983, p.124). In heralding the necessity of opening up opportunities for persons with disabilities, President Reagan echoes the statements of previous Presidents and numerous Congressional pronouncements.

The United States Supreme Court has acknowledged "the Federal interest in developing the opportunities for all individuals with handicaps to live full and independent lives" (Community Television of Southern California v. Gottfried, 459 U.S. 498, 508 (1983)).

Providing access to opportunities has generally been chosen over "taking care of" persons with disabilities as the preferred approach of the Federal and many state governments, along with international bodies and organizations of persons with disabilities, for at least the last two decades. Twenty years ago, an article written by a blind law professor and his colleague contrasted the "custodial" and "integrative" approaches to disability:

The older custodial attitude is typically expressed in policies of segregation and shelter, of special treatment and separate institutions. The newer integrative approach focuses attention upon the needs of the disabled as those of normal and ordinary people caught at a physical and social disadvantage. The effect of custodialism is to magnify physical differences into qualitative distinctions; the effect of integrationism is to maximize similarity, normality, and equality as between the disabled and the able-bodied.
(ten Broek and Matson, p. 816).

In their laws and official pronouncements, government bodies at all levels of modern American society have, with relative consistency, chosen equal opportunity, full participation, and integration as the desired objectives for people with disabilities (U.S. Commission on Civil Rights, 1983, pp. 67-69).

Congress has declared:

the benefits and fundamental rights of this society are often denied those individuals with mental and physical handicaps;

it is of critical importance to this Nation that equality of

opportunity, equal access to all aspects of society, and equal rights guaranteed by the Constitution of the United States be provided to all individuals with handicaps;

it is essential ... that the complete integration of all individuals with handicaps into normal community living, working, and service patterns be held as the final objective

(29 U.S.C. section 701 Note, (1976)).

A major obstacle to achieving the societal goals of equal opportunity and full participation of individuals with disabilities is the problem of discrimination. Discrimination consists of the unnecessary and unfair deprivation of an opportunity because of some characteristic of a person. It is the antithesis of equal opportunity.

The severity and pervasiveness of discrimination against people with disabilities is well-documented. The U.S. Commission on Civil Rights' major study of handicap discrimination concluded: "Historically, society has tended to isolate and segregate handicapped people. Despite some improvement, particularly during the last two decades, discrimination against handicapped persons continues to be a serious and pervasive social problem. It persists in such critical areas as education, employment, institutionalization, medical treatment, involuntary sterilization, architectural barriers, and transportation."

(U.S. Commission on Civil Rights, 1983, p. 159). Numerous commentators and court cases have documented various examples of discrimination against individuals because of their disabilities. A 1985 decision of the United States Supreme Court recognizes that serious discrimination against persons with disabilities results not only from intentional denials of opportunity, but also from thoughtlessness, indifference, and benign neglect

(Alexander v. Choate, 105 S.Ct. 712, 718 (1985)).

To address the problem of denials of opportunity to persons with disabilities, Congress has enacted several laws prohibiting discrimination on the basis of handicap. Equal opportunity laws for persons with disabilities have been a bipartisan priority. Former President Carter had declared that "antidiscrimination laws are the cornerstone of civil rights for the handicapped" (President Carter, 1980, p. 809). President Reagan has written:

Our Nation's commitment to equal protection of the laws will have little meaning if we deny such protection to those who have not been blessed with the same physical or mental gifts we too often take for granted. I support Federal laws prohibiting discrimination against the handicapped, and remain determined that such laws be vigorously enforced. (President Reagan, 1982).

In its National Policy For Persons With Disabilities, endorsed by the President, the National Council on the Handicapped called for "a comprehensive, internally unified body of disability-related law which guarantees and enforces equal rights and provides opportunities for individuals with disabilities." Congress has enacted several laws prohibiting discrimination or requiring equal opportunity for persons with disabilities. One of the best-known of such laws is Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794), which prohibits discrimination on the basis of handicap in programs and activities conducted by the Federal government or conducted by recipients of Federal financial assistance. Section 503 of the Rehabilitation Act (29 U.S.C. Section 793) requires Federal government contractors to take "affirmative action" to employ and advance workers with disabilities. Section 501 (29

U.S.C. Section 791) places a similar "affirmative action" requirement upon Federal government employment. Several other Federal laws prohibit discrimination on the basis of handicap in certain other contexts.

This report examines the current status of disability-related equal opportunity laws and identifies gaps in coverage, shortcomings and inconsistencies in interpretation and application, and deficiencies in enforcement. To address such problems, the Council makes recommendations for the enactment of comprehensive and effective equal opportunity laws for people with disabilities.

II. PROBLEMS WITH THE SCOPE OF COVERAGE

A major problem with current equal opportunity laws regarding disabilities is that the scope of their coverage and enforceability is quite limited.

A. Not Enforceable In Federal Courts Against States

A recent decision of the United States Supreme Court has blunted much of the effect and enforceability of Section 504 of the Rehabilitation Act. In Atascadero State Hospital v. Scanlon (105 S.Ct. 3142 (1985)), the Court ruled that the Eleventh Amendment prohibits suits for monetary damages in Federal court against States and state agencies under Section 504. While the dissenting Justices argued that Section 504's legislative history demonstrated that Congress clearly intended the States to be "among the primary targets of section 504" (Id. at p. 3151), the majority of the Court held that Congress can abrogate the States' immunity from Federal court suits "only by making its intention unmistakably clear in the language of the statute" (Id. at p. 3147). Because Section 504 does not contain such an unequivocal statement that the States may be sued in Federal court, the Court ruled that state agencies are immune from suits for monetary damages under Section 504. Considering the large proportion of Federal financial assistance to States and state agencies, such as state education agencies, state universities, and state residential programs for people with disabilities, the impact of the Court's decision upon the enforceability of Section 504 is considerable. Congressional intent appears to have been thwarted by this ruling, for it is hard to dispute the conclusion of the

dissenting Justices that "Congress intended to impose a legal obligation on the States not to discriminate against the handicapped" (Id. at p. 3153).

Consistent with Congressional authority under the Fourteenth Amendment, the statutory prohibition of discrimination on the basis of handicap should extend to all "State actions." This would apply to all officially sanctioned conduct of the States, state agencies, state officials, and county and local governments, acting "under color of state law." The application to local government bodies, including such entities as zoning boards, is consistent with the decision of the U.S. Supreme Court in City of Cleburne, Texas v. Cleburne Living Center (105 S.Ct. 3249 (1985)), which held that a local zoning board's denial of a special exception to permit a group home for mentally retarded people in a residential neighborhood was irrational and violated the Fourteenth Amendment. (For additional discussion of the zoning issue and of the need for a statutory provision addressing it, see the Council's report on Housing).

