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TESTIMONY OF THE HONORABLE LOWELL WEICKER, JR.
TO THE SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES
REGARDING THE AMERICANS WITH DISABILITIES ACT
JUNE 22, 1989

I COME BEFORE YOU TODAY AS A PARENT OF A CHILD WITH A DISABILITY, AS A FORMER CHAIRMAN OF THE SUBCOMMITTEE ON THE HANDICAPPED, AND NOW AS PRESIDENT OF A COALITION FURTHERING MEDICAL RESEARCH, TO DISCUSS LEGISLATION WHICH I BELIEVE SHOULD BE THE HIGHEST PRIORITY OF THE 101ST CONGRESS: THE AMERICANS WITH DISABILITIES ACT.

THE 43 MILLION AMERICANS WITH DISABILITIES HAVE WAITED LONG ENOUGH TO BE EQUAL IN THE EYES OF THE LAWS OF THE UNITED STATES.

FOR YEARS THIS COUNTRY HAS MAINTAINED A PUBLIC POLICY OF PROTECTIONISM TOWARD PEOPLE WITH DISABILITIES. WE HAVE CREATED MONOLITHS OF ISOLATED CARE IN INSTITUTIONS AND IN SEGREGATED EDUCATIONAL SETTINGS. IT IS THAT ISOLATION AND SEGREGATION THAT HAS BECOME THE BASIS OF THE DISCRIMINATION FACED BY MANY DISABLED PEOPLE TODAY. SEPARATE IS NOT EQUAL. IT WASN'T FOR BLACKS; IT ISN'T FOR THE DISABLED.

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IT IS TRUE THAT, OVER THE LAST 16 YEARS, WE HAVE BEGUN TO ALTER THE DIRECTION OF PUBLIC POLICY. WITH THE ENACTMENT OF SEC. 504 OF THE REHABILITATION ACT OF 1973, CONGRESS SAID THAT NO LONGER WILL FEDERAL FUNDS SUPPORT OR ASSIST DISCRIMINATION, AND LAST YEAR WE REAFFIRMED THAT COMMITMENT IN THE CIVIL RIGHTS RESTORATION ACT. IN 1975, WITH THE PASSAGE OF PUBLIC LAW 94-142, WE SAID THAT CHILDREN WITH DISABILITIES HAD A RIGHT TO A PUBLIC EDUCATION--AND THAT NO LONGER WOULD WE ALLOW SUCH CHILDREN TO BE EDUCATED OUTSIDE OF THE MAINSTREAM OF OUR SOCIETY. THAT DIRECTIVE WAS EXPANDED IN 1986 BY PUBLIC LAW 99-457. MOST RECENTLY, IN THE FAIR HOUSING AMENDMENTS OF 1988, WE SAID THAT NO LONGER WILL WE BUILD MULTIFAMILY HOUSING THAT DOES NOT ALLOW ALL AMERICANS INSIDE.

THE LEGISLATION BEFORE THIS COMMITTEE TODAY COMPLETES THE WORK BEGUN IN 1973 TO SECURE THE CIVIL RIGHTS OF AMERICANS WITH DISABILITIES. IT PROVIDES A PLACE IN SOCIETY FOR EVERYONE. IT DOES NOT GUARANTEE YOU A JOB--IT GUARANTEES THAT YOU WILL NOT BE DENIED A JOB ON THE BASIS OF YOUR DISABILITY. THIS BILL LOOKS TO THE FUTURE, NOT TO PUNISHING SOCIETY FOR THE SINS OF THE PAST. IT LAYS OUT A CLEAR BLUEPRINT FOR THE FUTURE--A BLUEPRINT THAT SAYS, WHEN A COMMUNITY BUYS A NEW BUS, IT BUYS A BUS THAT EVERYONE CAN USE. A BLUEPRINT THAT SAYS, WHEN NEW BUILDINGS ARE

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CONSTRUCTED, THEY MUST BE USABLE BY PERSONS WITH DISABILITIES. A BLUEPRINT THAT SAYS OUR PHONE SYSTEM MUST BE USABLE BY EVERYONE.

I'D LIKE TO TAKE A MOMENT TO REMIND THE MEMBERS OF THIS COMMITTEE THAT THE AMERICANS WITH DISABILITIES ACT WOULD NOT BE BEFORE YOU TODAY WERE IT NOT FOR THE WORK OF THE NATIONAL COUNCIL ON DISABILITY. THE MEMBERS OF THAT COUNCIL ARE PRESIDENTIAL APPOINTEES--AND ALL WERE APPOINTEES OF RONALD REAGAN WHEN THEY DEVELOPED THIS HISTORIC LEGISLATION. FROM JUSTIN DART, A LONG-TIME STALWART OF THE REPUBLICAN PARTY, TO JEREMIAH MILBANK, THE FOUNDER OF THE EAGLE FORUM, I DARE SAY NO ONE HAS EVER CHALLENGED THE CONSERVATIVE POLITICAL CREDENTIALS OF ANY OF THOSE 15 MEMBERS. AND, AFTER MUCH INTERNAL DELIBERATION, THEY CAME FORWARD WITH A BILL THAT WAS ONE OF THE MOST PROGRESSIVE, COMPREHENSIVE CIVIL RIGHTS LEGISLATION SINCE THE CIVIL RIGHTS ACT OF 1964. WHEN THEIR WORK WAS COMPLETED, THEY CAME AND ASKED, AS THE RANKING REPUBLICAN ON THE HANDICAPPED SUBCOMMITTEE, IF I WOULD BE THE LEAD SPONSOR IN THE SENATE. I SAID I WOULD BE PROUD TO DO SO.

YET AS ONE WHO KNEW THE DIFFICULTY OF FURTHERING ANY NEW LEGISLATION, MUCH LESS LEGISLATION FOR PERSONS WITH DISABILITIES, I KNEW THAT NOTHING WOULD BE ACCOMPLISHED EXCEPT ON A BIPARTISAN BASIS. AND SO IN THE NEXT BREATH, I ASKED THEM TO SEE TOM

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HARKIN. NOT BECAUSE HE IS A GOOD FRIEND AND A COMPASSIONATE MAN, BUT BECAUSE AS THE CHAIRMAN OF THE HANDICAPPED SUBCOMMITTEE, HIS ACTIVE LEADERSHIP WAS CRITICAL TO THE FUTURE OF THE AMERICANS WITH DISABILITIES ACT. TOGETHER, WE COULD DO MUCH--SEPARATELY, NOTHING.

THE FACT IS, DISABILITY LEGISLATION HAS ALWAYS BEEN A BIPARTISAN EFFORT. AND NO ONE KNOWS IT BETTER THAN THE MEMBERS OF THIS COMMITTEE. THERE WASN'T A BILL THAT CAME THROUGH THIS COMMITTEE IN MY MEMORY THAT WASN'T COSPONSORED AND FULLY SUPPORTED BY THE CHAIRMEN AND RANKING MEMBERS OF THE FULL COMMITTEE, AS WELL AS THE HANDICAPPED SUBCOMMITTEE. <u>EVERY ONE</u> OF THOSE BILLS PASSED THIS COMMITTEE UNANIMOUSLY, AND <u>EVERY ONE</u> OF THOSE BILLS WAS SIGNED INTO LAW.

TODAY, THE BIPARTISANSHIP ON THIS BILL CONTINUES, WITH 11 REPUBLICANS FROM ALL RANGES OF THE POLITICAL SPECTRUM JOINING IN THE BATTLE. I CANNOT EMPHASIZE ENOUGH THAT THE DIVISIVENESS OF PARTISANSHIP HAS NO PLACE ON A BILL THAT WILL GUARANTEE THE CIVIL RIGHTS OF AMERICANS WITH DISABILITIES.

NOT ONLY IS THIS BILL THE APPROPRIATE HUMANITARIAN STEP FOR THE 101ST CONGRESS, THE AMERICANS WITH DISABILITIES ACT MAKES GOOD ECONOMIC SENSE AS WELL. RIGHT NOW, WE HAVE A SYSTEM THAT IS

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BASED ON DEPENDENCE, WITH OVER $57 BILLION A YEAR IN FEDERAL FUNDS GOING FOR SOCIAL INSURANCE BENEFITS FOR DISABLED PERSONS. THE ECONOMIC RETURN TO SOCIETY WHEN PEOPLE GET OFF THE WELFARE ROLLS AND BECOME EMPLOYED CANNOT BE OVERSTATED. WITH TWO-THIRDS OF DISABLED AMERICANS UNEMPLOYED, AND 82 PERCENT OF THOSE PERSONS WILLING TO GIVE UP BENEFITS IF THEY COULD WORK FULL-TIME, IT CAN ONLY MEAN A REDUCTION IN WELFARE DEPENDENCY IF THOSE PERSONS HAVE REAL OPPORTUNITIES TO PARTICIPATE IN THE WORKFORCE.

