

1973. Likewise, universities and other major Federal grant recipients have been subject to the Section 504 nondiscrimination requirement since 1973. To these agencies, equal opportunities for people with disabilities is not a new idea.

Small businesses are likely to have less familiarity with concepts of nondiscrimination on the basis of handicap, barrier removal, and reasonable accommodation, and may have concerns about the feasibility of making modifications in their facilities and operations to provide equal opportunities for individuals with disabilities. Data suggests that most such concerns are misplaced; studies of Federal contractors subject to Section 503 indicate that accommodations are usually minor and inexpensive (Ellner and Bender, 1980, pp 51-52; Berkeley Planning Associates, 1982, pp. 20-29; U.S. Commission on Civil Rights, 1983, pp. 106-107). A 1982 United States Department of Labor study of accommodations provided for disabled workers by Federal contractors showed that only 22 percent of such workers received some form of accommodation, and these were generally inexpensive -- half of the accommodations cost nothing and more than two-thirds cost less than \$100 (Berkeley Planning Associates, 1982, pp. 20-29). Only about 9 percent involved modifying office equipment, such as telephones or typewriters, or providing dictaphones, audiovisual aids, or other special devices.

Small businesses need to have access to information about the most practical and efficient ways to modify their facilities and practices to permit the participation of disabled persons. They also need to be apprised of information about such programs as the Targeted Jobs Tax Credit and the tax deduction

for barrier removal expenses that may help to defray some of the financial impact of necessary modifications. In short, small businesses should be provided with information and technical assistance concerning their responsibilities to provide equal opportunities for people with disabilities in the most practical and efficient manner possible. One program that has begun to address such needs is the Job Accommodations Network. As the scope of equal opportunity laws for people with disabilities is expanded, more such efforts are needed.

Additional programs are also needed to provide funding and incentives for the costs of modifications and barrier removal. These might consist of a direct funding or grant program, a loan fund, guaranteed loans, or tax incentives. Novel sources of funds for such programs might include fines assessed against discriminators or direct transfers of funds saved by Federal agencies when a disabled person gets a job (similar fund transfers for rehabilitation costs are currently made by the Social Security Disability Trust Fund).

Tax incentives might expand upon the current tax deduction for expenses of barrier removal, build upon the Targeted Jobs Tax Credit program, or provide a new program of deductions or tax credits for costs incurred to allow persons with disabilities to be hired or obtain goods and services from small businesses.

VIII. RECOMMENDATIONS

For all the reasons set out in this report, the National Council on the Handicapped makes the following 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 law 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. The States, counties, and local governments, pursuant to Congressional authority to enact legislation that abrogates the States' immunity under the Eleventh Amendment in order to enforce the Fourteenth Amendment guarantee of Equal Protection of the Laws.

These provisions would expand coverage of equal opportunity law for people with disabilities to make it commensurate with the coverage of other types of nondiscrimination laws. In addition, they would undo limitations imposed upon the coverage of such laws as a result of such Supreme Court decisions as Atascadero State Hospital v. Scanlon, Grove City College v. Bell, and Community Television of So. Cal. v. Gottfried. In response to the Scanlon ruling, the coverage of State, county, and local governments (including such entities as local zoning boards) would be spelled out, pursuant to the authority of Congress to abrogate the States' immunity under the Eleventh Amendment in order to enforce the Fourteenth Amendment. In contrast to the Grove City decision, all operations of Federal financial aid recipients would be prohibited from discriminating. And in response to the Gottfried holding, Federal licensees would explicitly be covered. The recommended provisions would also close certain other gaps in the coverage of such statutes by explicitly covering interstate transportation and discriminatory insurance practices.

3. The law should provide a clear definition and standards for applying the prohibition of discrimination on the basis of handicap.

The statute should straightforwardly prohibit "discrimination on the basis of handicap," without establishing any eligibility classification for the coverage of the statute. Discrimination on the basis of handicap should be broadly construed to apply the requirements of the statute to all situations in which a person is subjected to unfair or unnecessary exclusion or disadvantage because of some mental or physical impairment, perceived impairment, or history of impairment. Discrimination should be defined to include:

- a) Intentional exclusion; b) Unintentional exclusion;
- c) Segregation; d) Unequal or inferior services, benefits, or activities; e) Less effective services, benefits, or activities; and f) The use of screening criteria with a disparate impact upon individuals with disabilities that do not correlate with actual ability.

The nondiscrimination requirement should expressly include a duty to make reasonable accommodations, which should be defined as providing or modifying devices, services, or facilities, or changing practices or procedures in order to allow a particular person to participate in a particular program, activity, or job. The duty not to discriminate should also include an obligation to remove architectural, transportation, and communication barriers, including meeting the accessibility requirements recommended below. In addition, there should be a requirement of eliminating discriminatory qualifications standards, selection criteria, and eligibility requirements, with a delineation of the standards and legal tests to be used to

determine when such qualifications, criteria, and requirements constitute discrimination. In addition, a requirement of outreach and recruitment efforts should be explicitly established; the focus of such efforts should be upon people with serious disabilities, such as the Equal Employment Opportunity Commission's current listing of "targeted disabilities."

4. The law should delineate specific enforcement standards, procedures, and timelines for the implementation of equal opportunity requirements.

The agencies responsible for developing regulations implementing the equal opportunity law for people with disabilities should be clearly designated, and timelines established for the issuance, after public comment, of such regulations. The Architectural and Transportation Barriers Compliance Board should be directed to establish binding minimum guidelines for architectural, transportation, and communication accessibility, as discussed below in Recommendation

5. Consistent with such minimum guidelines, the Department of Housing and Urban Development should be directed to develop appropriate regulations concerning housing opportunities (for further discussion, see the Council's report on Housing), the Department of Transportation should be directed to develop regulations for mass transit, air travel, and other modes of transportation covered by the law (for further discussion, see the Council's report on Transportation), the Federal Communications Commission should be directed to promulgate regulations governing its licensees, and other agencies should be directed to develop regulations for the areas of their

responsibility, including the programs and activities they conduct, those they license, and those for which they provide financial assistance. The Equal Employment Opportunity Commission should expressly be charged with the development of regulations governing Federal government employment and for setting standards for all other employment covered by the law. An administrative enforcement process should be provided for individuals who believe that their rights under the law and regulations have been violated. Successful complainants should be entitled to injunctive relief, monetary damages, and back pay as necessary to remedy the discrimination to which they have been subjected. A private right of action in Federal court should be established for complainants if administrative enforcement has not occurred after a specified amount of time (e.g., 60 or 90 days), and at the completion of the administrative decision-making and appeals process. The law should authorize the imposition of fines or the cutoff of Federal funds (including both grants and contracts) if there is a showing of discrimination in an appropriate administrative or judicial proceeding; such fines or funding cutoff should continue until the discrimination is corrected or discontinued.

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.

This recommendation is intended to correct the problems with the language of Section 502 of the Rehabilitation Act of 1973 as

currently worded that have left questions about the extent of ATBCB's authority to set minimum guidelines regarding transportation and communication barriers. It would also expand the Board's authority commensurate with the expanded coverage of the equal opportunity law recommended in this report. Provisions establishing ATBCB should also be amended to provide that public members of the Board shall continue to serve at the expiration of their terms, until their successors have been appointed and are ready to serve.

6. The law should direct the Federal Government to use its leverage as a consumer of goods and services to set standards and timelines for requiring that businesses and companies from which it purchases or rents goods, services, or facilities shall make such goods, services, and facilities accessible, available to, and usable by people with disabilities on a nondiscriminatory basis.

This requirement and standards implementing it should apply to such matters as the rental of conference and meeting rooms; the rental of hotel rooms for government employees and meeting attendees; airline and train tickets, and contracts with airlines and train companies; and rental and leased cars and contracts with rental car and leasing companies. The standards to be imposed in regard to accessibility and usability of facilities and vehicles should be developed by the Architectural and Transportation Barriers Compliance Board, and requirements regarding consumer products and services should be developed and administered by the General Services Administration, in consultation with the ATBCB and the National Council on the Handicapped.

7. Equal opportunity obligations upon Federal contractors and subcontractors should be made enforceable by a private right of action.

This recommendation highlights a change that is implicit in Recommendation 4. It would correct the current situation in which responsibilities of Federal contractors and subcontractors under Section 503 of the Rehabilitation Act of 1973 are sometimes difficult to enforce administratively and are generally held to be unenforceable in the courts.

8. The law should apply to discrimination in medical services.

This provision is necessary to correct the narrowing of coverage resulting from the Court of Appeals decision in United States v. University Hosp., State U. of New York, which ruled that Section 504 of the Rehabilitation Act of 1973 does not cover discrimination in the area of medical treatment.

9. An enforceable Bill of Rights for Persons with Disabilities should be enacted.

Because American guarantees of basic rights of all persons in the U.S. Bill of Rights and other constitutional and statutory provisions have not always been equally recognized and implemented in regard to citizens with disabilities, an explicit delineation of important rights of persons with disabilities is necessary to prevent abuses and reestablish those rights. Such a Bill of Rights should be patterned upon the provisions of the existing Developmental Disabilities Bill of Rights and that proposed by the Task Panel on Legal and Ethical Issues of the President's

Commission on Mental Health. It should, however, apply to persons with all types of disabilities, and should explicitly be made enforceable administratively and in the Federal courts.