B. Not Co-Extensive With Laws Prohibiting Discrimination in Employment on the Basis of Race, Color, Religion, Sex, or National Origin

Title VII of the Civil Rights Act of 1964 (42 U.S.C. Section 2000e et seq.) prohibits employment discrimination on the basis of race, color, religion, sex, or national origin. It applies to all employers engaged in an industry affecting commerce who have fifteen or more employees, to employment agencies, and to labor unions.

Laws addressing handicap discrimination do not have comparable coverage of employment. They cover primarily employment by Federal government agencies, Federal contractors, and recipients of Federal grants. The fact that a business engages in interstate commerce, which makes it subject to Congressional authority under the U.S. Constitution, does not, under current statutes, give rise to any duty to refrain from discriminating against people with disabilities. There do not appear any sound policy reasons why employers who are prohibited from other types of discrimination should be allowed to discriminate on the basis of handicap.

C. The Program or Activity Limitation

In the case of Grove City College v. Bell (104 S.Ct. 1211 (1984)), the U.S. Supreme Court ruled that an educational institution is covered by the nondiscrimination provisions of Title IX of the Education Amendments of 1972 (20 U.S.C. Section 1681(a)) if some of its students receive Federal grants to pay for their tuition. But the Court ruled that the receipt of such Federal grants does not trigger institutionwide coverage. Since this form of financial assistance, said the Court, represents financial assistance to the college's financial aid program, it is only that program which is regulated by Title IX. Because the pertinent provisions of Title IX are very similar to the language of Section 504, the holding in Grove City has implications for the interpretation and application of Section 504.

The same day that it decided the Grove City case, the

Supreme Court also announced its decision in Consolidated Rail Corporation v. Darrone (104 S.Ct. 1248 (1984)) -- a Section 504 case. The Court mentioned its discussions of the meaning of "program or activity" in the Grove City and North Haven Board of Education v. Bell (456 U.S. 512 (1983)) decisions under Title IX, and stated that: "Clearly, this language limits the ban on discrimination to the specific program that receives federal funds" (104 S.Ct. at p. 1255). The Court did not, however, attempt to define the term "program" in Darrone, but held that that task should be left to the district court. Given the procedural posture of the case, the high Court declined to decide whether Federal financial assistance was received by the "program or activity" that allegedly discriminated against the plaintiff in Darrone.

In response to the Grove City decision and its implications for Title IX, Section 504, and other similar statutes, legislation was introduced during the 98th Congress, but no such bill was enacted. Similar bills, referred to as the Civil Rights Restoration Act, have been introduced in the 99th Congress. Such bills are based upon a conviction that any person or agency that wishes to obtain Federal grant funds should be required to avoid or cease discriminating in all of its activities. Conversely stated, the Federal government should not provide financial assistance to any person or agency that engages in discrimination in any part of its operations or activities.

D. Not Co-Extensive With Federal Fair Housing Act

Title VIII of the Civil Rights Act of 1968 (42 U.S.C. sections 3601 - 3619) prohibits discrimination in housing on the basis of race, color, religion, sex, and national origin. The coverage of Title VIII is extremely broad, applying to almost all types of housing with the exception of certain private, single family dwellings, and facilities owned or operated by religious groups and private clubs.

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of handicap only in housing programs or activities of the Federal government or that receive Federal financial assistance. Compared to the coverage of Title VIII, the housing subject to Section 504 is quite limited. Various bills have been proposed that would provide equivalent coverage of handicap discrimination as that provided under Title VIII, generally by simply adding "handicap" to the types of discrimination prohibited in Title VIII. A key element that should be addressed in such proposals is a standard regarding the duty upon landlords, developers, and sellers to make reasonable accommodations for tenants and purchasers with disabilities.

E. Not Co-Extensive With Prohibitions of Other Types of Discrimination in Public Accommodations

Title II of the Civil Rights Act of 1964 (42 U.S.C. Section 2000a) prohibits discrimination on the basis of race, color, religion, or national origin in public accommodations. It applies to a broad range of "places of public accommodation," including inns, hotels, motels, restaurants, cafeterias,

lunchrooms, lunch counters, soda fountains, gas stations, motion picture houses, theaters, concert halls, sports arenas, and stadiums, if such facilities "affect commerce" or if the discrimination or segregation is "supported by State action."

There is no comparable provision prohibiting discrimination on the basis of handicap in public accommodations. Except for the relatively rare case in which a place of public accommodation is the recipient of Federal grant funds, no Federal law addresses unnecessary barriers and other forms of discrimination that deprive persons with disabilities of the use of public accommodations. Thus, many hotels, motels, restaurants, theaters, stadiums, and other public accommodations that are prohibited from discriminating against racial, ethnic, and religious groups may with impunity refuse to serve and deny access to their facilities to people because they have disabilities.

F. Failure of the Federal Government to Use Its Leverage as a Consumer of Goods and Services

Federal agencies spend large sums of money on contracts and purchases of consumer goods and services. Government agencies rent large numbers of conference and meeting rooms, and pay for many hotel rooms of meeting attendees and government employees on travel. The government purchases a great quantity of airline and train tickets, frequently through arrangements with "contract" carriers. Government agencies also pay for great numbers of rental cars used by government employees, often through agency contracts with particular companies.

Many of the companies from whom the government rents or purchases facilities, goods, and services have not made substantial efforts to make their products and services equally open and usable by government employees and other consumers who have disabilities. Many conference and meeting facilities rented by government agencies are architecturally inaccessible or do not have adequate toilet facilities for persons with disabilities. The government pays the costs for many hotel and motel rooms in establishments that are not accessible and have made no efforts to plan for and accommodate disabled guests. Some of the airlines and train companies that benefit from government travelers have poor records of accommodating individuals with disabilities; many have inaccessible stations and vehicles, and archaic rules and practices that exclude or demean travelers who have disabilities. Rental car companies that reap the benefits of government business often do not provide vehicles with hand controls or other modifications needed by individuals with disabilities, or provide modified vehicles only in certain cities, or upon very different terms from that offered to other people, e.g., at higher rates or requiring that a modified vehicle can be returned only at the original place of rental.

Some organizations of persons with disabilities have made use of their "consumer clout" to get providers of services and goods to be more accommodating to those with disabilities. In selecting a site for national conferences or conventions, for example, some organizations bargain with the management of hotels to make more rooms, restrooms, and other facilities accessible. The Federal government, in contrast, has made no use of its

considerable leverage as a consumer of goods and services to improve the lot of government employees and other individuals having disabilities. Rooms are paid for, tickets purchased, and cars leased without any attempt to get the businesses involved to make their facilities and services more open and usable by people with disabilities. The Federal government is squandering an important opportunity to provide leadership and incentive to make the oft-recited goals of equal opportunities, integration, and full participation of disabled people more of a reality in this country. Federal agencies need to send a clear message to hotels, motels, airlines, train companies, rental car companies, and other purveyors of consumer goods and services that they will not do business with those who refuse to provide equal opportunities for customers with disabilities.