I UNDERSTAND THE NEED FOR COMPROMISE, AND I COMMEND THE CHIEF SPONSOR, SENATOR HARKIN, AND THE CHAIRMAN OF THE FULL COMMITTEE, SENATOR KENNEDY, AND THE SUBCOMMITTEE RANKING MEMBER, SENATOR DURENBERGER, FOR WORKING WITH THOSE WHO HAVE EXPRESSED LEGITIMATE CONCERNS ABOUT THE BILL IN AN EFFORT TO COME UP WITH EQUITABLE, WORKABLE SOLUTIONS TO SOME OF THE ISSUES RAISED. I HAVE TO TELL YOU, THOUGH, THAT I THINK THE CHANGES MADE ON THIS LEGISLATION GO FAR ENOUGH. THE BALANCE HAS BEEN STRUCK--WHILE FINE-TUNING MAY BE NECESSARY, ANY FURTHER SUBSTANTIVE CHANGES WOULD, I BELIEVE, SERIOUSLY TILT THE SCALES AGAINST SECURING FULL CIVIL RIGHTS FOR PERSONS WITH DISABILITIES, AND THUS DEMEAN THE CONSTITUTIONAL SPIRIT IN WHICH THIS ENDEAVOR WAS CONCEIVED.

THE FACT IS, THIS LEGISLATION NOW ENJOYS SUPPORT FROM EVERY SEGMENT OF THE DISABILITY COMMUNITY. FROM THE DEAF AND HEARING

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IMPAIRED, TO PERSONS INFECTED WITH HIV, TO THOSE WITH PHYSICAL AND MENTAL DISABILITIES, THERE IS NOTHING LESS THAN ENTHUSIASTIC SUPPORT FOR THIS BILL. OVER 100 ORGANIZATIONS HAVE BEEN WORKING TIRELESSLY ON BEHALF OF AMERICANS WITH DISABILITIES. DON'T FRUSTRATE THEM NOW. THEIRS HAS ALREADY BEEN A LIFETIME SPENT OVERCOMING NOT WHAT GOD WROUGHT BUT WHAT MAN IMPOSED BY CUSTOM AND LAW.

AS MOST OF YOU KNOW, I HAVE A SON WITH DOWN'S SYNDROME. SONNY IS 11 YEARS OLD. THANKS TO THE VISION OF YOU AND YOUR PRE-DECESSORS, HE HAS SPENT HIS LIFE IN PUBLIC SCHOOLS WITH NONDISABLED PEERS. WHEN SONNY COMPLETES SCHOOL, HE WILL GO OUT INTO THE WORLD READY TO TAKE HIS PLACE IN SOCIETY, ALONG WITH EVERYONE ELSE. THIS BILL THEN IS THE FOLLOW-ON TO SONNY'S FUTURE: WITH IT, HE WILL BE ABLE TO LIVE WHERE HE WANTS, GET ON A BUS, GO TO WORK WHEREVER HIS TALENTS WILL TAKE HIM, AND RELAXATION WILL MEAN MOVIES AND RESTAURANTS AS FOR ANYONE ELSE. WITHOUT ADA, HIS ABILITY TO DO ANY OF THOSE ACTIVITIES WILL REST ON THE WHIM OF SOCIETY. THAT SIMPLY ISN'T GOOD ENOUGH IN AMERICA.

DISABLED PERSONS MAY REPRESENT A MINORITY IN THIS COUNTRY, BUT THEY ARE A MINORITY ANY OF US MAY JOIN AT ANY TIME. INDEED, THE LATEST RESEARCH INDICATES THAT SONNY WILL PROBABLY JOIN THE

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DISABLED RANKS FOR A SECOND TIME. AS REPORTED IN THE NEW ENGLAND JOURNAL OF MEDICINE THIS MONTH, DOWNS PERSONS ARE AT GREATER RISK TO DEVELOP ALZHEIMERS' BY AGE 50. THAT GIVES ME 39 YEARS TO FIND THROUGH RESEARCH A RESOLUTION OF THE FATE THAT AWAITS HIM.

HOWEVER, IN A MATTER OF MONTHS YOU CAN SECURE TO SONNY AND HIS 43 MILLION PEERS A HAPPINESS THAT ONLY COMES WITH LOVE EQUALLY DEVISED AND ADMINISTERED.

THANK YOU.

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Andy McReed

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Defining Liberty for Handicapped Americans

Lowell Weicker, Jr. *U.S. Senate*

In his comprehensive casebook, *The Legal Rights of Handicapped Persons,* Robert L. Burgdorf, Jr. (1980) writes that "the history of society's formal methods for dealing with handicapped people can be summed up in two words: segregation and inequality" (p. 51). It is all too true that for many Americans civil rights have been a sometime thing. Early in our history, the promises enshrined in the Constitution and amendments to it were kept only where free, white men with property—and without handicaps—were concerned. Those who didn't fit this mold were not admitted to America's mainstream. The great social contract guaranteeing government of, by, and for the people was stamped "void where prohibited" for blacks, women, the newly emigrated, and, most certainly, the handicapped.

During the mid-1800s, however, as public opinion and the political establishment turned against the "peculiar institution" practiced on Southern plantations, reformers also began to question the practice of "institutionalizing" handicapped people. Many could be found shut away in the attics of private homes, locked up in jails and poorhouses, or chained to chairs and lashed to beds in insane asylums.

Abraham Lincoln, in one of his last public addresses, said, "I have always thought that all men should be free; but if any should be slaves, it should be first those who desire it for themselves, and secondly, those who desire it for others" (in Beck, 1980, p 524). The Emancipation Proclamation came at about the same time as the first attempts at educating people with handicaps and teaching them how to live in the world outside their walls. It seemed that the supposedly "unalienable rights" of life, liberty, and the pursuit of happiness were at last being extended to handicapped Americans.

However, this improvement did not last long because Reconstruction and reaction followed. By 1875, just as Jim Crow governed relations between blacks and whites in many parts of the country, those who were handicapped were again segregated from those who were not, but this time in bigger and bigger custodial institutions that gave them not much more than three meals a day, a suit of clothes, and an occasional bath.

This piece of history, while a century old, is worth keeping in mind as we survey the frequently faltering pace of the civil rights struggle in our time. The fact that such movements are seldom characterized by steady progress and more often by long periods of inaction, punctuated by dramatic breakthroughs and disappointing backslides, is a source of frustration but also a source of hope for the future.

In recent decades, America witnessed a wave of activism and accomplishment for handicapped people that crested in the 1970s. There were forward strides on so many fronts—social, legal, and scientific. Advances in education and medicine demonstrated that: (a) mentally retarded people do have a capacity for learning, if at a slower pace than average; and (b) physical handicaps can be overcome and compensated for. Legal advocates argued that neither type of handicap was a legitimate excuse for denying a person his or her constitutional rights, and the federal courts agreed, issuing landmark decisions. Among educators and employers and in society at large, there was a greater understanding that stereotypes and labels were demeaning and destructive—both to the individuals in question and to the American social fabric. More and more it was demonstrated that the "pathology," the deviation from the norm, was not "in the individual . . . but rather in the physical, social, political and economic environment that . . . limited the choices available to people with disabilities" (DeJong & Lifchez, 1983, p. 45).

My tenure in Congress has coincided with nearly all of the laws put on the books to promote full participation by our handicapped citizens, from the Architectural Barriers Act of 1968 to the Rehabilitation Act Amendments of 1984. Perhaps one of the most pivotal pieces of legislation is the Rehabilitation Act of 1973, which prohibits discrimination against qualified handicapped people in programs, services, and benefits that are federally funded or conducted. This Act also created the Architectural Barriers Compliance Board. Another significant law is the Education for All Handicapped Children Act of 1975, which provides for a free, appropriate education for handicapped children in the least restrictive setting.