10. To assure the recognition and implementation of the rights established in this equal opportunity law, Congress should authorize an expanded Protection and Advocacy System in each State to protect and advocate for the rights of individuals with all types of disabilities, regardless of the age of onset; Congress should authorize the awarding of reasonable attorneys fees and litigation expenses to prevailing complainants.

Federal agencies charged with implementing the requirements of the equal opportunity law for persons with disabilities should provide notices and public education efforts to make persons with disabilities and their families, and persons and agencies subject to the nondiscrimination requirement aware of rights and responsibilities under Federal laws, regulations, and court decisions, and of potential remedies and compliance procedures when a violation is alleged. Independent living centers, consumer and parent organizations, service providers, information and referral services, and advocacy agencies should also be encouraged to make such information available. Congress should support additional advocacy services to implement the law by expanding the function of existing developmental disabilities Protection and Advocacy Systems to authorize them to serve persons with all types of physical and mental disabilities and by providing seed money for legal representation to Independent Living Centers and other agencies (perhaps with funds obtained from fines paid by violators of the equal opportunity law). The allowance of reasonable attorneys fees would track other types of nondiscrimination laws that provide for court awards of

reasonable attorneys fees to complainants who successfully prove
that they have been the victims of illegal discrimination.

REFERENCES

American Coalition of Citizens with Disabilities. (1985). Statement for the record by the American Coalition of Citizens with Disabilities regarding expanded protection against employment discrimination for handicapped individuals. (presented to the Subcommittee on Employment Opportunities of the Committee on Education and Labor, U.S. House of Representatives, 99th Congress, June 6, 1985).

Baker, L. D., & Karol, C. (1978). Employee insurance benefit plans and discrimination on the basis of handicap. DePaul Law Review, 27, 1013.

Berkeley Planning Associates. (1982). A study of accommodations provided to handicapped employees by Federal contractors: Final report. (prepared under a U.S. Department of Labor, Employment Standards Administration contract) 1.

Burgdorf, R. L., & Bell, C. G. (1984). Eliminating discrimination against physically and mentally handicapped persons: A statutory blueprint. Mental and Physical Disability Law Reporter, 8(1), 64-75.

Carter, J. (1980). President's remarks at the annual meeting of the President's Committee on Employment of the Handicapped. Public Papers of the President: Administration of Jimmy Carter, 1980, p. 808.

Du Pont de Nemours and Company, E. I. (1982). Equal to the Task: 1981 du Pont Survey of Employment of the Handicapped. Wilmington DE.

Ellner, J. R., & Bender, H. E. (1980). Hiring the Handicapped. AMACOM.

Gatty, B. (1981, August). Business finds profit in hiring the disabled. Nation's Business. pp. 30-35.

General Accounting Office. (1980). Comptroller General's Report to the Subcommittee on the Handicapped, Senate Committee on Labor and Human Resources: How Federal Developmental Disabilities Programs Are Working. Washington, DC.

Henney, L., & Alldredge. (1980). Protection and Advocacy in the U.S. - The First Two Years. Institute for Comprehensive Planning.

Jones, N. L. (1985). Judicial Decisions Discussing "Program or Activity Receiving Federal Funds" Under Section 504 of the Rehabilitation Act Before and After Grove City College v. Bell. Washington, DC: Congressional Research Service, The Library of Congress.

Jones, N. L. (1985). Overview of Major Legal Issues Under Section 504 of the Rehabilitation Act of 1973. Washington, DC: Congressional Research Service, The Library of Congress.

Jones, N. L. (1985). Proposed Coverage of Handicapped Persons By Title VII of the Civil Rights Act: An Analysis of H.R. 370. Washington, DC: Congressional Research Service, The Library of Congress.

Morgan, M. (1976, May). Beyond disability: A broader definition of architectural barriers. AIA Journal. p. 50.

Note, Accommodating the handicapped: The meaning of discrimination under Section 504 of the Rehabilitation Act. (1980). New York University Law Review, 55, 881.

Pecht, A. M. (1982). Amending Title VII to prohibit employment discrimination on the basis of handicap. (Unpublished Paper).

Reagan, R. (1982). Memorandum to the Attorney General, April 30, 1982. Washington, DC.

Reagan, R. (1983) National Decade of Disabled Persons: Proclamation 5131. Presidential Documents. 19, 1621-1622.

Task Panel on Legal and Ethical Issues of the President's Commission on Mental Health. (1978). Mental health and human rights: Report of the Task Panel on Legal and Ethical Issues. Arizona Law Review. 20, 133.

Ten Broek, J. & Matson, F. (1966). The disabled and the law of welfare. California Law Review. 54, 809.

U.S. Commission on Civil Rights. (1983). Accommodating the Spectrum of Individual Abilities. Washington, DC.

Wegner, J. W. (1984). The antidiscrimination model reconsidered: Ensuring equal opportunity without respect to handicap under Section 504 of the Rehabilitation Act of 1973. Cornell Law Review. 69, 401.

SYNOPSIS OF RELEVANT CIVIL RIGHTS LAWS

THE CIVIL RIGHTS ACT OF 1964

Title II -- Public Accommodations

42 U.S.C. Sec. 2000a

- Prohibits discrimination on the basis of race, color, religion and national origin
- Covers establishments affecting interstate commerce or those supported by State action

Examples: inns, hotels, motels, restaurants, cafeterias, lunch counters, theaters, movie houses, sports arenas, and concert halls.

Exempts: private clubs.

Title VI -- Federal Financial Assistance

42 U.S.C. Sec. 2000d

- Prohibits discrimination, exclusion or denial of benefits on the basis of race, color, or national origin
- Covers any program or activity receiving Federal financial assistance

Prohibition is repeated in regulations governing Federally assisted programs administered by the Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, Interior, Justice, Labor, State, and Transportation.

Title VII -- Employment

42 U.S.C. Sec. 2000e

- Prohibits discrimination in employment practices on the basis of race, color, religion, sex, or national origin
- Covers employers engaged in industry affecting commerce with 15 or more employees, labor organizations, employment agencies, joint labor-management apprenticeship or training programs

Examples: failing or refusing to hire or discharging someone because of discrimination on a prohibited basis; limiting, segregating, or classifying an employee in such a way that would deprive or tend to deprive him or her of an employment opportunity or adversely affect one's status as an employee

THE CIVIL RIGHTS ACT OF 1968

Title VIII -- Fair Housing

42 U.S.C. Sec. 3601

- Prohibits discrimination on the basis of race, color, religion, sex, or national origin
- Covers the sale or rental of housing

Examples: based on membership in a covered class, it is illegal to refuse to sell, rent or negotiate; run an ad expressing a preference or limitation; represent a dwelling is not available; or, induce or attempt to induce, for profit, a sale or rental by making representations about entry or prospective entry into a neighborhood

Exempts: religious organizations, private clubs, private homes sold or rented by owner, and dwellings of four units or fewer if owner lives on premises

THE EDUCATION AMENDMENTS OF 1972

Title IX - Sex Discrimination in Education 20 U.S.C. Sec. 1681

- Prohibits exclusion, denial of benefits or discrimination on the basis of sex
- Covers any education program or activity receiving Federal financial assistance

Exempts: religious institutions, fraternal organizations, some traditionally single sex schools, to name a few

AGE DISCRIMINATION

Age Discrimination in Employment Act

29 U.S.C. Sec. 623

- Prohibits discrimination in employment practices on the basis of age
- Covers any person or entity governed by Title VII

Exceptions: age as a bona fide occupational qualification; bona fide seniority systems; retirement, pension or insurance plans

CIVIL RIGHTS RESTORATION ACT

- Prohibits discrimination in any program or activity of an entity or institution receiving any Federal funds
- defines the term "program or activity" to mean all of the operations of an entity any part of which is receiving Federal financial assistance
- restores the broad scope of coverage and interpretation of statutes affected by the Supreme Court's decision in Grove City College v. Bell

Affected statutes: The Civil Rights Act of 1964; Title IX of the Education Amendments of 1972;; Section 504 of the Rehabilitation Act of 1973; and, the Age Discrimination Act of 1975

Exceptions: (1) The Act does not require any entity receiving Federal funds to perform or pay for an abortion.
(2) A person with a contagious disease or infection who constitutes a direct threat to the health and safety of others or who is unable to perform the duties of a job because of the contagious disease or infection is not covered by Sections 503 and 504 of the Rehabilitation Act as they relate to employment.