G. Other Gaps in Coverage

There are certain other areas in which serious problems of discrimination against people with disabilities are within the scope of Congressional authority to address, but no legislative remedies have been provided under current laws. In the case of Community Television of So. Cal. v. Gottfried (459 U.S. 498 (1983)), the U.S. Supreme Court ruled that, because Section 504 of the Rehabilitation Act of 1973 is silent on the matter, the Federal Communications Commission is not required to ensure that its public television licensees do not discriminate on the basis of handicap. The application of the nondiscrimination requirement to Federal licensees is an issue that should be addressed by equal opportunity laws for people with disabilities,

but, to date, has not been.

Interstate travel is another area in which the problems of discrimination faced by persons with disabilities should be explicitly covered by equal opportunity laws. (For further discussion of such problems and recommended approaches for addressing them, see the Council's report on Transportation). Likewise, individuals with disabilities have encountered discrimination in the availability of insurance; frequently individuals are denied certain types of insurance coverage because of presumptions about their increased risks and deficits, even though there may be no adequate actuarial data supporting such presumptions (Baker and Karol, 1978). Problems of discrimination in eligibility for insurance should be addressed in equal opportunity laws for people with disabilities.

III. PROBLEMS WITH THE LANGUAGE, INTERPRETATION, AND ENFORCEMENT OF CURRENT HANDICAP EQUAL OPPORTUNITY LAWS

The nation has had a dozen years of experience under the nondiscrimination provisions of the Rehabilitation Act of 1973. A number of problems with the wording and enforcement of current laws guaranteeing equal opportunities for people with disabilities have come to light.

A. Absence of Reasonable Accommodation Requirement and Standards

A key element of eliminating discrimination on the basis of handicap is the process of matching the particular abilities and limitations of each disabled individual with the essential requirements of a particular activity and trying to modify the activity as necessary to permit the individual with a disability to participate. Legally, this matching and modification process has been imposed as the concept of reasonable accommodation. Reasonable accommodation occurs whenever a service provider or employer provides or modifies devices, services, or facilities, or changes practices or procedures in order to match a particular person with a particular program or activity.

The duty to make reasonable accommodations to the limitations of persons with physical and mental disabilities was first applied in 1976, when the Department of Labor issued regulations affecting government contractors under Section 503 of the Rehabilitation Act of 1973. Over ten years of experience with the reasonable accommodation requirement suggests that it is a workable and effective concept. Concerns about the costs and

disruptiveness of the duty to make reasonable accommodations have been found to be largely misplaced. Studies have found that workplace accommodations for individuals with disabilities frequently cost little or nothing (See authorities collected in U.S. Commission on Civil Rights, 1983, p. 2). The E. I. du Pont de Nemours and Company has reported: "The cost of most accommodations is nominal" (du Pont, 1981, pp. 17-18). And a U.S. Department of Labor study concluded that accommodation is "no big deal" (DOL, 1982, p. 2).

If the practical application of the reasonable accommodation requirement has not been particularly troublesome, its conceptual and legal theoretical development has been somewhat more problematic. None of the existing handicap nondiscrimination statutes explicitly mention a duty to make reasonable accommodations to permit the participation of handicapped people. The U.S. Supreme Court, in the case of Alexander v. Choate (105 S.Ct. 712 (1985)), recognized the existence of a duty to make reasonable accommodations under Section 504 of the Rehabilitation Act of 1973: "to assure meaningful access, reasonable accommodations in the grantee's program or benefit may have to be made." (Id. at p. 721). The Court noted that "the regulations implementing section 504 are consistent with the view that reasonable adjustments in the nature of the benefit offered must at times be made to assure meaningful access." (Id. at p. 721 n. 21). Nonetheless, the Court's ruling, coupled with its earlier hazy analysis in Southeastern Community College v. Davis (442 U.S. 397, 411-413 (1979)), has not dispelled confusion about the nature and extent of a duty to accommodate. Lower courts,

regulatory agencies, and analysts have wrestled very inconsistently with questions about the existence and extent of the reasonable accommodation requirement. Section 504 has been variously interpreted as requiring modifications to existing programs as long as such changes are not "massive," as mandating only "modest affirmative steps" to accommodate persons with disabilities, as requiring only de minimis modifications (those not requiring any effort or expense), or as not requiring accommodation at all.

The absence of a stated requirement of reasonable accommodation and of delineated standards for its application is one of the most serious shortcomings of current handicap equal opportunity laws.

B. Failure to Spell Out Elements of Nondiscrimination

Laws such as Section 504 of the Rehabilitation Act of 1973 prohibit discrimination on the basis of handicap in general terms, but they do not further define or delineate the nature of the "discrimination" that is prohibited. This leaves open a number of key questions about the impact of the nondiscrimination requirement. Is it discrimination to fail to remove architectural, transportation, and communication barriers? How far does the duty to remove such barriers extend? Is it discrimination to use selection criteria and eligibility requirements that screen out or have a disproportionate effect upon people with disabilities? What tests or standards should be applied to determine the legality of such criteria or eligibility requirements? Are there limits upon the changes that

a person, business, or agency is required to make in its operations in order to avoid or stop discriminating? To what extent are costs and impact upon a program or activity a defense to the duty not to discriminate? These and other questions about the nature and extent of the handicap nondiscrimination requirement remain largely unanswered and debated, because of the failure of the statutes to resolve them by spelling out the types and elements of the discrimination that is prohibited.

Until the Supreme Court resolved the issue in the recent case of Alexander v. Choate (105 S.Ct. 712 (1985)), it was not even clear whether Section 504 prohibited discrimination that occurs unintentionally, or whether its nondiscrimination mandate was limited only to intentional actions. Looking at such unintentional discrimination as architectural barriers erected thoughtlessly, the Court declared: "much of the conduct that Congress sought to alter in passing the Rehabilitation Act would be difficult if not impossible to reach were the Act construed to proscribe only conduct fueled by a discriminatory intent" (Id. at p. 719). It is noteworthy, however, that litigation had to be pursued to the highest court in the land to answer the question whether Section 504 addresses unintentional acts of discrimination. Clarity and consistency in the interpretation and application of handicap nondiscrimination laws would be greatly furthered by a clear delineation in the statutes themselves of the types of discrimination they make unlawful.

C. Use of the Word "Solely" in Statutory Language

Section 504 of the Rehabilitation Act of 1973 states that no qualified handicapped individual shall be excluded, denied benefits, or subjected to discrimination "solely by reason of his handicap." The phrase "solely by reason of" does not appear in other types of nondiscrimination laws. Whatever may have prompted the choice of this language in drafting the statute, it may be interpreted to allow discrimination, exclusion, and denials of benefits on the basis of handicap where such discrimination is only one of the justifications for the action taken. The goal of such laws would most appropriately seem to be to eliminate from the decision-making process discrimination against persons with disabilities, not to eliminate such discrimination only when it is found in a pristine, isolated, unadulterated form. As in nondiscrimination laws protecting other groups, the phrase "solely by reason of" is unnecessary and should not be included in laws guaranteeing equal opportunities for people with disabilities.