So we entered the 1980s with the legislative framework in place. Whether these laws were written or enforced as well as they should have been is an altogether different question. The strategy for institutionalizing civil rights for the handicapped as part of national policy was not difficult to conceive. The issue of civil rights for the handicapped was perceived

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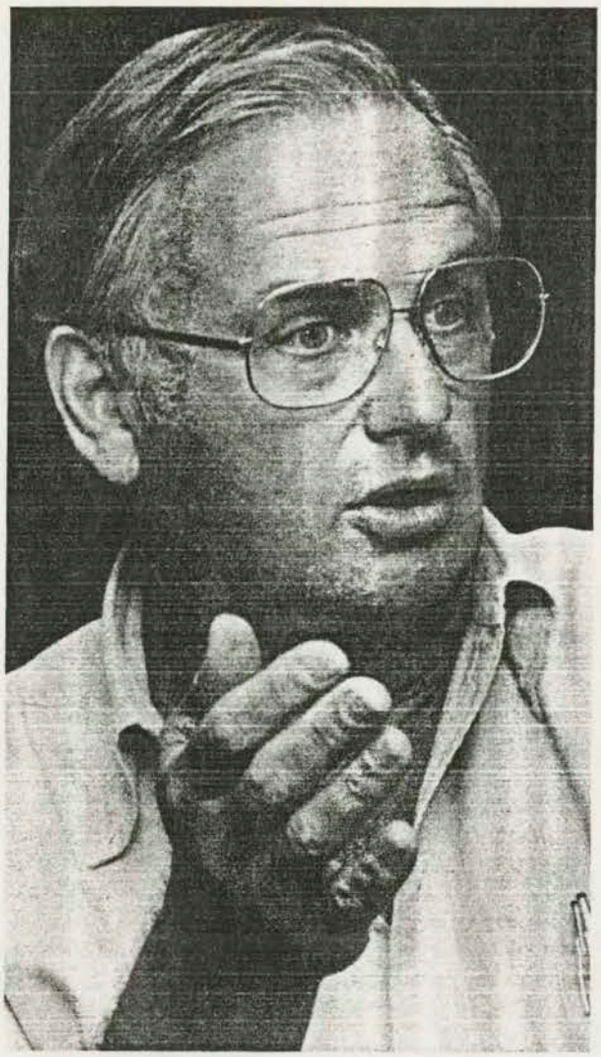

Lowell Weicker, Jr.

as a matter of simple justice and was self-defining. However, the strategy for achieving social and economic equity within the context of those hard-won institutional changes is still on the drawingboard. In the May/August 1980 issue of *Amicus,* the journal of the National Center for Law and the Handicapped, Jean Postlewaite wrote:

> In order to make a real impact on the lives of the disabled, enforced legislation, community-based advocacy and personal persuasion will prove most effective. In other words, the excitable push that began in the 1970s will have to turn to sustained commitment in the 1980s if we are to avoid a reversal of rights that are at the very least paper victories and yet hold the promise for real progress. The landmark decisions are exciting headline-catchers, but as *Brown v. Board of Education* and *Wyatt v. Stickney* have shown us, they are not particularly effective tools for social change. The sustained quiet persuasion of knowledgeable concerned advocates at the grass roots level, as well as strong government support and leadership, will provide the quickest, surest victories. (p. 43)

The course of the past four years has proven Postlewaite correct, both in her warnings concerning a possible "reversal" of rights and her prescription for countering reactionary trends and pushing ahead in the cause of civil rights for the handicapped. One of the first items on the Reagan administration's budget-cutting agenda was the dismantlement of the federal framework for aiding disabled persons. In February 1981, the Administration made a proposal to abolish the Architectural and Transportation Barriers Board, to block grant all the major legislative initiatives serving the handicapped, and cut their budgets by 25%. The so-called "Program for Economic Recovery," which was in effect a repeal of previous legislation, called for 45 categorical grants administered by the Department of Education to be collapsed into two programs—one block grant to the states and the other to local educational agencies. The local educational agency block grant was to be divided up among several groups of students with special educational needs—economically disadvantaged students, physically or mentally handicapped students, children with limited English-speaking abilities, children in school districts undergoing racial desegregation, and illiterate adults. Likewise, the proposed block grant to the states would have lumped direct educational services for the handicapped with a variety of support services to classrooms, libraries, and state educational agencies.

In subsequent years, proposals were made to deregulate special education and Section 504 of the Rehabilitation Act of 1973, the linchpin of civil rights for the handicapped, and cut the budget for developmental disabilities assistance by 30%. Almost without exception, these proposals were defeated, precisely because of the "community-based advocacy" of which Postlewaite wrote *and* because enough members of

Editor's note. The Honorable Lowell Weicker, Jr. (R-Connecticut) was elected to the Senate in 1970 and is now serving his third term. He is the chair of the Small Business Committee and serves on the Appropriations Committee, chairing its Labor, Health and Human Services, and Education Subcommittee. He is a member of the Labor and Human Resources Committee and chairs its Subcommittee on the Handicapped. He also sits on the Energy Committee and is chair of the Energy Conservation and Supply Subcommittee.

This article is part of our special invited series by public officials designed to inform psychologists about policy issues of concern to psychology and the public at large. The views expressed are those of the author and do not necessarily reflect those of the American Psychological Association or its officers.

Author's note. Requests for reprints should be sent to Senator Lowell Weicker, Jr., 303 Hart Office Building, Washington, DC 20510.

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Congress were committed to the protection of handicapped programs.

As chair of the Subcommittee on the Handicapped, I had a hand in this battle, and I would be hard-pressed to name another group within the human service spectrum that has not only survived the policies of this Administration but has also defeated them as consistently and as convincingly as the disabled community. At a time when budget cuts were the rule, handicapped programs had their funding maintained and even increased.

But where does the movement go from here? To be a "movement," it must again demonstrate a capacity for forward motion and not merely an ability to mount holding actions. Unfortunately, now that the budgetary pressures have eased up, the ranks are no longer as close as before. It is imperative that handicapped Americans and their allies build on the legislative foundation laid in the 1960s and 1970s. Otherwise, they risk the imposition of an altogether different blueprint as in the 1870s and 1880s.

In 1983, Congress produced two pieces of legislation, the Education for the Handicapped Act Amendments (1983) and the Rehabilitation Act Amendments (1984), that were designed to perfect the provisions of the core programs for the handicapped. In addition to extending the life of the discretionary programs under the Education for the Handicapped Act for three years, the Education for the Handicapped Act Amendments expand the age range of children served. Provisions are made for intervention beginning at birth under the preschool incentive program, a move reflecting recent findings that underscore how crucial the first few years of life are in identifying and dealing with disabilities. Postsecondary programs are broadened to include all disabilities and not just deaf persons as in the past. Two new initiatives deal with the critical transition from secondary school to postsecondary school, employment, or independent living and the need to train parents to participate in their child's special education. Federal data collection and evaluation responsibilities are strengthened by the Education for the Handicapped Act Amendments, and provisions for reporting to Congress are improved.

The companion piece of legislation, the Rehabilitation Act Amendments (1984), focuses on continuing and improving services to individual handicapped clients. The basic state grant program provides vocational rehabilitation services to nearly one million disabled Americans each year and is a crucial federal responsibility. This legislation extends the program's authorization for three years and provides for a new and independent role for client assistance programs, mandating that they exist in every state. It gives the National Council on the Handicapped, the federal government's own established voice for handicapped persons, an expanded role and greater independence in reviewing and evaluating all policies, programs, and activities within the executive branch and the Congress that concern handicapped people. Other client-centered provisions include training rehabilitation counselors in the provisions of Section 504 as they apply to the vocational rehabilitation client and new demonstration programs to help prepare mentally retarded persons and handicapped youths to enter the work force. The legislation also provides the necessary authority to the National Institute of Handicapped Research to support education and training activities in research, thus enabling interested young people to become qualified researchers in the field of rehabilitation. This institute's reauthorization also contains the mandate that research and training centers be established that focus on pediatric rehabilitation and the rehabilitation needs of the Pacific Basin.

Unlike the amendments to the Education for the Handicapped Act, the Rehabilitation Act Amendments came under considerable fire from the Administration. Office of Management and Budget Director David Stockman indicated that the House version of the bill would be in line for a presidential veto, and Education Secretary T. H. Bell expressed the Administration's objections to most of the major provisions of the Senate version in a letter to the Labor and Human Resources Committee (T. H. Bell, personal communication, June 23, 1983). The Administration opposed the 5.3% increase in authorized state grant funding as "excessive" and objected to required evaluations of Projects with Industry and Independent Living Center programs on the grounds that the Department "must have the administrative flexibility to assess (its) information needs and establish (its) evaluation priorities accordingly." Independent client assistance programs in all states were opposed as "an unnecessary expenditure of Federal funds." A required annual personnel needs report on how rehabilitation training funds are to be used was said to be "not necessary." Specific provisions designed to allocate federal demonstration dollars to help mentally retarded youths enter the labor force were described as "additional and unnecessary authority (which) would complicate administration of the Act." The Administration also "strongly oppose(d)" making the National Council on the Handicapped an independent agency and allowing state rehabilitation agencies to compete for new Projects with Industry funding.