DISABILITY NONDISCRIMINATION LAWS

Education for All Handicapped Children Act Public Law 94-142
(amendments to the Education of the Handicapped Act, 20 U.S.C.
Sec. 1401)

- Authorizes Federal grants to State and local education agencies for special education services in accordance with a detailed funding formula
- As a precondition to funding under the Act, it requires States to have in effect "a policy that assures all handicapped children the right to a free appropriate public education"
- Requires the submission of a State plan that describes the goals, programs, and timetables under which each State intends to educate handicapped children within its borders
- Establishes extensive requirements for providing a free appropriate public education, including the following:
 - o Identifying handicapped children
 - o Individualized education programs
 - o Nondiscriminatory testing
 - o Procedural safeguards
 - o Least restrictive environment
 - o Periodic reviews

REHABILITATION ACT OF 1973, as amended 29 U.S.C. Sec. 701

Section 504 29 U.S.C. Sec. 794

- Prohibits discrimination solely on the basis of handicap against otherwise qualified handicapped individuals
- Covers any program or activity receiving Federal financial assistance or conducted by any Executive agency or the Postal Service
- Initial regulations under this Act were issued by the Department of Health, Education, and Welfare in 1976; regulations governing recipients of Federal financial assistance are issued by the individual granting agencies; Executive agencies are also required to have regulations governing programs and activities they conduct themselves

Section 503

29 U.S.C. Sec. 793

- requires affirmative action to employ and advance qualified handicapped individuals
- covers businesses with Federal contracts of \$2,500 or more
- enforced by the Office of Federal Contract Compliance Programs (OFCCP) of the Department of Labor

Section 501

29 U.S.C. Sec. 791

- requires the establishment of an affirmative action plan to encourage the hiring, placement, and promotion of handicapped individuals
- applies to all Federal departments and agencies and the United States Postal Service
- enforced by the Equal Employment Opportunity Commission

STATISTICAL INFORMATION

and

HARRIS POLL RESULTS

Recent Data and Trends

Accurate statistical data in the area of disability are imperative for policy-makers and others. As reported in *Toward Independence*, existing studies have been fraught with problems. Since the publication of *Toward Independence*, however, a number of significant studies have been conducted.

The Census Bureau issued an important study of functional limitations in December 1986. Entitled "Disability, Functional Limitation, and Health Insurance Coverage: 1984/85," the report presents data drawn from the Bureau's Survey of Income and Program Participation, conducted in May through August of 1984.

In the report, researchers found that one out of five non-institutionalized residents aged 15 and over—some 37.3 million persons—has difficulty performing one or more basic physical activities. The activities included seeing, hearing, speaking, walking, using stairs, lifting or carrying, getting around outside, getting around inside, and getting into or out of bed. Some 13.5 million persons said that they not only had difficulty, but could not perform the activity specified or could not do it without help.

Among the findings of the study:

- ☐ Some 12.8 million people, or 7.1 percent of the population studied, had trouble seeing words and letters in ordinary newsprint, even with glasses or contact lenses. Approximately 1.7 million could not see words and letters at all.
- ☐ About 7.7 million people had trouble hearing a normal conversation, and 500,000 were unable to hear such a conversation.
- ☐ Some 2.5 million people had a problem having their speech understood by others.
- ☐ About 19.2 million people had difficulty walking a quarter of a mile, including 8 million who reported that they were unable to walk that far.
- ☐ Some 18.1 million people had trouble walking up a flight of stairs without resting, and 5.2 million could not do so on their own.
- ☐ About 18.2 million persons had trouble lifting or carrying something as heavy as a full bag of groceries, and 17.8 million of them could not do so.
- ☐ Some 6 million individuals had trouble getting around outside the home, and 3.6 million of them could not do so on their own.

- ❑ Approximately 2.5 million people had trouble getting around inside the home, and 1.2 million were unable to do so without help.
- ❑ Some 2.1 million people had difficulty getting into or out of bed, and 1.2 million of them could not do so on their own.
- ❑ Of those who had trouble performing at least one function, 21.8 million were under age 65 and 15.5 million were 65 and over. The totals for those completely unable to perform an activity or who needed help were 6 million under age 65 and 7.5 million 65 and over.

One of the data sources employed in the development of *Toward Independence* was the *Digest of Data on Persons with Disabilities*, prepared by Mathematica Policy Research, Inc. under contract to the Congressional Research Service of the Library of Congress. The information in the *Digest* has been supplemented by two reports prepared by the Human Services Research Institute and issued by the National Institute on Disability and Rehabilitation Research. *The Summary of Data on Handicapped Children and Youth* (1985) compiles data from various sources regarding the incidence and prevalence of disability in children.

Among the statistical highlights contained in the report are estimates that 4.2 percent of all children under age twenty-one have a chronic activity limitation, and that about one-fourth of 1 percent of children under age seventeen need help in activities such as walking, going outside, dressing, eating and using the toilet. The *Compilation of Statistical Sources on Adult Disability* (1986) provides a bibliography containing profiles of major national data files. It is designed to serve as a reference for researchers, administrators, and practitioners looking for statistical information on adult impairments. The *Compilation* describes thirty data files, some of which contain two or more related surveys.

Several publications have made projections regarding the population with disabilities. These include two publications of the Menninger Foundation, *A Population Model of Working Age Disabled Individuals* (1985) and *The Relationship Between Age and Physical Disability Among Workers: Implications for the Future* (1986), and a book chapter by H.R. Vachon, III, entitled "Inventing a Future for Individuals with Work Disabilities" (1986). All three sources provide estimates of the size and characteristics of the population with disabilities through the year 2000 and beyond. Among a variety of other observations and findings, these publications verify two major premises of *Toward Independence*—that disabilities correlate with aging, and that the proportion of the

population with disabilities will increase significantly during the next several decades.

Harris Polls

Clearly, the two Harris poll studies initiated by the Council also made important and unique contributions to the disability community. The idea for the first Harris poll evolved during the initial phases of *Toward Independence*. Several Council members expressed frustration at the lack of adequate data regarding the status, needs, and opinions of Americans with disabilities. One Council member suggested a nationwide survey of persons with disabilities.

A short time later, working in conjunction with the Council, the International Center for the Disabled commissioned such a study from the well-known survey research firm of Louis Harris and Associates. The survey, entitled "Bringing Disabled Americans into the Main-stream," was the first major national survey to study the attitudes and experiences of people with disabilities. As the Harris agency correctly acknowledges:

Census Bureau and other government agencies have measured the incidence and prevalence of disability in the general population, and the number of disabled people in and out of the labor force...But no substantial nationwide survey has sought to learn the impact of disability; what disabled people think about being disabled; and what they think must be done to enable them to participate fully in the life of the nation (p.1).

The Council decided that it needed to know the answers to such questions before it could address the needs of disabled persons and effectively set disability policy in America.

Sample

One unique aspect of the Harris poll was its use of a nationwide random sample. Harris researchers telephoned 12,500 households to obtain 1,000 respondents who met at least one of the definitional criteria (which will be discussed in the next section). The sample represented non-institutionalized disabled persons aged sixteen and over who lived in households with telephones. When a disabled person was unavailable for an interview, or unable to be interviewed, a proxy was chosen as the respondent. About seventeen percent of the interviews were conducted with proxies.

Issue of Definition

Toward Independence points out that the issue of defining disability is

not simple. "Most existing studies of the disabled population employ one of two major approaches, each of which has its own shortcomings and limitations" (p.3). The health conditions approach stresses conditions or limitations which impair health or interfere with normal functioning. This approach is best exemplified in surveys conducted by the National Center for Health Statistics. On the other hand, the work disability approach focuses on factors that prevent individuals from working or limit their ability to work. Data collected by the Social Security Administration exemplify this type of definitional approach.

Knowing the limitations of these approaches, Harris sought to solve the problem by using a third approach. For purposes of the Harris survey, a person was defined as being disabled if:

- ☐ He or she had a disability or health problem that prevented them from participating fully in work, school, or other activities.
- ☐ He or she said that he or she had a physical disability, a seeing, a hearing, or speech impairment, an emotional or mental disability, or a learning disability.
- ☐ He or she considered himself or herself disabled, or said that other people would consider him or her disabled. (p. iii)

In a Council report on the Federal Government implications of the Harris survey (to be published in 1988), strong support was given to the application of this approach:

The Harris...approach should be considered as a starting point or conceptual model in the development by Federal agencies of more adequate instruments and studies... In particular, the Bureau of Census should consider the definitional approach in the Harris survey for reformulating questions on disability for the decennial Census...."

Numbers and Types of People with Disabilities

Another issue discussed in *Toward Independence* was the number of people with disabilities in the U.S. Various estimates place the number between twenty million and fifty million, with thirty-five or thirty-six million being the most commonly used figures. Based on the Harris data, it was estimated that the incidence of disability was 15 percent and that the number of Americans aged sixteen and over was between twenty-seven and twenty-eight million (p.123). Although the Harris survey did not use people under age sixteen in the survey, it found the overall incidence for this group to be 1.5 percent or about three million. This figure is drastically lower than other estimates of the number

of children with disabilities, and appears to reflect an undercount. According to the Harris figures, the disabled population is between thirty and thirty-one million. When the number of disabled persons in institutions is considered, along with those in households without telephones or in households in which Telecommunication Devices for the Deaf are used exclusively, and when the undercount of children with disabilities is considered, the figure of thirty-five or thirty-six million is roughly validated.

Another complex question to answer, and one that is somewhat dependent on which definitional approach is selected, relates to the types of disabilities. *Toward Independence* provided data with a variety of classifications and categories from such sources as the National Center for Health Statistics, the National Institute of Mental Health, and the Office of Special Education and Rehabilitative Services.

Harris data revealed that 44 percent of respondents stated that they had a physical disability, 13 percent had sensory impairments (visual, hearing, speech, and/or language), 6 percent had a mental disability (mental retardation or mental illness), and 32 percent had other serious health impairments (heart disease, respiratory disease, etc.) Thirty-two percent of the Harris sample considered themselves multiply disabled, while the remainder did not. Finally, with regard to the severity of disability, 45 percent considered themselves to be slightly or moderately disabled and 52 percent considered themselves to be somewhat or very severely disabled.