D. Problems With Concept of "Otherwise Qualified"

By its terms, Section 504 applies to handicapped individuals who are "otherwise qualified." The phrase "otherwise qualified" is not found in other types of nondiscrimination laws, presumably because it is assumed that denials of opportunity because of failure to meet legitimate qualifications do not constitute discrimination condemned by these laws. From this point of view, the phrase "otherwise qualified" in Section 504 may be considered a redundancy. A person who is denied a benefit because he or she

does not possess the requisite qualifications has not been subjected to discrimination; such an individual has been excluded because of an absence of qualifications, not on the basis of handicap discrimination. On the other hand, if the qualifications established for a job or activity are themselves discriminatory, the concept of "otherwise qualified" in the statute only further complicates the analysis. In each case, the pertinent question under Section 504 would seem to be whether a person has been discriminated against on the basis of handicap. The close interrelationship between the concepts of "otherwise qualified" and discrimination under Section 504 has been noted by the Supreme Court. In Alexander v. Choate, the Court observed that "the question of who is 'otherwise qualified' and what actions constitute 'discrimination' under the Section would seem to be two sides of a single coin..." (Id. at p. 720, n. 19).

The inclusion of "otherwise qualified" in the statutory language leads to results that seem clearly illogical. The outcome of a case in which a handicapped person is found not to possess the appropriate qualifications for a program or activity is a ruling that the person is not an "otherwise qualified handicapped individual," and is, therefore, not protected by Section 504 -- Section 504's prohibition of discrimination does not apply to that person and that individual cannot invoke the statute's protection. A more logical result would seem to be a ruling that a handicapped individual who does not have appropriate qualifications is covered by the nondiscrimination requirement, but has not, in fact, been discriminated against.

The implications of the "otherwise qualified" phraseology

were clearly illustrated in the Supreme Court's analysis in Southeastern Community College v. Davis (442 U.S. 397 (1979)).

The case involved a woman with a serious hearing disability who had been excluded from a clinical registered nurse training program. The Court determined that there were no modifications that the college could make in its program that would enable Ms. Davis to successfully participate in the program. The logical conclusion, therefore, would have been that Ms. Davis had not been discriminated against. But because of the "otherwise qualified" wording in Section 504, the Court's conclusion instead was that Davis was not an "otherwise qualified handicapped individual," and Section 504 did not cover her. Such an analysis seems to blur a scope of coverage question with a substantive question of discrimination.

For persons with disabilities, the danger of the "otherwise qualified" concept is that by the way agencies state their qualifications for participation in a program or activity covered by Section 504 they can eliminate persons with various disabilities from eligibility, and can even make the disabled person ineligible for the statutory protection against discrimination. This danger is all the more real because, as noted above, the handicap nondiscrimination laws provide no statutory standards regarding the use of discriminatory eligibility requirements, selection criteria, and qualifications standards. Moreover, there has not been a consistent recognition of the interplay between qualifications and reasonable accommodation. Some otherwise unqualified persons may become

qualified if reasonable modifications of the program or activity are made. For example, the ability to walk up stairs may be a legitimate qualification for a job in a particular factory, but a person who uses a wheelchair may nonetheless become qualified if the company is required to make a specific work station accessible as part of its duty to make reasonable accommodations to persons with disabilities. The relationship between reasonable accommodation and qualifications and the delineation of what types of qualifications are nondiscriminatory and permissible are part of the overall task of defining and setting standards regarding discrimination. The inclusion of the "otherwise qualified" concept in the statute is unnecessary and problematic, and serves to obscure the real issues.

E. Problems With the Term "Handicapped Individual"

Section 504 protection is afforded to an otherwise qualified "handicapped individual." In delineating a class of persons that is eligible for the protection of the statute, Section 504 deviates from the model of other types of nondiscrimination statutes, which simply prohibit discrimination "on the basis of" race, or sex, or national origin, etc.; all persons are covered by the protection of these other statutes. Under Section 504, before you are protected from discrimination on the basis of handicap, you must first show that you are a "handicapped individual."

For persons with disabilities who have spent many years of their lives stressing their abilities rather than their limitations, and who have strenuously objected to being assigned

labels such as "handicapped," the need to prove that one is a "handicapped individual" can be very undesirable. Moreover, the showing that one is "handicapped" often tends to depend upon a medical model of disability -- the necessary proof is often a doctor's certification that the individual has a mental or physical handicap according to medical standards. For many persons with disabilities, this medical approach to disabilities is objectionable.

Some potential problems with the concept of "handicapped individual" have been avoided by the broad definition provided in the statute. For the purposes of Title V of the Rehabilitation Act (which includes Sections 501, 502, 503, 504, and 505), "handicapped individual" is defined as "any person who (A) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (B) has a record of such an impairment, or (C) is regarded as having such an impairment." (29 U.S.C. Section 706). The regulations implementing Section 504 fill in some of the details of this general definition by listing categories of conditions included. An Appendix accompanying the regulations when they were originally published provides even more specificity by giving a partial list of the particular conditions denominated "handicaps" under the definition (42 Federal Register 22685-86 (May 4, 1977)).

The statutory formulation, the regulations, and the analytic Appendix together provide a definitional approach that is expansive and flexible, and yet also fairly specific. The inclusion of the "has a record of" and "is regarded as having"

components of the statutory definition could go a long way toward making the definition sufficiently broad and flexible and avoiding a medical certification approach. Nonetheless, in practical application in administrative proceedings and court cases, persons with disabilities most often find themselves having to prove that they meet criteria (A) of the statutory formulation, i.e., that they have a physical or mental impairment that substantially limits one or more major life activities. Such a requirement does not sit well with those disabled individuals whose orientation is toward achievement and independence.

The statute's denomination of a protected class of "handicapped individuals" also causes problems about where lines should appropriately be drawn for the statute's coverage. Conditions that do not inherently interfere with major life activities may become serious "handicaps" because of employers' and agencies' reactions to them. Individuals have been denied employment and excluded from participation in programs and activities because of such conditions as glaucoma in an arrested state, cancer of the uterus that has been successfully treated, minor degrees of back impairment, a missing kidney, absence of part of a finger, or double vision. Many of these conditions do not of themselves entail a substantial limitation upon major life activities, so a person with such a condition has a hard time meeting the statutory definition for Section 504 protection. Yet they may have been excluded precisely because of discrimination against them on account of their disabilities.

Very often, the "handicapped individual" limitation to Section 504 coverage places a person who has been discriminated against on the basis of handicap in a "Catch 22" situation. To be a "handicapped individual" eligible for Section 504 protection, a person has to show that he or she has a substantial impairment of ability that limits major life activities, but to be "qualified," a person has to show that he or she is not substantially impaired in ability.