In February, 1984, President Reagan finally signed this piece of legislation into law. For far too long, however his administration failed to realize the extent to which the rehabilitation ethic embodies many conservative traditions normally associated with Republicanism, including that of keeping federal out-

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lays low. In its fiscal year 1981 annual report, the Rehabilitation Services Administration states that the estimated lifetime earnings for persons rehabilitated in fiscal year 1980 will improve by $10.40 for every dollar spent on services. Those persons were expected to pay federal, state, and local governments an estimated $211.5 million more in income, payroll, and sales taxes than they would have paid had they not been rehabilitated. The same cost-benefit analysis can be applied to most, if not all, of the programs authorized by the Subcommittee on the Handicapped because they are geared to transforming the often dependent and demeaning life-styles of disabled Americans into more meaningful existences. Frequently, these efforts result in getting disabled people off welfare rolls and onto payrolls and tax rolls as well.

As noted earlier, the creation of and continued support for service programs for the handicapped are only stage one in the struggle for social and economic equity. Later, the Subcommittee will move on to stage two and specifically examine the civil rights aspects of federal handicapped programs, in particular Section 504 of the Rehabilitation Act (1973), Part B of the Education for the Handicapped Act (1975), and the Bill of Rights portion of the Developmental Disabilities Assistance and Bill of Rights Act of 1975.

Modeled on Title VI of the Civil Rights Act of 1964, Section 504 provides that "no otherwise qualified handicapped individual in the United States (as defined by the Act) shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance" (p. 794). As we all know, the Civil Rights Act of 1964 did not sit well with many Americans. Resistance to it has been wide ranging and persistent. Just a few years ago, the Reagan administration attempted to ignore it and allow tax exemptions for racially segregated schools. Section 504 of the Rehabilitation Act made it contrary to law for tax monies to go to schools or other endeavors that segregate or otherwise discriminate against handicapped people. That is the "don't" part of the statute. The "do" part requires a positive action by the institution to "reasonably accommodate" the disabilities of handicapped people to allow them to participate fully.

Both aspects have been hotly debated. Some employers and educators complain of the regulatory burden placed upon them and of the costs involved, despite a government study that found that "for most combinations of types of handicapping conditions and job categories 'reasonable accommodations' require either no or only minor outlays" (Hull, 1979, p. 38).

For their part, handicapped people have complained to the Congress and the courts that Section 504 is simply not being complied with. In other instances, they say, the law just does not go far enough. In terms of building access, the provisions of Section 504 and the Architectural Barriers Act have been labeled deficient for two reasons. First, they apply only to structures built or altered after the law was enacted, even though older buildings frequently house a wide range of government services and agencies. Second, they apply only to federal buildings or buildings built or remodeled with federal assistance. Most state and all private facilities are excluded.

The law is similarly limited in its impact on employment of the handicapped. It applies only to public employment and employment with federally assisted institutions or federal contractors. And, according to the *Akron Law Review,* "out of a possible 275,000 institutions and corporations which would be affected by this requirement, less than 300 had filed affirmative action plans." (Ryan, 1978, p. 154).

As applied to education, Section 504 requires any locality receiving federal funds to provide a "free, appropriate public education" at the elementary, secondary, and postsecondary levels. But in application, the definitional problems have been enormous. Oberman (1980) enumerated just a few: "What is the scope of a public education? What is an *appropriate* education? What is a *free* public education? What constitutes the *least restrictive environment*?" (p. 49).

Hull (1980) has written that the failure of Congress to declare what it intends Section 504 to accomplish, what it will support where appropriations are necessary, and what it considers to be the basic civil rights of handicapped people has been one of the major obstacles in providing courts with a basis to require a substantial degree of accessibility (pp. 67–68).

Hull is right. Congress also must make clear where it stands with regard to the civil rights of the institutionalized disabled. In a hearing I chaired in November 1983, the Subcommittee on the Handicapped looked into Department of Justice enforcement of the civil rights of mentally retarded citizens living in institutions. The testimony of witnesses and the Department's own correspondence indicated that its civil rights division has pursued a policy of "extended negotiation" in the face of documented civil rights abuses, including rape and murder. In December of 1983, members of my staff began a series of visits to these institutions. Their findings will form the basis for another Subcommittee hearing on this subject later this year.

In institutions where violence against patients is not a problem, there are still far too many instances of neglect, of giving up on patients who have the potential for learning, at the very least, to take care of themselves. Thomas Bellamy (1981), Associate Professor of Special Education and Rehabilitation at the University of Oregon, testified at another hearing

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that "if our experience in several states bears out nationwide . . . for every person now served in a restricted environment, in a segregated school, in a segregated adult program, in an institution, we will find a functional twin somewhere else who has benefited from integrated community services" (p. 59). There can be many more of these functional twins if we are willing to invest a little effort, imagination, and money. Bellamy told of severely retarded people who can assemble oscilloscope cam switch actuators, cable harnesses, chain saw components, circuit boards, computer printer frames, transformer coils, power supply units, and so forth.

The technology required to bring handicapped people into the mainstream of life is not always expensive. For example, an inexpensive backscrubber with a bar of soap built into it has been designed for persons with the use of only one arm. Often, such simple yet ingenious devices are the key to independent living. In contrast, the development of a chin-activated wheelchair and a self-serving food system for quadriplegics required a federal investment of $200,000, but the expenditure was worth it. Even when technology is expensive, it is seldom as expensive as dependence. According to government statistics, "in 1980 two income-transfer programs, Social Security Disability Insurance and Supplemental Security Income, made $20.6 billion in cash payments to more than 4 million working age people with disabilities" (DeJong & Lifchez, 1983, pp. 42–43). Monroe Berkowitz of Rutgers University estimates that disability-related expenditures of $63.5 billion were made on behalf of working-age people in 1977. Of this figure, $47.6 billion went to public and private income-transfer payments (cited in DeJong & Lifchez, 1983, p. 43).

The American people and the politicians who represent them must be made to see the worth of long-term investments in making society accessible to handicapped persons. There will always be those who rabble-rouse against such investments and appeal to the worst in us. Rud Turnbull at the University of Kansas characterized such attitudes as "the razor's edge of selfishness" (Turnbull, 1983, p. 169). Recently, the President of the United States blamed the decline in American education on efforts to make education more accessible to minority Americans, women, and the handicapped.

To fend off this type of attack, handicapped persons and their allies must agree upon an agenda and get behind it. The agenda must be advanced in such a way that unites the American people rather than alienates them. As Turnbull has pointed out

> Cases that established the right of some handicapped children to attend school twelve months of the year, to obtain interpreters for deaf children during all aspects of their education, and to obtain private school placements and psychotherapy for themselves at school expense, were expensive, not only in terms of their implementation by the public schools but also in terms of the political capital that they cost. (pp. 203–204)

This is not to say that these objectives are not worthy ones. But we must be aware of how much of that precious commodity, political capital, handicapped people have at any one time and how it should be best expended for the good of them all. Most of all, more political capital must be generated through community-based efforts and through the leadership of the Congress.

It is my hope that the various hearings the Subcommittee of the Handicapped holds during 1984 will help clarify where the nation stands now on civil rights for the handicapped, where it wants to go, and how much it is willing to pay to get there. But I am realistic about the difficulty of the task at hand. In the midst of the civil war, Abraham Lincoln said, "The world has never had a good definition of the word liberty, and the American people just now are much in want of one" (in Beck, 1980, p. 523). Today, in the midst of a no-growth or, at best, a slow-growth economy, we are in need of a definition of *liberty* that matches both our ideals and the realities of the time. If we do our job right, Americans another hundred years from now will look back on the 1980s not as a decade of reaction and retreat, but rather as a time when the great principles of equal protection and equal opportunity were more perfectly realized for us all.

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REMARKS OF SENATOR LOWELL WEICKER, JR.

UNIVERSITY OF MARYLAND SPRING CONFERENCE

ON

DISABILITY POLICY: THE STATE OF THE NATION

WASHINGTON, D.C.

MAY 12, 1987

It's a pleasure to be with you this morning at a conference about disability policy -- a subject, I might add, close to my heart and central to my responsibilities as a United States Senator.

By the end of this two-day conference, you will have heard speeches and panel discussions on, among other topics, deinstitutionalization, early intervention, special education, rehabilitation, employment, transportation -- all falling under the umbrella of "Disability Policy: The State of the Nation." These are important issues, and they demand a forum in which you can examine what works and what doesn't work from many perspectives.

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Allow me to take the opportunity this morning to pose a question -- a critical question confronting us all: Just what is the state of disability policy in this nation today?

From my vantage point on Capitol Hill, I see a federal government that sends mixed messages about what it wants to accomplish in the context of ensuring equality of opportunity to disabled Americans in education, employment and community integration. One minute I am cheered because the president has signed into law legislation extending educational opportunities for disabled infants; the next minute I'm pounding my fist on the desk because the White House has proposed zero-funding that very program. Frankly, my friends, I am outraged at this administration's appalling lack of consistency in its disability policies.