Age

Based on Census data, *Toward Independence* confirmed what many have observed: the incidence of disability increases dramatically with age. Harris data showed that "58 percent of people with disabilities were 55 years of age or older, and 71 percent were 45 or older. In contrast, only 16 percent of disabled people were between the ages of 16 and 34. Twelve percent were in the 35-44 age range" (p.15).

Income

Numerous studies have confirmed the correlation between disability and poverty. *Toward Independence* drew from 1980 Census figures on income levels of those with work disabilities. Some 20.1 percent of the persons reporting a work disability had family incomes below the poverty threshold. That figure was more than double the 1980 Census rate of 9.1 percent for the general population.

The Harris survey confirmed the great disparity between the incomes of those with disabilities and those in the general population. According to Harris, half of all disabled persons surveyed had incomes

of \$15,000 or less. Among non-disabled Americans, just over a quarter had incomes in that bracket.

Harris highlights the alarming rate of poverty among older disabled persons. "Fully one in three (32%) of disabled persons aged 65 and over report a household income of \$7,500 or less. Six out of ten elderly disabled persons report a household income of \$15,000 or less" (p.23).

Poverty also correlates with severity of disability. Using the Harris definition of disability, both those who are the most severely disabled and those who stated that their activities are the most limited have the lowest family incomes.

Education

The Harris poll examined the education levels of persons with disabilities. "Forty percent of all disabled persons aged 16 and over did not finish high school. This proportion is nearly three times higher than in the non-disabled population, where only 15% of adults aged 18 and over have less than a high school education" (p. 23).

Future studies are needed to determine of the impact of the Education of All Handicapped Children Act, Public Law 94-142. As the Harris report comments: "These data provide no measure of the impact of the Education Act of 1975 [sic], since only a small minority of the sample were educated since its passage" (p. 88). Thus, at the urging of the Council, a third Harris poll surveying parents of children with disabilities, disabled children themselves, and educators, is being conducted and will be released in 1988 (see also "Educating Children with Disabilities").

Statistics from the first poll on college education, although not surprising, are also disconcerting. Only 29 percent of disabled persons have had some college or at least a four-year degree, compared with 48 percent of the non-disabled population.

Employment

Census figures on individuals with work disabilities used in *Toward Independence* revealed that only 32 percent of working age persons with disabilities had jobs at the time of the 1980 Census (p.22). Data from the first Harris poll confirmed those figures. The chapter describing the employment status of disabled persons was entitled "Working or Not Working: The Great Divide." The Harris report remarks:

Not working is perhaps the truest definition of what it means to be disabled in this country. Two-thirds of all disabled Americans between age 16 and 64 are not working. Only one in four work full-time, and another 10% work

part-time. No other demographic group under 65 of any size has such a small proportion working. (p.47)

Even though the number of persons with disabilities not working is so large, one optimistic finding is that of the persons with disabilities who are not working, two-thirds say that they would like to work. As the Harris report declares, "This finding— that most non-working persons want to work— is one of the most important and challenging findings in the survey. The challenge is how society can effect policies and programs which will bring these people into the working mainstream" (p.50).

Barriers preventing the employment of persons with disabilities are significant. When asked by Harris to comment on barriers respondents identified being limited by their own disabilities or their need for medical treatment and therapy. They also mentioned employers' attitudes, lack of appropriate jobs, insufficient education and training, lack of accessible transportation, and lack of necessary equipment or devices.

Based on data from the first Harris poll, and the conclusion that the employment picture needed more in-depth study, a second Harris poll was conducted which focused on employers' perceptions of disabled employees. Although this second study is discussed more fully in the Employment topic paper, a few relevant points are summarized here to supplement the overall status of employment of persons with disabilities.

Disabled employees received very high marks from employers. "Overwhelming majorities of managers give disabled employees a good or excellent rating on their overall job performance" (p.7). The myth that the cost involved in hiring disabled people is high was dispelled by a 75 percent majority of managers who said that the average cost of hiring a disabled person is about the same as the cost of employing a non-disabled person (p.9).

Managers appear to be aware of the discrimination faced by disabled employees. "A three-fourths majority of managers feel that disabled people often encounter discrimination from employers" (p.12).

Although the study portrays disabled persons as being a strong, untapped resource, it also points out that the employment of disabled persons is not likely to increase because:

- ☐ Most managers think their company is already doing enough to employ disabled people and should not make greater efforts to do so.
- ☐ Most employers believe that the shortage of disabled job appli-

cants with appropriate qualifications is a major barrier to their employing of more disabled people.

- ☐ Employers give the hiring of disabled people a lower priority than the hiring of people from minority groups and the elderly. And disabled people are the least likely to be viewed as an excellent source of employees. (p.16)

Harris concludes that efforts to increase the employment of disabled people will require an increase in the number of qualified job applicants and employers giving the hiring of disabled persons a higher priority (p.16).

Social Life and Leisure

The Harris survey provided important new data regarding the limited independence of people with disabilities in regard to social life and leisure experiences. Harris researchers included questions on social life and leisure patterns for which they had comparable data on the non-disabled population. They discovered a group of people who are extremely isolated and simply do not get out and pursue as many activities as non-disabled persons.

Over half of those surveyed said that their disability prevents them from getting around, attending cultural or sports events, or socializing with friends outside their home as much as they would like. The more severely disabled the individual, the more these statistics increase. Almost 80 percent of very severely disabled persons do not get around in the ways mentioned.

Harris researchers found significantly lower participation rates among disabled persons for specific activities:

- ☐ Nearly two-thirds of all disabled Americans never went to a movie in the past year. In the full adult population, only 22% said that they had not gone to a movie in the past year.
- ☐ Three-fourths of all disabled persons did not see live theater or a live music performance in the past year. Among all adults, about 4 out of 10 had not done so.
- ☐ Two-thirds of all disabled persons never went to a sports event in the past year, compared to 50% of all adults.
- ☐ Disabled people are three times more likely than are non-disabled people to never eat in restaurants. Only 34 percent of disabled people eat at a restaurant once a week or more, compared to 58% majority of non-disabled people. (p.3)

Traditional leisure pursuits are not the only activities limited for

disabled persons. Those social activities associated with daily living and community life are also affected. For example, 13 percent of disabled persons never go to a grocery store, compared to 2 percent of the general public (p.3). Only 36 percent of disabled persons participate actively in community, religious, volunteer or recreational groups, as compared to 60 percent of non-disabled persons.

Because of the isolated and non-participatory status of persons with disabilities in leisure activities, it is clear that this area is one that merits further investigation and policy development. The complex interactions between leisure and schooling, leisure and work, and leisure and health also need to be examined.

Emerging Political Constituency

Disabled voters have gained increasing attention from candidates. Most recently, efforts are being made to make polling places accessible to persons with disabilities. Of course, these efforts have even more importance in 1988, a Presidential election year.

The Harris researchers explored the degree to which persons with disabilities felt a common unity. An overwhelming majority, 75 percent, of Americans with disabilities reported that they felt some sense of common identity with other people with disabilities (p.110). Furthermore, the Harris report notes, "the strength of identification varies little among disabled people of all ages, those who have been disabled all or only part of their lives, and among those who are moderately or severely disabled" (p.110).

In analyzing this phenomenon, the Harris report remarks:

These results show clear signs of an emerging group consciousness. Many other findings in the survey indicate that most disabled person view their disability as their own problem. But these attitudinal data suggest that the common experience of not working and facing limitations in physical and social activities, affects how disabled persons relate to, and perceive, other disabled people. (p.110)

In a Council report on the Federal policy implications of the Harris poll, further analysis is offered: "...[P]ersons with disabilities are an emerging political constituency whose views and objectives will become an increasingly important aspect of American politics and program administration" (p.24).

Endorsement of Nondiscrimination Law

A central theme of *Toward Independence* was the enactment of a comprehensive law requiring equal opportunity for persons with disabilities. As an emerging political constituency, the views of people with

disabilities regarding such a law are important. The Harris survey found strong support for legal protection against discrimination on the basis of disability:

When it comes to how disabled persons should be treated under the law, a near consensus emerges. Three out of every four (75%) disabled persons believe that civil rights laws that protect minorities against discrimination should also protect them. (p.112)

It is also clear from the survey that disabled Americans strongly endorse efforts by the Federal Government to enhance the lives of persons with disabilities. "A two-thirds majority of disabled Americans think that federal laws passed since the late 1960's to give better opportunities to disabled Americans have helped a great deal or somewhat" (p.1).

Disabled Americans are not alone in their belief that they should be protected from discrimination by law. All four manager groups in the second Harris poll on employment were asked if the civil rights laws that cover minorities against discrimination should also cover disabled persons. "Majorities of top managers, EEO managers, line managers, and small business managers think they should" (p.25). Both Harris polls have demonstrated support for equal opportunity legislation that would protect people with disabilities from discrimination.

PRESS CLIPPINGS
REGARDING THE AMERICANS WITH DISABILITIES ACT

THURSDAY

FEBRUARY 11, 1988

THE



SUN

VOL. 302 NO. 75

BALTIMORE, MARYLAND

IN THE NATION

Stern was being retained as a special outside counsel "to represent the Office of Independent Counsel in the course of any courtroom proceedings which may challenge a possible prosecution because of limited immunity grants by Congress."