Proof of class membership is not required under other types of nondiscrimination laws, and statutes guaranteeing equal opportunity for persons with disabilities need not have such a requirement either. Such laws should focus upon a demonstration of discrimination "on the basis of handicap" rather than requiring proof of membership in a protected class.

F. Lack of a Clear Distinction Between Nondiscrimination and Affirmative Action

Sections 501 and 503 of the Rehabilitation Act of 1973 require Federal agencies and Federal contractors, respectively, to have an "affirmative action" program for the employment and advancement of individuals with disabilities. Section 504 prohibits discrimination on the basis of handicap. As noted previously, the concept of discrimination is not defined in the Act. Likewise, the meaning of the term "affirmative action" is not described or defined. Consequently, there has been some confusion concerning the nature and extent of each of these requirements, and where to draw a line between them.

Such confusion resulting from lack of statutory clarity was

evident in the opinion of the United States Supreme Court in Southeastern Community College v. Davis, (442 U.S. 397, 410-413 (1979)). The Court tried to draw a distinction between "evenhanded treatment of qualified handicapped persons" and "affirmative efforts to overcome the disabilities caused by handicaps." The former, according to the Court, is nondiscrimination; the latter, affirmative action. And Section 504, unlike Sections 501 and 503, mandates only nondiscrimination, not affirmative action. Such analysis, however, runs into trouble with concepts such as reasonable accommodation and architectural barrier removal. Are these nondiscrimination or affirmative action? In the Davis opinion, the Court first discusses accommodation as an affirmative action requirement and then, two pages later, describes accommodation as a nondiscrimination requirement (442 U.S. 411-13).

The Court subsequently acknowledged the analytic haziness of its opinion in Davis. In Alexander v. Choate, the Court observed:

Our use of the term affirmative action in this context has been severely criticized for failing to appreciate the difference between affirmative action and reasonable accommodation; the former is said to refer to a remedial policy for the victims of past discrimination, while the latter relates to the elimination of existing obstacles against the handicapped.
(Id. at p. 721, n. 20)

The statutory lack of definiteness about the meaning of nondiscrimination and affirmative action has led to inconsistent interpretations of the extent of the duty not to discriminate under Section 504, on the one hand, and to a lack of clarity about requirements to engage in recruitment and outreach efforts

under Sections 501 and 503, on the other. To establish clear and enforceable standards, equal opportunity laws for people with disabilities should define the elements of nondiscrimination, as discussed above, and should explicitly require recruitment and outreach activities to increase the participation of people with disabilities in programs and activities covered by these laws.

G. Problems With the Enforceability of Section 503

The requirement imposed by Section 503 of the Rehabilitation Act of 1973 that Federal contractors take affirmative action to employ and advance qualified handicapped individuals is enforceable by the filing of a complaint with the Department of Labor (DOL). Administrative enforcement proceedings within DOL have sometimes been criticized as involving lengthy delays and reluctance upon the part of the Department to rule against contractors.

Section 503 does not mention any right of aggrieved handicapped persons to file a private court suit against a contractor who has violated the statute. Some courts have ruled that such a private right of action is implicitly created by Section 503, but the greater weight of judicial precedent is against the existence of such a right.

In accordance with other types of nondiscrimination laws, it seems appropriate that if a disabled complainant has filed a complaint with the Department of Labor and has not obtained any administrative resolution within a reasonable period of time, the complainant should have the option of filing a Federal court lawsuit to vindicate his or her rights under the law. The right

to such a private cause of action should be explicitly provided in the statute.

H. Limited Applicability of Barrier Removal Requirements and Problems Regarding the Architectural and Transportation Barriers Compliance Board

Section 502 of the Rehabilitation Act of 1973 established the Architectural and Transportation Barriers Compliance Board (ATBCB) and charged it with a variety of responsibilities in regard to the enforcement of the Architectural Barriers Act (42 U.S.C. Sections 4151-4157), and the elimination of architectural, transportation, and communication barriers confronting individuals with disabilities.

The Architectural Barriers Act of 1968 was the first Federal legislation requiring certain Federally constructed, altered, leased, or financed buildings to be readily accessible to persons with physical disabilities. It designated four agencies -- the General Services Administration, the Department of Defense, the Department of Housing and Urban Development, and the U.S. Postal Service -- to develop standards for the design, construction, and alteration of buildings covered by the Act.

A 1978 amendment to Section 502 of the Rehabilitation Act added to the ATBCB's functions the responsibility to issue minimum guidelines and requirements for the standards established by the four standard-setting agencies. A final rule issued by ATBCB establishing such Minimum Guidelines was published in the Federal Register on August 4, 1982 (42 Federal Register 33862, codified at 36 C.F.R. Part 1190). Subsequently, the four

standard-setting agencies concurred in the joint issuance of Uniform Federal Accessibility Standards, which were published on August 2, 1984.

A significant problem with Federal requirements regarding architectural, transportation, and communication barriers removal is simply that most buildings and transportation systems are not subject to such requirements. The buildings subject to regulation under Federal accessibility standards are primarily only those that are built by, leased by, altered by, or financed by the Federal government. While this obviously includes a large number of buildings, a much larger number of buildings continue to be built without being subject to any accessibility requirements. Moreover, even for those buildings that are subject to Federal barriers laws, the limited resources of ATBCB and the limited enforcement efforts of the four standard-setting agencies result in sporadic implementation of accessibility requirements. Likewise, existing state and local laws regarding architectural barriers are seldom enforced.

Many commentators and architects have begun to advocate a concept of "universal accessibility." They argue that mandates of accessible building design would be beneficial to most Americans. As one architect has written:

(A)ll people pass through stages of ability and disability: children who have not yet attained adult strength, stature or mental processes; pregnant women who, even without complications, suffer reduced stamina, mobility, agility and balance; persons who tend the very young and are encumbered by carrying infants, maneuvering baby vehicles or moving hand-in-hand with a toddler whose mobility is tenuous at best; aging persons who are subject to progressive loss of physical, perceptual and mental faculties. In addition, there are the many people who at a given time may experience temporary disabilities as a result of illness or accidental

mishap. The designed environment at present satisfactorily accommodates only a small number of people who are in their prime period of the life cycle and who also possess maximum physical and mental capabilities. All the rest of us who are in the majority could benefit greatly from barrier-free design.
(Morgan, pp. 50-51)

The benefits of universal accessibility, when combined with data that indicate the costs of achieving barrier-free design in new construction is less than 1 percent, make for a strong argument in favor of broad accessibility requirements. The Federal government should make use of its authority to enforce the Fourteenth Amendment, to regulate interstate commerce, and to regulate recipients of Federal financial assistance, to establish broad and strong standards for the elimination of architectural, transportation, and communication barriers.