No one disagrees that tremendous strides have been made since passage of the landmark civil rights legislation known as Public Law 94-142, the Education for All Handicapped Children Act. But the test of progress, President Franklin D. Roosevelt was fond of saying, (and I quote) "is not whether we add more to the abundance of those who have much; it is whether we provide enough for those who have too little." (end quote) If we apply that test to progress in disability policy, it becomes clear that the federal government can and should be doing more. Individuals with disabilities don't have too little because of any phsyical

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or mental problem; they have too little because the federal government limits their opportunities for education, job training and full integration into the community.

A moment ago I mentioned Public Law 94-142, which I believe stands as a testament to federal public policymaking at its very best. That legislation was the beginning of the end of an era of segregation and discrimination against handicapped children in our schools. No longer could schools shut their doors to handicapped students and say, "You look different from the others, go away," or "You don't learn the way the others do, go away." With a federal mandate entitling every handicapped student to an education in the least restrictive environment, the school house doors were opened.

The public schools now educate over 4 million -- a full 93 percent -- of the disabled children in this country. What was once an idealistic concept -- that we should be "mainstreaming" handicapped children into the public schools with their nonhandicapped peers -- is now a reality. You know as well as I do that, while still not perfect, the system is working. And everybody wins: The disabled child who benefits socially, emotionally and intellectually from a normal environment, and the nondisabled child whose life is enriched through association with his or her disabled peer.

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Yet despite our enormous gains in the area of education, we are still faced with some grim and disturbing statistics. According to a national poll released last year by Louis Harris and Associates, two-thirds of disabled individuals of working age are unemployed.

Now there was time in our nation's history when we could look at that unemployment rate -- 66 percent -- and accept it because we thought disabled individuals couldn't measure up, that there were innate limits in their ability to enter the workforce and become independent, productive participants in the American way of life.

But as a nation we have progressed in our knowledge and in our attitudes. And fortunately for us, this doctrine of limitations has been challenged continually -- challenged by individuals with disabilities, challenged by their families and by their advocates. And they have won. They have shown us that limitations come from our false perceptions. With appropriate support in areas such as education, training, transportation and housing, disabled individuals can and want to enter the competitive workforce and take their rightful place in our communities. And we can help them help themselves by making available the tools necessary to achieve the goals of independence, productivity and integration.

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The problem seems to be that individuals with disabilities know this; families know this; you as professionals and advocates know this. But the administration has yet to realize that a cohesive policy would produce far greater results from this relatively untapped segment of society.

Let me give you some recent examples.

Last year, Congress reauthorized the Education of the Handicapped Act, including in that reauthorization a new program of early intervention services for handicapped infants from birth through age two. As you know, this program will assist states in establishing and implementing comprehensive, individually tailored services for handicapped infants and toddlers. As the Department of Education stated in its 1985 report to Congress, "studies of the effectiveness of preschool education for the handicapped have demonstrated beyond doubt the economic and educational benefits of programs for young handicapped children. In addition, the earlier intervention is started, the greater is the ultimate dollar savings and the higher is the rate of educational attainment by these handicapped children."

President Reagan indicated his commitment to early intervention by signing the reauthorization into law last October. In fact, in a letter to the National Association of State Directors of Special Education, an assistant secretary at the Department of Education wrote: "The Reagan administration is

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committed to education services for handicapped children, including special services to handicapped infants and preschool children . . . These children are especially deserving of our assistance so that they may reach their fullest potential."

I know that sounds like a commitment to special education, but the surest way to determine whether the administration truly believes its own rhetoric is to look at where it wants to spend its money. Congress funded early intervention services at a level of 50 million dollars for fiscal year 1987, and again the president demonstrated his support by signing the appropriations bill into law. Not three months later, the administration proposed rescinding the entire 50 million dollars for fiscal 1987 and zero-funding these services for fiscal 1988.

This funding proposal represents a total contradiction of the administration's stated policy toward early intervention programs. Anyone can see early intervention benefits the child and makes good sense. What makes no sense is the administration saying one thing and doing quite another.

That also goes for what the administration says and does about employment opportunities for disabled individuals. Last year, the president signed into law revisions to the Rehabilitation Act to open that already successful system to a group of individuals previously unable to benefit from its services -- severely disabled individuals who have proven that

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"disability" does not mean "inability," and who ask only for some additional supports to get off the benefit rolls and into competitive employment. Yet again the administration's budget request would have eliminated funding for this new supported employment state grant program this year and zero-funded it next year.

The administration doesn't seem to realize that individuals with disabilities are no different from those of us who measure our self-worth by our ability to be productive, contributing members of society. Nor does the administration seem to realize that getting disabled individuals employed makes good economic sense by returning 11 dollars for every one dollar expended, turning tax payers out of tax users. In humanitarian terms, the return is even greater. The dignity of working, of being independent, of becoming part of our towns and communities -- that is what the Rehabilitation Act is all about for the people in our country who happen to have disabilities.

Perhaps the most dramatic example of contradiction in disability policy occurs in the area of deinstitutionalization. At its best, the Medicaid system fosters sheltered and limited opportunities and custodial care. At its worst, it promotes segregation, dependence, isolation and abuse. While there is a great difference of opinion about how many developmentally disabled citizens would require institutionalization if adequate community alternatives were available, there is no difference of

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opinion about the state-of-the-art and most effective services for these individuals.

By anyone's measure, the institutional system is overwhelmingly expensive, with an annual cost per client of 25,000 to 40,000 dollars in 1984. More recent figures from my own state of Connecticut indicate substantially higher costs: 200 dollars per day per client. That translates to a whopping 73,000 dollars annually per client.

And what does this buy in terms of services? Certainly not quality. Indeed, quite often just the opposite.

For an administration that is ever-intent on saving a dollar when funding programs for the disabled, the Medicaid program stands out as a notoriously poor investment. The questions about "cost-effectiveness" that we hear when it comes to funding for early intervention or supported employment are strangely absent when it comes to the three billion dollars the federal government signs over to states for institutional care. And what <u>does</u> the government demand in return? Far too little, as we know from the 1985 investigation and hearings on institutional care. The extent of abuse and neglect in those facilities -- many of which are heavily reliant on federal Medicaid funds -- was shocking. The guarantees of safe and humane treatment provided by the Civil Rights of Institutionalized Persons Act were shown to be hollow pronouncements indeed.

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Unfortunately, these are not isolated examples of the federal government's lack of commitment to the civil rights of the disabled. Little by little, the government has been chipping away at the civil rights of disabled individuals. Since the Supreme Court's Grove City College v. Bell decision, the government is permitting what amounts to tax-supported discrimination. Let me explain. Section 504 of the Rehabilitation Act pledges that "no person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination" on the basis of handicap in federally assisted programs . This prohibition represents a powerful tool -- and indeed the only tool available -- for ending discrimination and establishing civil rights for individuals with disabilities. But the Court in its Grove City ruling narrowed the meaning of "program," effectively contracting the law's scope of coverage and rendering it virtually meaningless. As a result, recipients of federal funds -- hospitals, nursing homes, schools and universities -- can take tax money with one hand and discriminate with the other.

With these examples in mind, I return to my original question: Just what is the state of disability policy in our nation today?

We have made great strides forward, yes. But we are continually confronted with the hypocrisy of an administration

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that, through its rhetoric, voices its support of programs for the disabled and then attempts, through its budgetary policies, to reduce or wipe out those very programs. Programs that enable the disabled individual to become a contributor to society rather than a drain on society. Programs that enable individuals with disabilities to exert control and choice in their own lives. Programs that replace the humiliation of dependency with the dignity of self-sufficiency.

There are those in the administration, and indeed in the Congress, who believe it's appropriate to balance the budget at the expense of those human beings who need our special care. But a few billion dollars applied to the business of life returns much more -- and I don't mean just in terms of increased tax dollars, although that is certainly a part of it. What I am talking about here are things you can't pin a price tag on -- like pride and self-esteem.

And so, I want to leave you with these challenges:

Are we going to begin intervention services for disabled infants early enough that we can reduce the long-term effects of their handicaps? Or are we going to deprive them of those essential opportunities?

Are we going to insist that Congress restore full civil rights protections to individuals with disabilities? Or are we going to allow tax-supported discrimination?

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Are we going to make available the education, job training and other support needed to enable individuals with disabilities to join the competitive workforce? Or are we going to allow them to waste away in institutions, hidden and forgotten?