A number of witnesses, including several targets of Mr. Walsh's investigation, gave testimony before Congress under limited grants of immunity from prosecution. These targets include retired Rear Adm. John M. Poindexter, who is a former national security adviser, Lt. Col. Oliver L. North and an arms dealer, Albert A. Hakim. Mr. Walsh carefully insulated his staff from news coverage of the congressional hearings and filed under court seal evidence his investigation turned up to prove he was not relying on testimony given under limited immunity grants.

Court action challenging this procedure is expected.

THE HANDICAPPED

National council drafting broad equal rights bill

The National Council on the Handicapped said yesterday it was

developing a comprehensive federal bill that would guarantee equal rights protection for people with disabilities. Members said they hope it will be introduced in Congress this year.

The bill, patterned after similar legislation for women and minorities, would be a major step toward ending discrimination against handicapped people, said A. Kent Waldrep Jr., a member of the council. "It should have been passed back in the '60s and early '70s when we were undergoing civil rights legislation," he said.

The council, appointed by President Reagan in 1984 to make recommendations that would improve conditions for the handicapped, also released a report detailing the progress of 45 legislative proposals it made to Congress in 1986. The report found that 80 percent of its recommendations have been acted on "to some degree."

The report, called "On the Threshold of Independence," included among the gains the development of an early-intervention program for infants, changes in Social Security legislation that had discouraged the handicapped from seeking employment, plans for community grants for disease prevention, tax incentives for employers who hire the disabled, and passage of the Air Carrier Access Act of 1986.

From Staff and Wire Reports

CURRENTS

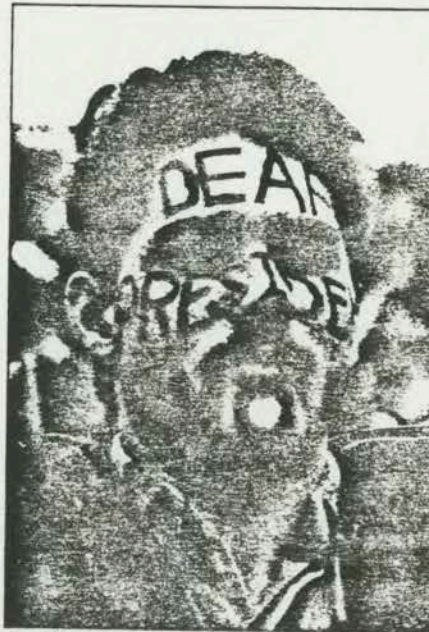


DISABILITY RIGHTS

A cry from the deaf is heard in Washington

■ Gallaudet University in Washington, D.C., is often called "the Harvard of deaf people"—a tribute to its academic excellence and long tradition of turning out role models for people who are deaf. But last week, when the school's search for a new president passed up two hearing-impaired candidates, student protesters defiantly shut down the campus of red-brick buildings 1 mile from the U.S. Capitol. After four days of demonstrations, the new president, Elisabeth Ann Zinser, called it quits, and the school's trustees began looking again for an administrator, most likely a deaf one, in her stead. Why the push for a hearing-impaired president at a school that had never had one before in its 124-year history?

The calls for a deaf president sprang from a growing militancy by people with disabilities. At issue for protesters at Gallaudet was a feeling that the trustees had, in effect, decided that a deaf person was not capable of running the school. Some students angrily contended that the chairman of the school's board of



Students at Gallaudet University use two kinds of signing to advertise their demand for a hearing-impaired school president

trustees, Jane Bassett Spilman, had told them, "Deaf people are not ready to function in a hearing world." Spilman, with a long record of work in the deaf community, vigorously denied making the statement, which she attributed to a misunderstanding during a conversation through interpreters. Nevertheless, the dispute showed students' simmering re-

sentment of what they called the "paternalistic" attitude of the school's trustees, only a minority of whom are themselves deaf. "We need a role model for the deaf now," declared protest leader John Limnidis, "to show that the deaf can do it."

The pressure on Gallaudet—ranked No. 1 among Eastern liberal-arts schools in *U.S. News's* 1987 college survey and the only liberal-arts college in the world for deaf people—came not only from unhappy students but from deaf people around the country, most of the faculty and key legislators as well. Some 75 percent of the college's funds are appropriated by Congress. The resignation of Zinser, an educator from the University of North Carolina at Greensboro, did not end the protests. Students vowed to stay on campus over spring break to press for the removal of Spilman and for the appointment of a majority of hearing-impaired persons to the board of trustees.

The fight of the students cheered activists for disabled groups across the U.S. "It's an example of what we all want—to end paternalism," said Mark Johnson of American Disabled for Accessible Public Transportation (ADAPT). Members of ADAPT were planning a protest of their own in Washington this week—pledging to get themselves arrested for blocking traffic to underscore their demand that all public transit be made accessible to wheelchair users.

More and more, disabled people have

CURRENTS

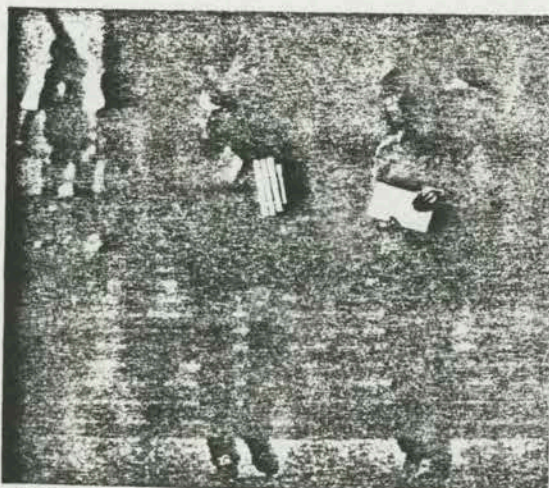
come to see their problems as one of civil rights. A recent poll conducted for two disability groups found that 45 percent of disabled Americans identify themselves as members of an oppressed minority. In fact, even the politically conservative members of the National Council on the Handicapped—all Reagan appointees—have drafted a wide-reaching bill to expand the rights of the disabled. That measure has become a rallying point for disabled groups. They see prejudice against people with disabilities—whether it's buildings made inaccessible or being turned away at a restaurant—as a bigger obstacle than their physical disabilities. Gallaudet students were quick to pick up on the parallels to the civil-rights struggles of blacks in the 1960s. As graduate student Kathy Karcher told students at a protest: "This is the Selma of the deaf."

CHINA

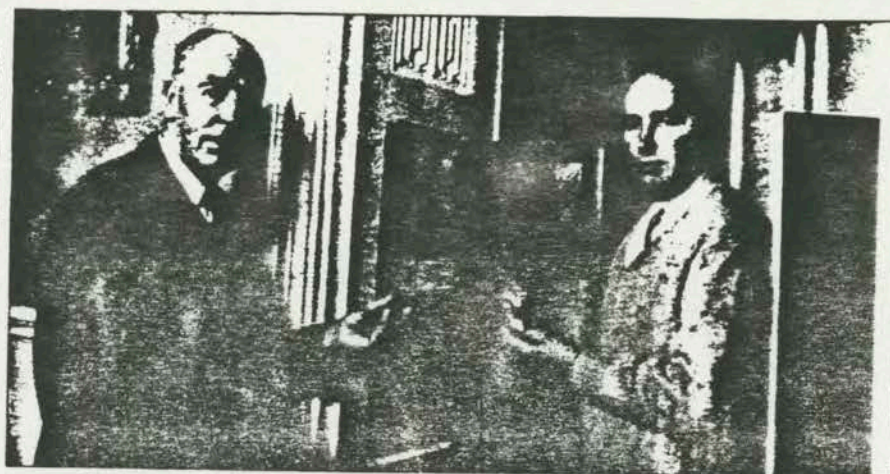
Beijing battles the brain drain

China has been losing some of its best young brains to the United States. Now it is setting out to stanch the drain by cutting back the number of students worldwide, diverting students from the U.S. to other countries and putting time limits on graduate study.

Of the 36,000 students who have come to the U.S. since China opened its doors, only a quarter have returned to China. Nobody knows how many of 27,000 who remain in the U.S. today have decided to stay indefinitely; two thirds of them are in the sciences and engineering, and many are enrolled in doctoral programs that can stretch out for years. This spring will be a key testing time since the first big batch of Ph.D. candidates is due



A shortened leash: Two Chinese students stroll on the University of Washington campus



Retired butler with present Lord Carnarvon at cupboard housing artifacts

to graduate. But China is no longer prepared to give them the benefit of scholarly doubt. It has stopped renewing passports for those who have already spent four or five years working on Ph.D.'s and has ruled out postdoctoral research jobs.

Beijing has also set a new, low cap of 3,000 a year on the number of students it will finance abroad. Only 20 percent, or 600, will be assigned to the U.S., compared with 7,000 government-supported students who are here now. Half will go to Europe, 20 percent to Australia and New Zealand and 10 percent to Japan. Students with government grants return to China at a higher rate than privately financed ones. Half of the 40,000 degree candidates China has sponsored over the past 17 years are now safely back home.