A more specific problem with the coverage of Federal accessibility requirements concerns the authority of the ATBCB in regard to transportation barriers. A 1978 amendment to Section 502 gave ATBCB the responsibility to "insure that public conveyances, including rolling stock, are readily accessible to, and usable by, physically handicapped persons." The statute does not, however, expressly provide that ATBCB has authority to establish minimum guidelines for transportation facilities and vehicles analagous to its authority to write minimum guidelines for buildings subject to the Architectural Barriers Act. As a result, the ATBCB's authority in the area of public conveyances is somewhat unclear, and the Board has not assumed a very strong role in setting standards for making public conveyances accessible.

Another problem with the ATBCB relates to the statutory

language regarding its composition and terms of offices of its members. As established in Section 502, the Board is to consist of ten Federal agency heads (or their high-level designees), and eleven public, non-governmental members (including five handicapped individuals). The terms of office for the public members is set at three years. Unlike many other similar pieces of legislation establishing boards and commissions, Section 502 does not say that a member shall continue to serve until a successor has been selected and appointed. As a result, for much of its existence ATBCB has had unfilled vacancies in the public member positions. These vacancies have undercut the public member majority on the Board as contemplated in the language of the Act. The terms of office provisions of Section 502 should track other statutes and require members to continue to serve until successors have been appointed and are ready to serve on the Board.

I. EEOC Authority For Enforcement Under Section 501

As originally enacted, Section 501 of the Rehabilitation Act of 1973 required executive agencies to submit affirmative action program plans to the Civil Service Commission, and directed the Commission to review such plans to see if they provide sufficient assurances, procedures, and commitments to achieve employment opportunities for people with disabilities. Pursuant to Reorganization Plan No. 1 of 1978 (43 Federal Register 19807), all enforcement functions related to employment of handicapped individuals previously held by the Civil Service Commission were transferred to the Equal Employment Opportunity Commission

(EEOC). Pursuant to this transfer of authority, EEOC has issued regulations for the implementation of Section 501 (29 C.F.R. part 1613, subpart G) and has administered the affirmative action plan review process.

In 1984 amendments to the Rehabilitation Act, a technical amendment to Section 501 was made, apparently prompted by the fact that the statute still made reference to the defunct Civil Service Commission. Inadvertently, however, the reference was changed to the Office of Personnel Management, which was the successor to many other Civil Service Commission functions, rather than to the EEOC. That there was no Congressional intent to transfer Section 501 enforcement functions away from EEOC is confirmed by the fact that Congress ratified the provisions of Reorganization Plan No. 1 of 1978 subsequent to the Section 501 amendment. Nonetheless, the erroneous amendment is confusing and should be corrected. Moreover, the mandate of Section 501 should be strengthened to require not merely the submission of an affirmative action plan but the submission and implementation of such a plan, and EEOC should explicitly be given the responsibility for establishing regulations outlining appropriate outreach and recruiting activities, in addition to nondiscrimination standards.

J. Application to Discrimination in Medical Treatment

One result of the controversy and legal actions surrounding the highly publicized instances of denials of medical treatment to certain handicapped newborns -- the so-called Baby Doe cases -- was the decision of a United States Circuit Court of Appeals

that Section 504 of the Rehabilitation Act of 1973 does not apply to medical treatment decisions. In the case of United States v. University Hosp., State U. of New York (729 F.2d 144 (2d Cir. 1984)) (commonly referred to as the "Baby Jane Doe" or "Stony Brook" case), the Court of Appeals for the Second Circuit ruled that there had traditionally been a "consistent congressional policy against the involvement of federal personnel in medical treatment issues" (Id. at p. 160). In light of this policy, the court held that it would not impute a Congressional intent that Section 504 apply to medical treatment issues in the absence of clearly expressed legislative intent to that effect. The court also expressed some difficulty with the question whether a handicapped child is a "handicapped individual" under Section 504, but ultimately determined that it "would defy common sense" to rule otherwise.

The court's ruling that Section 504 does not apply to discrimination in medical treatment removes the protection of the statute from a very important area. The U.S. Commission on Civil Rights has found that people with disabilities "face discrimination in the availability and delivery of medical services," citing examples of medical experimentation on disabled people, electroshock treatments, administration of psychotropic drugs, psychosurgery, inappropriate organ transplants, and denials of routine medical care, in addition to denials of lifesaving medical treatment to newborns with disabilities (U.S. Commission on Civil Rights, 1983, at pp. 35-36).

The decision in the University Hospital case has been

appealed to the United States Supreme Court. Unless the matter is clarified by the high Court, the coverage of medical treatment by equal opportunity laws for disabled people should be reestablished in the statutory language.

K. Other Enforcement Problems With Section 504

In addition to problems already mentioned in regard to the implementation of Section 504 of the Rehabilitation Act of 1973, there have been numerous delays in the regulatory enforcement process under Section 504. Regulations have been very slow in coming forth from agencies with Section 504 responsibilities. In 1980, a Federal court lawsuit, Williams v. United States (No. 80-5368 (C.D. Cal., filed Dec. 3, 1980)) was filed to address the failure of Federal agencies to promulgate regulations regarding their programs and activities.

There have also been criticisms of a Department of Justice Prototype Regulation issued to provide guidance to agencies in preparing their regulations, and of the proposed regulations issued by some agencies, particularly in regard to limitations upon agency obligations under the regulations.

Most of the substantive problems with the Prototype and agencies' proposed regulations result from a lack of specificity and standards in the statute, as discussed previously. A statutory clarification of the nondiscrimination requirement, along with timelines for the issuance of implementing regulations, would go a long way toward resolution of implementation problems under Section 504.

IV. PROBLEMS IN TRYING TO APPLY TRADITIONAL CIVIL RIGHTS LEGAL STANDARDS TO DISCRIMINATION ON THE BASIS OF HANDICAP

Statutes prohibiting discrimination on the basis of handicap have been considered "part of the general corpus of discrimination law" (New York State Ass'n for Retarded Children v. Carey, 612 F.2d 644, 649 (2d Cir. 1979)), and analysts, courts, and regulators have looked to interpretations of traditional civil rights laws when analyzing and applying equal opportunity laws for people with disabilities. It has become apparent, however, that there are limits to the applicability of principles developed in these other areas to the problems of discrimination against people with disabilities. The U.S. Commission on Civil Rights has cautioned that legal approaches developed in race, sex, national origin, and religious discrimination cases cannot be applied uniformly and mechanically to cases of discrimination on the basis of handicap: "The legal theories, principles, and precedents of traditional civil rights law should be applied to handicap discrimination cases only when, and to the degree that, they are equally relevant." (U.S. Commission on Civil Rights, 1983, pp. 149, 163). The American Coalition of Citizens with Disabilities, in testimony endorsed by the American Council of the Blind, the Association for Retarded Citizens, the Association of Children with Learning Disabilities, the Disability Rights Center, the National Easter Seal Society, the Paralyzed Veterans of America, the National Network of Learning Disabled Adults, and the National Association of Private Residential Facilities for the Mentally Retarded, and submitted to the Subcommittee on