In meeting these challenges, there are none whose voices are more powerful than people who know what it is to be given a chance to succeed -- people like Pat Kraft. Pat is a young man with cerebral palsy who secured a job because of a work site adaptation made possible by rehabilitation engineering. Testifying before the Handicapped Subcommittee last year about the tremendous opportunities created by this new technology, Pat said: "Without the discipline of rehabilitation engineering, I would not be here before you today. Unfortunately, my peers around the country who do not have access to this expertise remain unproductive. They live at home, in nursing homes and state institutions. They are not even considered for jobs. I am an individual who is virtually independent. I pay taxes and contribute to the United Way. I give to the church. I supplied the motivation and the desire. The Rehabilitation Engineering Center supplied the hardware and software to make my dream a reality. I implore you, make my success a reality for countless others."

To that, I can only add: Pat, this nation will not let you down.

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NEWS

SENATOR LOWELL WEICKER, JR.
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Remarks of
Senator Lowell Weicker, Jr.
National Council of Jewish Women
Washington, D.C.
November 19, 1987

Hello everyone and thank you very much for the opportunity to be with you today. It is a great honor to be the recipient of the Council's Social Action Award. This distinction is all the more gratifying because it comes from an organization with an outstanding track record of advocacy on behalf of people young and old, male and female, Jew and non-Jew alike. We in the Congress would do well to adopt your action agenda as our own. If we did, the country would come to terms with the very real and persistent problems of poverty and discrimination.

We have worked together on many an issue -- among them apartheid, the right to choose abortion, tax-financed discrimination, and the separation of church and state. Unfortunately, the evidence everywhere points to the need for a renewed offensive on every count.

One year ago, the United States ended years of silent complicity and told the world we would no longer do business with South Africa. No one believed that sanctions would put an immediate end to apartheid. They were to be a first step, a foundation upon which we and other nations would build a concerted international response to bring pressure to bear on the minority regime.

Yet the Administration has sought no multilateral sanctions agreement, and in fact, vetoed a U.N. Security Council resolution that would have made mandatory for all U.N. members a package of sanctions similar to our own. It has allowed South Africa to get around the ban on uranium imports and has been unwilling to assure us that our intelligence community is not collaborating with the Pretoria government. It has allowed the U.S. trade representative to formally disavow responsibility for implementing provisions punishing foreign countries that take commercial advantage of U.S. sanctions. And now, the President, in clear violation of the law, has refused to recommend additional sanctions.

Section 501 of the Anti-Apartheid Act states it shall be the policy of the United States to impose additional measures against the Pretoria regime if, after one year, substantial progress toward ending apartheid has not been made. The President so found, yet he has recommended no new sanctions.

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We have a duty to denounce --and to further disassociate ourselves from -- the dehumanizing practice of apartheid. As a matter of historical fact, there is an analogy to be drawn between the government in Pretoria today and its laws and the government in Berlin and its laws in the late 1930s. It is not merely a case of de facto segregation as we had in the United States. That was bad enough. But here the law has always held us all to be equal, however short of that ideal we have fallen. In South Africa as in Nazi Germany, the law is used to subjugate an entire category of human beings. As Elie Wiesel wrote after an emotional walk through Soweto: "Without comparing apartheid to Nazism and its "final solution" -- for that defies all comparison -- one cannot but assign the two systems, in their supposed legality, to the same camp."

We likewise have a responsibility to condemn the continued suppression of Soviet Jews, comprising no less than one fifth of the world's Jewish population. Emigration for those who wish it and free exercise of religion for those who remain are goals that must be central to any superpower summit. I happen to believe that America's strength lies in her commitment to moral principle. It is our greatest weapon.

Making good on that commitment means practicing what we preach. Here at home the polls show racism and anti-Semitism to be at their lowest ebb in our history. And it is perfectlty clear to me as to why that is so. The civil rights movement made us face up to the reality of racial discrimination and do something about it. And, by striking down school prayer, the Supreme Court added new bricks and mortar to the constitutionally-mandated wall between church and state. As a result, an entire generation of Americans -- our children -- have grown up in a nation much less given to bias and bigotry.

There are those, however, who would like to go back to an earlier time. We hear calls even from some who are running for the highest office in our land to Christianize America. I would note that no one is fooled by their trip of the hat to our "Judeo-Christian tradition." The good old days they are talking about are the ones when public school children were forced to recite the Lord's Prayer and read the Protestant Bible.

Religion does have a place in America, in the synagogues and churches, in the pews and the pulpits, and for people of faith, in the home. But it must remain a matter of private belief and not an issue of public conformity.

In defiance of the Supreme Court's ruling, a number of states, including my own, have passed laws permitting school prayer of a sort. The Court struck down one such law in 1985 and in the current session is considering another. Call it what you like, silent or voluntary, the effect of these laws is the same: and that is to reopen old wounds and old divisions. We must do all we can to resist a return to those times.

Some of you may have listened with dismay as I did when, in the recent debate, every single one of the Republican candidates for President announced their support for a Human Life Amendment to the Constitution. Federal family planning services have been a favorite target of the far right, despite the fact that family planning reduces the likelihood of abortion. The Administration recently attempted a radical rewrite of the Title X program in regulations requiring federally-funded family planning clinics to omit all reference to abortion as a medical option. The Senate unanimously approved my amendment to the Labor, Health and Human Services and Education Appropriations bill directing HHS to rescind these regulations but the matter is far from closed. A four-year reauthorization of the Title X program is before the Congress -- and that legislation could very well fall victim to the anti-abortion agenda of some of its Members.

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Other proposed legislation requiring renewed support is the Civil Rights Restoration Act. Those who practice discrimination against racial minorities, women, the elderly and the handicapped won a great victory in 1984 when the Supreme Court ruled in Grove City v. Bell that civil rights statutes banning discrimination by federally-funded institutions apply solely to the specific program or activity in question and not to the institution as a whole.

Thus recipients of federal funds -- hospitals and schools, local governments and corporations -- can take government money with one hand and discriminate with the other. And they can get away with it.

For three years now, legislation has been introduced in Congress to clarify its intent regarding tax-subsidized discrimination. And for three years, this legislation, the Civil Rights Restoration Act, has failed to find its way out of either chamber.

This failure is frequently attributed to a lack of courage on the part of our Congressional leadership. And there is some truth to that. But it is also the result of a certain silence that hangs over the land. That silence was broken with the nomination of Judge Bork. A man perceived as posing a threat to our Constitutional rights was nominated to the Supreme Court and activists all over this nation came out of the woodwork.

Federally-financed discrimination is a longstanding denial of these rights and yet the people have yet to be heard. The letters and phone calls that flooded this city during the Bork hearings have simply not been generated. Attempts to reinstate prayer in schools and to do away with a woman's right to choose have also been met with apathy on the part of many who know in their hearts that these efforts are not in keeping with the principles we are pledged to as a nation.

These are not easy fights. Allies are often few and far between. No vote can be taken for granted. Solidarity on one issue is not automatically transferable to another. Senator Mark Hatfield and I stand shoulder to shoulder on the issue of war powers and yet we part ways on a woman's right to choose. Party labels are likewise no foolproof guarantee. It was Jesse Helms and the far right who led the effort to strip the federal courts of jurisdiction in cases involving segregation in our public schools, but they did so with the acquiesence of supposed liberals like Joe Biden.

It shouldn't take a noxious Supreme Court nominee to make Americans go to bat for the Constitution. Rather a dedication to its principles should be our way of life. Making this case requires a concerted effort to educate, not merely the man in the street but also the Member of Congress. The founders wrote the words but it is up to each and every one of us to give them their highest and best meaning.

Thank you.

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STATEMENT BY SENATOR LOWELL P. WEICKER, JR.

ON THE INTRODUCTION OF

THE MEDICAID HOME AND COMMUNITY QUALITY SERVICES ACT OF 1987

SEPTEMBER 10, 1987

Mr. President, I rise today with my colleague from Rhode Island, Senator Chafee, to introduce the Medicaid Home and Community Quality Services Act of 1987. This legislation will restructure the current system of funding Medicaid services for people with severe disabilities in order to increase their independence, productivity and integration into the community. Further, it will replace the current fragmented leadership on disability issues within the federal Medicaid bureaucracy with a centralized unit that will oversee Medicaid disability policy and ensure the delivery of high-quality services.

As lawmakers, it is our responsibility to enact legislation consistent with the constitutional principle of providing for the general welfare. We have adapted this principle to changing perceptions of disabled individuals. We have made mistakes, we have learned from them, and we have moved on to new responses, with disabled Americans themselves now in the leadership of this movement.

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Only during the last twenty years or so have we truly begun to break down the barriers that placed opportunity for disabled individuals in a class below opportunity for all Americans.