In another measure to discourage overstayers, Beijing is refusing visas for spouses and children to accompany students abroad. This kind of hostage holding is a well-tried technique of Communist societies. China has refined it by insisting that students going abroad sign a pledge to return at a fixed time and also nominate a colleague who will be punished or fined if the student absconds. In Shanghai, one fine was set at 20 years' earnings.

Chinese students in the U.S. plan to draft a protest letter to party boss Zhao Ziyang; they are wishfully expecting 10,000 signatures. A year ago, a similar open letter denouncing Beijing's anti-democratic movement contained 1,700 names. Most were pseudonyms.

Currents contributors: Joseph P. Shapiro, Emily MacFarquhar, Miriam Horn, John Barnes, James Wallace, Ronald A. Taylor, Joseph L. Galloway, Gillian Sandford

ARCHAEOLOGY

The King Tut caper



The ancient Egyptian treasures might have remained hidden for centuries to come. Squirreled away by the late Lord Carnarvon—the man who in 1922 first opened King Tutankhamen's tomb—the 3,000-year-old artifacts

had been concealed for six decades behind a secret panel in Highclere Castle, the family estate in Hampshire, England. Yet when Lord Carnarvon's grandson did a recent inventory of the manor, he called a 75-year-old butler out of retirement to assist. The butler—silent so long—led him to the "Egyptian stuff": More than 300 objects, including jewels, vases and a wooden face of Tut's grandfather.

The discovery, revealed last week, brought swift demands from Egypt for return of the antiquities. Egypt is confident of success because of a 1924 court case denying the Carnarvon claim to artifacts taken from Tut's tomb. Tut's treasure, now in the Egyptian Museum in Cairo, dazzled Americans when it toured the U.S. in the late '70s.

In 1924, the Carnarvon family, angered by the verdict, vowed never again to mention ancient Egypt in the halls of Highclere Castle. The nannies believed the family was afraid of reawakening the curse of the Pharaohs—a curse the superstitious said caused Lord Carnarvon's death just months after he entered Tut's tomb. Doctors laid his death to blood poisoning from a shaving cut. But much was made of a blackout in Cairo at the moment he died and the early deaths of two dozen other explorers involved in the excavation. Several years ago, a French physician submitted a doctoral thesis attributing six of the deaths to an earthly cause: Severe allergic reaction to mold.

The Washington Post
A WEEKLY JOURNAL OF MEDICINE
HEALTH
SCIENCE AND SOCIETY

A New 'Common Identity' for the Disabled

By Joseph P. Shapiro

Special to The Washington Post

Jill Robinson watched the televised images of Gallaudet protesters and thought excitedly, "These students are fighting my fight."

Robinson, an Arlington attorney, is not deaf. But she uses a wheelchair and knows a lot about the barriers thrown up to people with disabilities, about the patronizing attitudes of others, about the desire to show everyone, as the Gallaudet students did, that "I can be who I am and make it in the world." The Gallaudet protest week made Robinson a "TV news junkie, flipping the channels up and down" to catch scenes—over and over—of Gallaudet students signing, en masse, for a "Deaf President Now." "It was," she says, "one of the most poignant moments of my life."

Like Robinson, millions of Americans who can't hear, see, walk or who have other impairments are coming to view themselves as members of a common minority group. A 1985 poll by Louis Harris and Associates found that 74 percent of disabled Americans say they share a "common identity" with other

Second Opinion

disabled people and 45 percent argue they are "a minority group in the same sense as are blacks and Hispanics." Taken together, people with disabilities would make up the country's largest minority. There are 37 million Americans with physical disabilities, according to the U.S. Census Bureau.

At the core of this growing collective identity is a new philosophy. Rejected is the traditional mindset that it's up to the individual to overcome his or her own physical limitation. That kind of thinking has given rise to the public's glorification of what Mary Johnson, editor of the disability rights movement's irreverent *Disability Rag*, calls "supercrises"—achievers such as Terry Fox, who ran across Canada on an artificial leg, or Jim Dickson, the blind sailor seeking to solo across the Atlantic. Extraordinary achievement is laudable, but it does not reflect the day-to-day reality of

Instead, according to the disability rights movement, it is not so much the individual that needs to change—but society. The biggest obstacle facing people with physical impairments, Johnson says, are people's prejudices about disability—whether it's a refusal to hire someone with epilepsy or a failure to make buildings accessible to people in wheelchairs. Although disability rights activists most often draw parallels to the civil rights and women's movements, Johnson says the best analogy may be with gay rights. Like homosexuals in the early 1970s, many disabled people now are rejecting the "stigma" that there is something tragic or pitiable about their condition. Johnson's magazine has even coined a slogan—"Disability Code"—the movement's equivalent of "Gay Pride" or "Black is Beautiful." Says Judy

Heumann of the World Institute on Disability: "Disability only becomes a tragedy when society fails to provide the things we need to lead our lives—jobs opportunities or barrier-free buildings, for example. It is not a tragedy to me that I'm living in a wheelchair."

So more and more frequently, disabled people are attacking discrimination. Sometimes the prejudice to be fought is crude, like that of the New Jersey private zoo owner who refused to admit children with Down syndrome to the Monkey House because, he claimed, they upset his chimpanzees. Other times, the rights at issue are not so clear-cut, as in the case of Tiffany Callo, the cerebral palsy patient fighting California welfare officials for custody of her two young sons.

Perhaps most serious is employment discrimination. According to the 1985 Harris poll, two thirds of disabled people are unemployed. Almost all of these people "want to work and can work," instead of being forced to accept welfare, says Sandra Swift Parrino of the National Council on the Handicapped. Although a disability may limit the type of work a person can do, more often, she says, companies simply don't want to hire or accommodate physically impaired workers. Syracuse

WASHINGTON POST HEALTH/MARCH 29, 1988

University economics professor William Johnson found that even when people with disabilities do hold jobs, they make less than other workers and are less likely to be promoted. Even after factors such as the possibility of a handicapped person's lack of experience or lowered productivity are taken into account, disabled men still make 15 percent less than non-disabled co-workers, according to Johnson. For women, there is a 30 percent difference.

There is no Martin Luther King or Betty Friedan of the disability rights movement. But its organizations are becoming more militant. Members of American Disabled for Accessible Public Transportation (ADAPT) use civil disobedience to lobby for transit systems to put lifts on all buses. In mid-March, 24 ADAPT members were arrested in Washington for blocking traffic after a day-long sit-in at the Department of Transportation. ADAPT argues that "para-transit"—separate vans for people with wheelchairs—amounts to a system that is "segregated" and, besides, doesn't work very well. "Black people had to fight for the right to ride at the front of the bus," says Mark Johnson, an ADAPT leader. "We're fighting for the right to get on."

Even the 13 members—all Reagan appointees—of the National Council on the Handicapped are targeting discrimination as the No. 1 problem facing people with disabilities. The council, a small independent federal agency, has drafted that most unlikely of things from the Reagan administration—a comprehensive civil rights bill. The Americans with Disabilities Act of 1986 would extend the same type of legal protection already guaranteed to blacks and women—against bias in housing and hiring, for example—to Americans with "physical or mental impairment."

Council attorney Robert Burgdorf Jr. says the legislation is necessary because the few protections that do exist—primarily Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination in activities that receive federal funding—are too narrow and "very difficult, if not impossible to enforce." Because the act is expensive and broad—it would also require new buses to be equipped with lifts and that television stations caption most of their programs and advertising for deaf people—it will attract a vast array of interest group opposition. But the bill, to be introduced next month by Senators Lowell Weicker (R-Conn.) and Tom Harkin (D-Iowa), will also serve as a rallying point for a

cross-section of disability groups. "People with epilepsy now will be advocates for the same piece of legislation as people who are deaf," says Liz Savage, assistant director for governmental affairs for the Epilepsy Foundation of America. "That has never happened before. And that's really historic."

Why the rise of a civil rights movement for the disabled now? A similar movement started briefly in 1977—when protesters seeking federal regulations staged sit-ins at Department of Health, Education and Welfare offices—but then quickly died. This time, advocates say, the movement is stronger. For one thing, hundreds of thousands of handicapped children have gone through education programs with non-disabled children since 1975, when mainstreaming was advocated by law. Says Cyndi Jones, publisher of the magazine *Mainstream*: "After 12 years of mainstreaming, the disabled feel they have a right to have jobs, to have family and to do anything else anybody else does."

Also a factor is the rise since the early 1970s of some 200 independent living centers. These nonprofit advocacy groups run by disabled people have fostered a new generation of activists. Further, disability groups gained political sophistication after they mobilized to stop efforts in the early years of the Reagan administration to cut back on federal regulations that protected handicapped individuals.

Jim Charlton of Access Living of Chicago, says Gallaudet was "a watershed in the history of the disability rights movement" that, for years to come, will be held up as "a shining example of what can be done."

Jill Robinson, however, is not so sure the victory significantly changed public attitudes. The fight over a deaf president, she says, was clear-cut. Issues such as putting lifts on buses "are more complicated." And the Gallaudet protest took place on a university campus where it did not have an impact on hearing people. The students were "clean-cut and All-American," she adds. People in wheelchairs are often "frightening" to non-disabled people. "It's easy to sympathize with a cause when you don't have to change your own behavior," says the Arlington attorney. "But to empathize, you have to change. What we need now is for everyone to change their own behavior." ■

Joseph P. Shapiro is an associate editor at U.S. News & World Report.