Employment Opportunities of the House Committee on Education and Labor on June 6, 1985, declared that "existing standards of nondiscrimination under Title VI of the Civil Rights Act of 1964 as applied to race, sex, religion and national origin are either inadequate or inappropriate to address discrimination on the basis of handicap..." A Federal court has observed that trying to fit the problem of handicap discrimination into the standards and remedies developed to deal with other types of discrimination is "akin to fitting a square peg into a round hole." (Garrity v. Gallen, 522 F.Supp. 171, 206 (D.N.H. 1981))

One major way in which standards of equal opportunity for persons with disabilities differ from those developed for other groups is the concept of reasonable accommodation. The individualized matching of persons with activities and making modifications to the activity to enable the individual to participate is integral to eliminating discrimination on the basis of handicap, but such matching and modification is rarely required in addressing other types of discrimination. The term "reasonable accommodation" does appear in Title VII of the Civil Rights Act of 1964 (42 U.S.C. Section 2000e(j)) in regard to employers' obligation to accommodate the needs arising from religious practice. The Supreme Court has ruled, however, that this religious accommodation provision imposes only a de minimis requirement (Trans World Airlines v. Hardison, 432 U.S. 63, 84 (1977)), so it is not analagous to the matching and modification process that characterizes reasonable accommodation for persons with disabilities.

Similarly, other areas of nondiscrimination law have no

direct analog to the requirement of removing architectural, transportation, and communication barriers. Discrimination against people with disabilities has literally been built into the physical environment, and eliminating such discrimination requires planning and action to remove barriers that exclude disabled people. In the case of Alexander v. Choate (105 S.Ct. 712 (1985)), the U.S. Supreme Court recognized that removing architectural and transportation barriers is of pivotal importance in eliminating discrimination against people with disabilities (Id. at p. 719). In discussing the nondiscrimination requirements of the Rehabilitation Act of 1973, the Court stated that "elimination of architectural barriers was one of the central aims of the Act" (Id. at p. 719). Such environmental barriers resulting in the physical exclusion of a group of people are not a major feature of nondiscrimination standards under other types of laws.

Another difference between legal standards for addressing discrimination against people with disabilities and other types of discrimination relates to eligibility requirements, qualifications standards, and selection criteria. Under traditional civil rights standards, any such requirements, standards, and criteria that are based upon a person's race, sex, religion, or national origin (or that use some criteria as a subterfuge for race, sex, religion, or national origin) are generally illegal. In employment, the use of criteria of religion, sex, or national origin may be justified only by demonstrating that they are a bona fide occupational

qualification (BFOQ) "reasonably necessary to the normal operation of that particular business or enterprise..." (42 U.S.C. Section 2000e-2(e)). Courts have indicated that the BFOQ defense is to be very narrowly and stringently applied. There is no BFOQ defense for employment discrimination on the basis of race. In short, race, sex, national origin, and religion are almost never legitimate criteria for decisions about whether to allow a person to have a job or participate in a program or activity, because such characteristics have no direct connection with ability to perform or participate.

With disabilities, on the other hand, there is a much more complex relationship between a particular person's disability and performance ability. Some judgments based upon disability may be appropriate, while others may be discriminatory. A vision requirement for an air traffic controller position (with current technology) may be a necessary eligibility restriction, but the exclusion of blind people from employment as lawyers or insurance salespersons might constitute discrimination. A deaf person should be eligible to compete for a job as a construction worker or an accountant, but might appropriately be denied a position as a voice coach or a sound technician. The distinctions between these situations largely depend upon an analysis of the essential elements of a job, program, or activity, and a determination whether, with reasonable accommodation, the person can participate and perform the essential elements. Consequently, a more complex set of standards are required to deal with eligibility requirements, selection criteria, and qualifications standards in relation to

disabilities.

For these and other reasons, the standards for resolving problems of discrimination against persons with disabilities must differ from those addressing other types of discrimination. As the American Coalition of Citizens with Disabilities and eight other national disability organizations have stated:

it is our conclusion that current Title VII standards are not adequate to effectively address and remedy discrimination on the basis of handicap. The necessity for expanding the scope of coverage of handicap discrimination laws to make them coextensive with the coverage of other civil rights laws should be pursued in a manner which guarantees that the legal standards to be applied will be tailored to provide clear and effective remedies to the types of discrimination faced by Americans with disabilities.

(ACCD, 1985, at p. 8)

V. BILL OF RIGHTS FOR PERSONS WITH DISABILITIES

In some situations, particularly in the context of large residential institutions, disabled people have had to give up many of their rights and basic freedoms in order to obtain needed services, treatment, and benefits. Concerns that service providers and public agencies have sometimes run roughshod over the rights of their clients have prompted calls for bills of rights to proclaim and protect the rights of citizens with disabilities. In the Developmental Disabilities Assistance and Bill of Rights Act of 1975 (42 U.S.C. Section 6000 et seq.), Congress created such a bill of rights for developmentally disabled persons. Section 6010 of the Act is a Congressional finding that persons with developmental disabilities possess a list of rights; the rights enumerated include a right to appropriate treatment, services, and habilitation, to be provided in the least restrictive alternative, and a requirement that institutional and other residential programs meet certain minimum standards:

- (i) Provision of a nourishing, well-balanced daily diet to the persons with developmental disabilities being served by the program.
- (ii) Provision to such persons of appropriate and sufficient medical and dental services.
- (iii) Prohibition of the use of physical restraint on such persons unless absolutely necessary and prohibition of the use of such restraint as a punishment or as a substitute for a habilitation program.
- (iv) Prohibition on the excessive use of chemical restraints on such persons and the use of such restraints as punishment or as a substitute for a habilitation program or in quantities that interfere with services, treatment, or habilitation for such persons.
- (v) Permission for close relatives of such persons to visit them at reasonable hours without prior notice.
- (vi) Compliance with adequate fire and safety standards...

Section 6010 also requires compliance with regulations providing standards for intermediate care facilities for mentally retarded people, and, for facilities not covered by the ICFMR standards, it requires that appropriate care be provided, that only persons whose needs can be met by a facility be admitted to that facility, and that residential programs "provide humane care of the residents of the facilities, are sanitary, and protect their rights."

Despite the strong wording of the Section and the fact that Congress headed the Title of the Act in which Section 6010 is found "Establishment and Protection of the Rights of Persons with Developmental Disabilities," the Supreme Court determined that Congress did not intend to create enforceable rights and obligations. In Pennhurst State School and Hospital v. Halderman (451 U.S. 1 (1981)), the Court ruled that in enacting the Bill of Rights Congress was simply "encouraging" or giving a "nudge in the preferred direction," rather than mandating compliance with the rights enumerated. It held that Section 6010 "does no more than express a congressional preference for certain kinds of treatment" and is, thus, "too thin a reed to support the rights and obligations read into it." To date, Congress has taken no action to reestablish the enforceability of the rights declared in the Developmental Disabilities Bill of Rights.