Disabilities are not selective about the families they touch. We are all potential candidates. But how we support individuals with disabilities is not just an issue for families. It is an economic and a humanitarian issue that touches the essence of what we stand for as a nation.

Today, we can be proud that many laws, such as the Education of the Handicapped Act, the Rehabilitation Act, and the Developmental Disabilities Act, reflect the current state of our knowledge about the abilities of people with disabilities. These individuals have shown us that almost anything is possible, with the right support.

Yet despite over a three billion dollar commitment to carrying out these visionary laws, we are still spending nearly the same amount of federal funds to support an antiquated system of services for the disabled through Medicaid. Indeed, the Medicaid program is the largest financial aid program for people with disabilities, with most of the funding going to the "Intermediate Care Facility for the Mentally Retarded", or ICF/MR, program. In 1986 the amount expended by the Federal Government and the states for this program was estimated at over five billion dollars, and still rising. For the most part, the money is used to fund large, public institutions, which at

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best offer limited opportunities and custodial care, and at worst promote segregation from families and society, encourage dependence, and allow the abuse and neglect of those very individuals for whom the system was created.

When Congress created the ICF/MR program to fund services for disabled people sixteen years ago, it assumed that federal Medicaid dollars would be directly linked with quality services. At the same time, however, the program was structured in a biased manner, with funding going primarily to state institutions and few dollars directed towards keeping people with disabilities in their homes and communities. This system has turned out to be very costly.

Average costs vary between states, but one estimate for 1985 says more than $32,000 was spent per year per person. Recent statistics from my own state of Connecticut indicate an annual cost of approximately $73,000 per person per year. Yet we know that these institution-bound funds do not necessarily buy quality services. In fact, the results of hearings on conditions in institutions, conducted last session by the Subcommittee on the Handicapped, indicated just the opposite. These hearings, and the investigation which preceded them, found that the programs funded with Medicaid dollars often provide inadequate services and protections to people confined within institutional walls. While Medicaid enforcement efforts have been stepped up since that time, and some improvements made, serious deficiencies continue to exist in many federally-supported institutions. And it is shameful that today, such

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conditions as were unveiled during those hearings continue, and are financed with federal funds.

This situation is particularly disturbing given our recognition that people with disabilities need not be bound to a barren life of inactivity and segregation. Indeed we now know that very often these same individuals confined to institutions could be living in the community, where they could have meaningful work and experience the day-to-day joys and sorrows of life among family and friends. But the existing Medicaid system of financing services to people with disabilities inhibits and frustrates the development of needed community supports.

Yet the need for such community-based assistance is greater than ever. Twelve years ago, Congress enacted Public Law 94-142, which marked the beginning of the end of an era of segregation and discrimination against children with disabilities in our public schools. Most of these students have been raised in the mainstream of life. They want to stay there, and their families want them there. But, as I was reminded at one of our Handicapped Subcommittee hearings, too often these students find themselves at the end of their schooling "all dressed up with no place to go." We cannot truly realize the promise of integration which is at the heart of P.L. 94-142, until no disabled person is forced to abandon their bright hopes for the future because there are no alternatives.

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People with severe disabilities in our country deserve full access to quality services that are least restrictive in terms of their personal freedom and most effective in terms of providing personal opportunity. And I believe that the changes in the current system of Medicaid funding for people with disabilities which we propose today are critical in assuring this will happen.

Specifically, the bill requires that every state participating in the institutional aspect of the Medicaid program also develop an array of quality community services and supports. It will allow for choice among the various available services, and choice among a variety of living situations. Most of us take the choices we have in our lives for granted. But for many people with disabilities and their families, there have been no choices--even when that choice could result in less cost to the federal government.

And what of the institutions? The bill we introduce today has not forgotten them. It contains numerous provisions to increase the quality of their services by strengthening the leadership, guidance and support at the federal level, and through increased training of those whose job is to review the quality of services they provide. But the bill sends a clear message that the <u>future</u> for people with disabilities is not segregation from the mainstream of life.

Because it is outside the locked doors of the institution that the land of opportunity lies. With the passage of this bill, those doors--and others--will open. It will require the dedicated efforts

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of everyone: families, service providers, politicians, and disabled individuals themselves. But that opportunity will not be denied.

Finally, I would like to extend my special thanks to Senator Chafee for his leadership in developing this legislation. He has been a tireless advocate for the development of family and community services for people with disabilities. I look forward to working with him, and other members of the Finance Committee, as work on this legislation proceeds.

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FLOOR STATEMENT BY SENATOR LOWELL WEICKER, JR.

ON THE CIVIL RIGHTS RESTORATION ACT OF 1987

FEBRUARY 19, 1987

MR. PRESIDENT, TWO YEARS AGO THIS MONTH, I SPOKE ON THE SENATE FLOOR AS A COSPONSOR OF THE CIVIL RIGHTS RESTORATION ACT OF 1985, A BILL WHICH ATTEMPTED TO REDRESS THE GRIEVOUS MISINTERPRETATION BY THE SUPREME COURT IN ITS GROVE CITY COLLEGE V. BELL DECISION. AS WE ALL KNOW, THAT RULING HAD A SEVERE IMPACT ON OUR NATION'S MINORITIES, WOMEN, HANDICAPPED INDIVIDUALS, AND THE ELDERLY, AND HAS GIVEN A VIRTUAL GREEN LIGHT TO TAX-SUPPORTED DISCRIMINATION.

IN 1964, THE UNITED STATES CONGRESS PASSED THE CIVIL RIGHTS ACT, WHICH STATED THAT,

"NO PERSON SHALL, ON THE GROUND OF RACE, COLOR OR NATIONAL ORIGIN....BE SUBJECTED TO DISCRIMINATION UNDER ANY PROGRAM OR ACTIVITY RECEIVING FEDERAL FINANCIAL ASSISTANCE."

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SINCE THAT TIME, LAWS HAVE ALSO BEEN ENACTED TO PROTECT AND EXTEND THE CIVIL RIGHTS OF MINORITIES, THE HANDICAPPED, THE ELDERLY AND WOMEN. IN SO DOING, IT WAS CONGRESS' INTENTION TO PROHIBIT FEDERAL SUPPORT FOR DISCRIMINATION AND TO ENSURE EQUAL OPPORTUNITY FOR ALL.

THE CIVIL RIGHTS RESTORATION ACT WHICH WE ARE INTRODUCING TODAY SEEKS TO CORRECT THE NARROW INTERPRETATION THAT GROVE CITY HAS IMPOSED ON TITLE IX OF THE EDUCATION AMENDMENTS OF 1972, TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, SECTION 504 OF THE REHABILITATION ACT OF 1973, AND THE AGE DISCRIMINATION ACT OF 1975. THESE LAWS BANNED ANY EXCLUSION FROM PARTICIPATION OR DISCRIMINATION "UNDER ANY PROGRAM OR ACTIVITY RECEIVING FEDERAL FINANCIAL ASSISTANCE" ON THE BASIS OF RACE, SEX, HANDICAP OR AGE. HOWEVER, THE SUPREME COURT, IN THE GROVE CITY DECISION, DETERMINED THAT THIS PROHIBITION REFERS MERELY TO THE SPECIFIC PROGRAM OR ACTIVITY RECEIVING FEDERAL MONEY, NOT THE ENTIRE ORGANIZATION OR INSTITUTION.

THE CIVIL RIGHTS RESTORATION ACT WOULD REDEFINE THE PHRASE "PROGRAM OR ACTIVITY" TO INCLUDE THE ENTIRETY OF ANY STATE OR LOCAL GOVERNMENT, UNIVERSITY OR EDUCATIONAL SYSTEM, CORPORATION, PARTNERSHIP OR PRIVATE ORGANIZATION, WHEN ANY ASPECT OF IT

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RECEIVES FEDERAL FUNDS. THUS, APPLICATION OF THE FOUR CIVIL RIGHTS STATUTES WOULD BE THE SAME AS IT WAS PRIOR TO THE SUPREME COURT'S GROVE CITY DECISION.

IT IS IMPERATIVE, MR. PRESIDENT, THAT CONGRESS TAKE THE LEAD IN THIS MATTER AND REASSERT WITH PRECISION AND CLARITY THE ORIGINAL INTENT OF CONGRESS REGARDING THE FOUR STATUTES AT ISSUE IN THIS LEGISLATION. WE MUST RENEW AND REINVIGORATE OUR PLEDGE TO THOSE WHOM THESE STATUTES SOUGHT TO PROTECT SO THAT THEY WILL BE FREE TO PURSUE THEIR DREAM OF SELF-REALIZATION, WITHOUT DISCRIMINATION DUE TO RACE, SEX AGE, OR HANDICAP. EQUALLY IMPORTANT IS OUR RESPONSIBILITY TO ALL AMERICANS TO REAFFIRM THAT CONGRESS ABSOLUTELY WILL NOT TOLERATE TAX-SUPPORTED DISCRIMINATION.