DISABILITY RIGHTS BILL EDGES TOWARD INTRODUCTION

The National Council on the Handicapped is working with members of Congress on comprehensive disability rights legislation that would bar disability-based bias in jobs, state services and, in one version, federally funded programs.

The Americans With Disabilities Act does not address education directly but could affect schools and colleges. The bill would set up barriers to disability bias that parallel the coverage in statutes against discrimination based on race, sex and age. It would cover discrimination in employment, housing, public accommodations, transportation and municipal operations such as education.

The bill would make it illegal to afford 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." It also would require "reasonable accommodations" to afford equal opportunity to people with disabilities: modifying services and facilities or changing criteria and practices to respond to the specific abilities of a disabled person.

One of the council's two versions of the bill also would repair the damage done to disability rights law by the U.S. Supreme Court's 1984 ruling in Grove City College v. Bell (465 U.S. 555). Grove City weakened civil rights laws such as Section 504 of the Rehabilitation Act--which outlaws disability bias in federally funded programs--by narrowing their scope to specific programs receiving federal aid, rather than whole institutions. To date, efforts by civil rights lobbyists and many members of Congress have failed to reverse Grove City.

The council is weighing two versions of its bill, one overlapping Section 504 coverage, reversing Grove City and streamlining the steps to prove bias in federally funded programs, and the other leaving Grove City up to other legislation and leaving Section 504 and its regulations undisturbed, for fear of losing a good thing. The members are likely to pick their approach next week.

Numerous Meetings "Over the past eighteen months, the Council has engaged in numerous meetings and discussions with members of Congress, congressional staff members, officers of national organizations, grassroots consumers" and others on the bill, the council said in "On the Threshold of Independence," a report it released last week that includes information on the legislation.

"The drafting of legislation is a developmental process that reflects negotiation, compromise, and continuous revision," the report says. "The Council believes, however, that the draft ... represents a significant step toward the introduction and eventual passage of such a statute."

Several lawmakers, including Sen. Thomas Harkin, D-Iowa, the chairman of the Senate Handicapped Subcommittee, have expressed their interest in legislation to broaden disability rights protections. ###

Handicapped Americans Report

including Handicapped Rights & Regulations

Vol. 11, No. 3

February 11, 1988

Page 21

- * HUD Audit Finds Unused Housing for Handicapped Funds.....Page 22
- * Legislator Pushes for Rights for Blind on Airlines.....Page 23
- * SSA Formalizes Assistance for AIDS Patients.....Page 23
- * Illinois Leads Way with Self-Sufficiency Trust.....Page 24
- * Family and Medical Leave Act Reported Favorably.....Page 26
- * Medicare-Covered Care Has Decreased Since 1984.....Page 26
- * UMTA Allocates Transit Funds for Handicapped.....Page 27

NEWS ANALYSIS

FIRST THE GOOD NEWS: of the 45 recommendations made to Congress and the administration in 1986 by the National Council on the Handicapped, 80% have been acted on to some degree. Now the bad news: progress has been minimal in areas such as housing, personal assistance and the elimination of work disincentives under the Social Security Act.

"ON THE THRESHOLD OF INDEPENDENCE," a report just released by the council, details the progress made in achieving equality for people with handicaps since its 1986 report, "Toward Independence," was released. Specific successes cited include unprecedented gains in employment opportunities for people with disabilities; passage of the Air Carrier Access Act of 1986 and the development of an early intervention program designed to serve infants with disabilities.

THE COUNCIL, AN INDEPENDENT federal agency charged with addressing, analyzing and making recommendations on issues of public policy that affect people with disabilities, believes that while some doors to opportunity have been opened, some still remain firmly shut. "... the significant progress that has been made does not obscure the fact that many of the major recommendations have not yet been addressed or addressed only partially," says the report.

THE REPORT ASSESSES PROGRESS made in each of 10 topic areas: equal opportunity laws; employment, disincentives to work under Social Security laws; prevention of disabilities; transportation; housing; community-based services for independent living; educating children with disabilities; personal assistance; and coordination. Progress in some areas has been strong; in others, weak.

BUT THE BIGGEST STEP is yet to come. In 1986 the council called for passage of a comprehensive equal opportunity law prohibiting discrimination on the basis of handicap. Since such a law was not brought up in '86 or '87, the agency is once again urging its adoption. The council has even gone so far as to draft a proposed bill called "The Americans with Disabilities Act of 1988." The draft, included in the council's report, would define terms and specifically prohibit various forms of discrimination. Already the concept has piqued the interest of a number of legislators, say council members.

FOR MORE INFORMATION on the report, contact the council at (202) 267-3846.

Leonard A. Elserer
Publisher

Kimberly M. Scott
Editor

Handicapped Americans Report (ISSN 0191-6734), published biweekly. Subscription rate: \$185 per year plus first-class or air-mail postage. Subscribers in U.S., Canada and Mexico, add \$5.72; subscribers in all other countries, add \$25. Six-month and multiple-year rates available on request. Reproduction in any form prohibited without express permission from the publisher. POSTMASTER: Send address changes to Business Publishers, Inc., 951 Pershing Dr., Silver Spring, MD 20910-4464. Phone: (301) 587-6300. Copyright Business Publishers, Inc. 1988

a0728

r w

AM-Handicapped Progress, 270

Disabled Have Made Unprecedented Gains, Group Reports

WASHINGTON (AP) -- Disabled Americans have made unprecedented gains on the employment front since 1986, but progress in housing and other areas has been minimal, the National Council on the Handicapped said Wednesday.

In a report to Congress and President Reagan, the group said at least partial action has been taken on 80 percent of the 45 recommendations it made two years ago in a report called "Toward Independence."

The latest report, "On the Threshold of Independence," cites specific successes including broadened employment opportunities, a new federal program for infants with disabilities, and new government requirements that airline service be accessible to the handicapped.

But Sandra Swift Parrino, chairwoman of the group, said in a statement that the significant progress "does not obscure the fact that many of the major recommendations have not yet been addressed or addressed only partially."

She said there has been scant progress in meeting the needs of the handicapped for housing and personal assistance from readers, interpreters and attendants. In addition, she said, Congress has not yet eliminated work disincentives for the handicapped that exist under the Social Security system.

The council said its top priority is legislation called the "Americans With Disabilities Act," putting into law the major equal opportunity recommendations that appeared in its first report.

"The council remains committed to passage of its comprehensive equal opportunity proposal as an essential prerequisite to equality and independence for persons with disabilities," the report said.

The council is an independent federal agency with 15 members appointed by the president and confirmed by the Senate. Congress mandated the progress report.

AP-NY-02-10-88 1935EST

HANDICAPPED

WED FEB 10 1988



Vocational/Developmental **REHABILITATION REVIEW**

A weekly analysis of issues for rehabilitation facility professionals

March 14, 1988 • Volume 5 No.10

National Council on the Handicapped Reviews Legislative Progress

The National Council on the Handicapped has recently released a report to the President and the Congress assessing the current legislative status of Americans with disabilities. The Council concludes that people with disabilities are "on the threshold of independence," with some of the doors to opportunity open, some ajar, and some still firmly shut.

Entitled *On the Threshold of Independence*, the Congressionally mandated report describes progress made toward implementing 45 recommendations first presented in the Council's 1986 report, *Toward Independence*.

The Council announced that 86 percent of its recommendations have been acted upon to some degree. As Council Chairperson Sandra Swift Parrino cautions, however, "the significant progress that has been made does not obscure the fact that many of the major recommendations have not yet been addressed or addressed only partially."

On the Threshold cites specific successes including gains in employment opportunities for people with disabilities; passage of the Air Carrier Access Act of 1986; and the development of an early intervention program designed to serve infants with disabilities. At the same time, however, progress has been minimal in areas such as housing, personal assistance and the elimination of work disincentives under the Social Security Act.

On the Threshold also documents progress made toward developing a comprehensive equal opportunity law prohibiting discrimination on the basis of handicap. As the Council's 1986 report indicated, the enactment of such a law is a necessary means to address the pervasive discrimination experienced by people with disabilities. Thus, the Council has drafted a proposed bill called "The Americans with Disabilities Act of 1988." Such a bill is the Council's top priority for 1988.

The National Council on the Handicapped is an independent Federal agency comprised of 15 members appointed by the President and confirmed by the Senate. While many government agencies deal with issues and programs affecting people with disabilities, the Council is the only Federal agency charged with addressing, analyzing, and making recommendations on issues of public policy which affect all people with disabilities.

The Sunday Courier

Painful memory fired crusading zeal

Local native authors
pending federal law
on rights of disabled

By LINDA NEGRO
Courier staff writer

Nearly 20 years ago Robert Burgdorf Jr. was kicked off an Evansville construction site by a contractor who didn't want "cripples" working on the job.

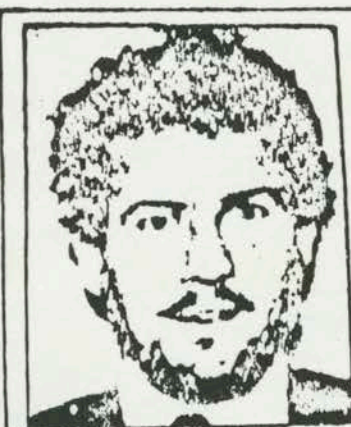
"I wanted to tell him that he couldn't do that because it was against the law," said Burgdorf, an Evansville native whose right shoulder was disfigured by polio when he was a year old.