In 1978, the Task Panel on Legal and Ethical Issues of the President's Commission on Mental Health submitted its report on Mental Health and Human Rights, in which it called for the establishment of Bills of Rights for all mentally handicapped

persons, both those institutionalized and those residing in the community (Task Panel Report, 20 Ariz. Law Review at pp.133-137). The Panel noted that approximately 14 states had established Bills of Rights for psychiatric patients and 12 had similar legislation for mentally retarded persons. It concluded that an adequate Bill of Rights should include at least seven basic components:

- (a) A statement that all mentally handicapped persons are entitled to the specified rights;
 - (b) A statement that rights cannot be abridged solely because of a person's handicap or because s/he is being treated (whether voluntarily or involuntarily);
 - (c) A declaration of the right to treatment, the right to refuse treatment and the regulation of treatment, the right to privacy and dignity, the right to a humane physical and psychological environment and the right to the least restrictive alternative setting for treatment;
 - (d) A statement of other, enumerated fundamental rights which may not be abridged or limited;
 - (e) A statement of other specified rights which may be altered or limited only under specific, limited circumstances;
 - (f) An enforcement provision; and
 - (g) A statement that handicapped persons retain the right to enforce their rights through habeas corpus and all other common law or statutory remedies.
- (Task Panel Report at p. 134)

Noting that existing state Bills of Rights are almost completely lacking in enforcement mechanisms, the Panel concluded that "(t)he statute should contain a strong enforcement provision" (Task Panel Report at p. 137).

A bill introduced in the 99th Congress (Senate Bill 974) would establish a Bill of Rights for mentally ill persons comparable to the Bill of Rights for developmentally disabled people. It contains no stronger enforceability language than the developmental disabilities version, and would presumably be unenforceable pursuant to the Court's reasoning in the Pennhurst

decision.

If such Bills of Rights are to be anything more than empty promises, they should be made binding and enforceable. And if an enforceable Bill of Rights is to be enacted, there do not appear to be any good reasons for not expanding it beyond developmental disabilities or mental disabilities to establish and protect the rights of all Americans with disabilities.

VI. INFORMATION ABOUT RIGHTS AND LEGAL REPRESENTATION

The Task Panel on Legal and Ethical Issues of the President's Commission on Mental Health aptly observed that "recognition of rights precedes enforcement" (Task Panel Report at p. 138). The laws guaranteeing equal opportunity for persons with disabilities recommended in this report will have little effect unless people with disabilities learn about such laws, their meaning, and how to go about enforcing them. To assure that persons with disabilities will have access to information about their substantive and procedural rights, it will be important for agencies charged with enforcing the laws and regulations to publicize their requirements, and to seek to inform disabled people and their families about these requirements and the rights of individuals who believe that such requirements have been violated. It will also be important to encourage independent living centers, consumer and parent organizations, and agencies providing advocacy services, to provide accurate information about the rights of people with disabilities under Federal laws, regulations, and court decisions, and about the avenues of potential remedies one may pursue to vindicate such rights when you believe they have been violated.

Frequently, asserting one's rights through the pursuit of legal and administrative remedies leads a person with a disability to need legal representation. For many Americans who are not wealthy, adequate legal representation is not easy to obtain, particularly in a specialized field such as that of

disability rights law. Access to competent legal representation may be an essential prerequisite for making legal guarantees of equal opportunity for people with disabilities a reality.

The Developmental Disabilities Assistance and Bill of Rights Act of 1975 required each state to establish "a system to protect and advocate the rights of persons with developmental disabilities" (42 U.S.C. Section 6012). The statute specifies further that these protection and advocacy systems (P&As) must "have the authority to pursue legal, administrative, and other appropriate remedies" to insure the protection of the rights of developmentally disabled persons. As to the importance of such advocacy efforts, a 1980 report of the General Accounting Office concluded that "the State Protection and Advocacy Program could be the most potent and effective mechanism to insure that the developmentally disabled receive the benefits, services, and rights they are entitled to." (GAO, 1980, p. 72) A report prepared by the Institute for Comprehensive Planning found that P&As had served some 44,000 developmentally disabled persons during their first two years of operation (Henney and Alldredge, 1980, p. 3), with only a small percentage of the cases necessitating legal action. The report indicated that only 1.5% of the cases handled by P&As during the two year period involved actual court proceedings, and another 5.5% required other types of formal proceedings such as administrative hearings and due process hearings. (Id. at p. 12)

A bill currently pending in Congress (Senate Bill 974) would create a similar protection and advocacy system for mentally ill persons. Such advocacy services should be made available for all

citizens with disabilities, whatever their category of disability and regardless of the age of onset of their disabling condition.

Another important determinant of the ability of people to obtain appropriate legal redress for denials of their rights is the availability of awards of attorneys fees. Court awards of reasonable attorneys fees to successful complainants are authorized under most other types of nondiscrimination laws. Currently, attorneys fees are available under Sections 504 and 505 of the Rehabilitation Act of 1973. They are not, however, available under the Education for All Handicapped Children Act (Public Law 94-142), pursuant to the decision of the United States Supreme Court in the case of Smith v. Robinson (104 S.Ct. 334 (1984)). Bills have been introduced in Congress to undo the impact of Smith v. Robinson and authorize the award of reasonable attorneys fees when parents prevail in special education cases.

As under most other types of nondiscrimination statutes, equal opportunity laws for people with disabilities should provide for reasonable attorneys fees to be awarded when complainants successfully prove that they have been the victims of unlawful discrimination.

VII. TECHNICAL ASSISTANCE AND AID TO SMALL BUSINESSES

In many ways Big Business has already endorsed the concept of equal opportunities for people with disabilities and has begun efforts to pursue this goal. David T. Kearns, the President of Xerox Corporation, has been a leading spokesperson for "full participation" for citizens with disabilities, arguing that business has an economic stake in helping individuals with disabilities become employed and in taking advantage of the talent pool they represent (Gatty, p. 3). E.I. du Pont de Nemours and Company has made a point of recruiting disabled employees and has monitored their numbers and progress in the company. Du Pont has achieved a reputation as an exemplary employer of people with disabilities, and the company's reports are replete with examples of successful case stories (Du Pont, 1981, pp. 10-16). In addition to Xerox and Du Pont, other major companies making similar efforts to promote the employment of persons with disabilities include AT&T; the Prudential Insurance Company; Sears, Roebuck and Company; Levi Strauss and Company; IBM; and Control Data Corporation, to name but a few (Gatty, pp. 30-35). Recently, Levi Strauss and McDonald's were among the companies whose national television advertising campaigns have featured people with disabilities in a natural, positive context.

Companies with government contracts have had some dozen years experience with the requirement that they "take affirmative action to employ and advance in employment qualified handicapped persons" as mandated in Section 503 of the Rehabilitation Act of