"In fact, it wasn't against the law then, and to these many years later it still is not against the law."

That may be changing, and Burgdorf is part of the reason.

He has transformed the humiliation from that moment into a crusade for the disabled, and that crusade is headed for Congress.

As an attorney for the National Council on the Handicapped, Burgdorf has authored a bill designed to give the nation's 36 million disabled people the



"People with disabilities have been out of sight, forgotten. When planning buildings, buses and train stations the planners don't think about people with impairments. Thoughtlessness, rather than cruelty, is the most common problem."

— Robert Burgdorf Jr.

same legal rights that the Civil Rights Act of 1964 gave others who faced discrimination on the basis of race, sex, national origin and religion.

"If that contractor had said I don't want a black or woman then I could have said, 'That's against the law,'" Burgdorf said. "But it was not illegal to fire or refuse to hire because of a disability."

The Americans with Disabilities Act of 1988 is a comprehensive equal rights bill for disabled people that would not only make it illegal to discriminate in

employment but require further removal of barriers in public accommodations, housing and transportation as well.

The bill will be introduced by Sen. Lowell Weicker, R-Conn., within two to three months.

Weicker, a former chairman of the Senate subcommittee on the handicapped, has had a longstanding interest in the rights of the disabled, even years before his son was born with Down's syndrome, according to staff member Terry Mullenburg.

"His principle priority has always been to help those who have no voice in Congress," she said.

Weicker's staff gives the bill a good chance for eventual passage, although it may not happen this year.

Burgdorf, who now lives in suburban Washington, said the issue is so compelling that it will be difficult to oppose. He expects strong support from the disabled and friends of civil rights.

The bill is geared not only to protect the disabled from intentional discrimination, such as Burgdorf faced, but also addresses the more common prejudice that is unintentional, based on ignorance of the abilities of the disabled.

"People with disabilities have been out of sight, forgotten," Burgdorf said. "When planning buildings, buses and train stations the planners don't think about people with impairments. Thoughtlessness, rather than cruelty, is the most common problem."

The disabled occupy an inferior status in society and are severely disadvantaged educationally, vocationally and economically, according to reports Burgdorf has written for the National Council on the Handicapped and the U.S. Commission on Civil Rights.

See RIGHTS on Page A5

RIGHTS

Continued from Page A1

The average income for the disabled, including people with mental and physical impairments, is less than half of the income for the non-disabled. It is not innate limitations but rather prejudice and discrimination that are the major cause of the disadvantages, the reports assert.

One of the most militant proponents of handicapped rights is a group called Americans Disabled for Accessible Public Transportation, based in Denver. If independence is the goal for the disabled, transportation is a key.

"The disabled are where the black community was in 1890," said Wade Blank, president of the group.

Blank's organization has blocked bus stops, and its members have chained themselves to buses to gain access to transit systems in several cities throughout the country. The next demonstration is planned for May in St. Louis.

Many U.S. cities, including Evansville, have "para-transit" systems that provide transportation to the handicapped and elderly in separate vehicles. In Evansville, the service is provided by the Metropolitan Evansville Transit System's SMILE vans.

But Blank said such systems are not acceptable, and he maintains that every public bus should have lifts and be completely accessible to disabled riders.

That would be required under the proposed civil rights act. All transit systems — bus, train and light rail systems — would be accessible within seven to 12 years.

The final language of the act still is being drafted, but preliminary drafts require all newly purchased buses to be accessible. In addition, half the fleet must be accessible

within seven years. Ideally, within 12 to 14 years, the life span of buses, all systems in the country would be accessible. Time limits also are established to make bus stops and stations accessible.

The proposal states that para-transit systems may supplement the service, but cannot be used in place of an accessible system.

That portion of the act is expected to draw opposition from the American Public Transit Association, which represents most transit systems in the country. The group successfully fought against similar regulations in the early 1980s.

"In a perfect world we would have money for a lift on every bus route and para-transit," said Jayne Kirkpatrick, director of the association's public relations. "It isn't a perfect world, and we are trying to meet the needs with the resources we have."

Blank said efforts such as the para-transit systems are the able-bodied public's way of thinking it has solved the problems of the disabled.

"They are trying to make themselves think the disabled are being treated equally when they are not," he said. "You can't have separate and equal. Separate is not equal. When you segregate people because of race, sex or disability, you do immeasurable damage to them."

John Kreitner, an Evansville man who uses a wheelchair, agrees with Blank. Kreitner says although the door-to-door service may appear more convenient, he prefers the privacy of the public METS bus service. He says he would rather catch a public bus to feel "more like a normal part of the public."

Kreitner, who has muscular dystrophy, said he feels like he has no privacy with SMILE because he

must call ahead 24 hours for an appointment and report each stop he will be making.

"I feel like I have to ask them permission to go places," he said. "I'd rather ride a city bus where no one knows my business."

But Jack Danks, former director of METS, said when a portion of city buses had lifts in the early 1980s they were underused and difficult to maintain.

METS Director Terry Grimm said the buses also have only one tie-down space for a wheelchair. Thus, a second wheelchair user would have to be left at a stop. He said the para-transit system provides a better service because it is door-to-door.

Although it would be costly to make all public buses accessible to the handicapped, proponents point to how much money is being spent nationally on transit malls.

In Evansville, more than \$1 million was spent last year in the renovation of the downtown transit mall. Part of the money was spent on trolley buses, which cost \$140,000 each and yet are not wheelchair accessible.

Officials of Chance Manufacturing Inc. of Wichita, Kans., builder of the trolley buses, said accessible units cost \$18,000 more. Evansville officials said they did not spend the extra money because federal regulations did not require it and because SMILE vans were already providing service for the disabled.

Blank said the problem is much bigger in San Francisco. He said \$70 million in federal transit money was spent renovating the trolley system in San Francisco and yet the trolleys aren't accessible to the disabled.

"Then they have the audacity to say the cost prohibits making a system accessible," Blank said. "Let's get the priorities straight."

Burgdorf's limitations fade when he reaches to help

By LINDA NEGRO
Counor staff writer

Robert Burgdorf Jr.'s physical reach is limited, but the Evansville native's legal footwork has embraced millions of disabled people who would otherwise have suffered from discrimination on the job or in public facilities.

Polio left Burgdorf's right shoulder disfigured and his upper arm useless when he was a year old. When he was 11, a surgeon at Welborn Baptist Hospital attached his upper arm bone to his shoulder, giving him use of the arm.

"But I cannot reach behind me or over my head, but it gave me range of motion," he said. "I can play basketball, but still it does not look the same, or work the same or move the same."

Before graduating from since-closed Rex Mundi High School in 1965, Burgdorf had numerous odd jobs, including delivering Grit magazine and working in the U.S. Post Office.

Nearly 20 years ago, Burgdorf joined the Electrician's Union, and because of his disability, was rejected on his first assignment. The union had sent him to the job, but the contractor refused to accept him.

"Clearly it was not a case that I wasn't able to do the job," said Burgdorf, who worked with the union two summers while he was attending college. "He presumed because I looked different that I couldn't do the job."

That humiliation motivated Burgdorf to seek to protect the rights of the disabled at a time when the issue was just beginning to gain national attention. He is now author of pending legislation that prohibits discrimination of the disabled.

While a student at Notre Dame Law School, he worked as a volunteer for a local association of retarded citizens. The group received federal funding for a pilot program establishing a "National Center for Law and the Handicapped." Burgdorf became the center's staff attorney when he graduated.

He was part of a small group of lawyers traveling

around the country to file civil rights lawsuits on behalf of the disabled.

Burgdorf said he represented mentally retarded children trying to get into public schools, people in wheelchairs wanting access to buildings, and a blind teacher who was refused a job in a public school. He also filed suits against large institutions charged with mistreating the disabled.

Although many of the cases he handled set precedents, he couldn't take a number of cases because the law wasn't in place.

"There was no recourse for some of the people who came to me for help," he said. "They felt they had been wronged, but I had to tell them, 'There was no law that prohibits what was done to you.'"

"There is another group of people that doesn't even bother to check with an attorney," Burgdorf said. "They've already heard they don't have rights in those circumstances."

After several years of handling those cases Burgdorf took a job as co-director of the Developmentally Disabilities Law Project at the University of Maryland Law School. While there he wrote the first law school case book compiling court decisions on the rights of disabled people.

"I was lucky," he said. "Not much was happening in the field when I started and then it mushroomed and I became an instant expert."

After the Maryland project, Burgdorf was hired by the U.S. Commission on Civil Rights, which was charged by Congress with studying discrimination of the disabled as well as discrimination based on race, sex, religion and national origin.

He co-authored the commission's study of discrimination of the disabled, "Accommodating the Spectrum of Individual Abilities."

Burgdorf has been with the National Council on the Handicapped since 1985 and wrote its report, "Toward Independence," and transformed that into language for legislation for disabled civil rights.

His parents, Patricia and Robert Burgdorf Sr., still live in Evansville.