IT IS SHAMEFUL THAT THIS BODY, IN THIS, THE 100TH CONGRESS, HAS EVEN TO DEBATE A PRINCIPLE THAT STANDS AS THE CORNERSTONE OF OUR CONSTITUTION. BUT IT IS CLEAR IN THE AFTERMATH OF THE GROVE CITY DECISION THAT OUR WORST FEARS HAVE BEEN REALIZED: FEDERAL ENFORCEMENT OF THE BEDROCK CIVIL RIGHTS STATUTES HAS BEEN WEAKENED. FROM COMPLIANCE REVIEWS OF INSTITUTIONS RECEIVING FEDERAL FINANCIAL ASSISTANCE, TO INVESTIGATION OF DISCRIMINATION

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COMPLAINTS, FEDERAL AGENCIES ARE TAKING A NEW AND NARROW VIEW OF THEIR RESPONSIBILITIES IN LIGHT OF THIS SUPREME COURT DECISION.

TODAY WE ARE RENEWING AND REDOUBLING OUR EFFORTS TO RESTORE OUR NATION'S CIVIL RIGHTS COMMITMENT TO ITS ORIGINAL SCOPE AND STRENGTH. THE FEDERAL GOVERNMENT CAN NO LONGER AFFORD TO TOLERATE DISCRIMINATION IN ANY PROGRAM OR ACTIVITY THAT IS ASSISTED BY THE AMERICAN TAX DOLLARS. IT IS IMPERATIVE THAT CONGRESS TAKE THE LEAD ON THIS VITAL ISSUE AND MOVE FORWARD TO REDRESS THIS VOID OF INEQUALITY LEFT BY THE GROVE CITY DECISION, AND TO GUARANTEE EQUAL RIGHTS AND OPPORTUNITY FOR ALL AMERICANS.

I URGE NOT ONLY MY COLLEAGUES' STRONG SUPPORT OF THE CIVIL RIGHTS RESTORATION ACT OF 1987, BUT THEIR ASSISTANCE IN ENSURING ITS EXPEDITIOUS CONSIDERATION. WITH ITS PASSAGE, THE MARCH TOWARD A SOCIETY OF FREEDOM AND EQUAL OPPORTUNITY FOR ALL, WHICH HAS BEEN HALTED THE LAST THREE YEARS, WILL ONCE AGAIN CONTINUE.

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FACT SHEET ON HARRIS POLL #2: EMPLOYERS OF THE DISABLED

-- THIS NATIONAL SURVEY QUERIED 921 EMPLOYERS OF THE DISABLED IN COMPANIES OF ALL SIZES.

-- MAJOR FINDINGS INCLUDE:

--DISABLED PEOPLE MAKE GOOD EMPLOYEES.

--THE COST OF EMPLOYING A DISABLED PERSON IS ABOUT THE SAME AS THE COST OF EMPLOYING A NON-DISABLED PERSON.

--HOWEVER, HIGH RATINGS AND LOW COST HAVE NOT RESULTED IN LARGE NUMBERS OF DISABLED "HIREES". EMPLOYERS CITE THE SHORTAGE OF QUALIFIED JOB APPLICANTS AS THE MAJOR BARRIER TO INCREASED HIRING.

--MANAGERS GENERALLY HAVE A LOW LEVEL OF CONSCIOUSNESS TOWARD DISABLED PEOPLE AS A GROUP.

--MANAGERS GENERALLY EXPRESS STRONG SUPPORT FOR MANY DIFFERENT PROPOSED INITIATIVES DESIGNED TO INCREASE EMPLOYMENT OF DISABLED PEOPLE (E.G., DIRECT TRAINING AND RECRUITING PROGRAMS; COMPANY-SPONSORED INTERNSHIPS, TECHNICAL ASSISTANCE FROM DISABILITY PROFESSIONALS FOR SPECIFIC PROBLEMS).

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CIVIL RIGHTS RESTORATION ACT

-- ON JANUARY 28, THE SENATE PASSED S.557 BY A VOTE OF 75-14. SEVERAL AMENDMENTS WERE CONSIDERED AND DEFEATED WHICH WOULD HAVE LIMITED THE APPLICATION OF THE AFFECTED CIVIL RIGHTS LAWS: TITLE IX OF THE EDUCATION AMENDMENTS, THE AGE DISCRIMINATION ACT, SECTION 504 OF THE REHAB ACT, AND TITLE VI OF THE CIVIL RIGHTS ACT.

-- THE SENATE ADOPTED A WEICKER AMENDMENT WHICH CLARIFIED THE NEUTRALITY OF S.557 WITH RESPECT TO ABORTION TO COUNTER CLAIMS THAT THE BILL CREATED "NEW" ABORTION RIGHTS.

-- HOWEVER, THE SENATE SUBSEQUENTLY ADOPTED AN AMENDMENT BY DANFORTH TO TITLE IX, WHICH WILL HAVE THE EFFECT OF REPEALING REGULATION WHICH PROVIDE FOR NONDISCRIMINATION ON THE BASIS OF PREGNANCY, PARTICULARLY IN UNIVERSITY HEALTH INSURANCE PLANS.

-- ON MARCH 2, THE HOUSE OVERWHELMINGLY ADOPTED THE SENATE-PASSED BILL, BY A VOTE OF 315 TO 98, THUS CLEARING THE MEASURE FOR THE WHITE HOUSE.

-- THE ADMINISTRATION HAS REITERATED ITS INTENT TO VETO THE LEGISLATION. SINCE THE BILL PASSED BOTH HOUSES WITH CONSIDERABLY MORE THAN THE TWO-THIRDS VOTES NECESSARY TO OVERRIDE A VETO, IT IS HIGHLY UNLIKELY THAT A VETO WOULD BE SUSTAINED.

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OPENING STATEMENT OF SENATOR LOWELL P. WEICKER, JR.

HEARING ON THE REPORT OF THE

COMMISSION ON EDUCATION OF THE DEAF

MARCH 21, 1988

WE CONVENE TODAY TO EXAMINE THE REPORT TO CONGRESS BY THE COMMISSION ON EDUCATION OF THE DEAF. I LOOK FORWARD TO HEARING FIRST FROM THE MEMBERS OF THE COMMISSION AS THEY SHARE WITH US THE FINDINGS OF THEIR REPORT, AND THEN TO THE COMMENTS ON THOSE FINDINGS BY THE WITNESSES WHO WILL FOLLOW.

I WOULD ALSO LIKE TO TAKE THIS OPPORTUNITY TO COMMEND THE COMMISSION FOR ITS EFFORTS TO PUT TOGETHER A COMPREHENSIVE REPORT, AND FOR GETTING THAT REPORT TO CONGRESS ON TIME, WITHIN BUDGET. I KNOW OF FEW COMMISSIONS THAT CAN MAKE THAT CLAIM.

WE ARE ALL AWARE OF THE MONUMENTAL CHANGES THAT HAVE TAKEN PLACE IN THE FIELD OF EDUCATION FOR DEAF AND HEARING IMPAIRED INDIVIDUALS SINCE THE BABBIDGE COMMISSION REPORT IN 1965. YET THESE ADVANCES WOULD NOT HAVE BEEN MADE WERE IT NOT FOR THE DEDICATION OF RESEARCHERS AND EDUCATORS, AND THE RIGHTFUL INSISTENCE BY DEAF INDIVIDUALS THAT THEY NOT BE LEFT ON THE SIDELINES AS THE MARCH TOWARD EQUALITY FOR THOSE WITH DISABILITIES HAS MOVED FORWARD. OVERCOMING THE COMMUNICATION

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BARRIERS WHICH CONFRONT DEAF INDIVIDUALS REQUIRES A CONTINUED COMMITMENT FROM ALL OF US TO ENSURE THAT DEAFNESS NEED NOT IMPEDE ONE'S FULL PARTICIPATION AND INTEGRATION INTO SOCIETY.

AS MEMBERS OF CONGRESS, WE SHARE THE RESPONSIBILITY FOR ENSURING QUALITY EDUCATIONAL PROGRAMS FOR DEAF INDIVIDUALS. BUT, RECOGNIZING THAT WE ARE NOT EXPERTS IN ASSESSING WHAT MUST BE DONE TO ACCOMPLISH THAT GOAL, WE TURNED TO YOU FOR ADVICE. THE INFORMATION AND RECOMMENDATIONS THAT YOUR REPORT PROVIDES WILL ASSIST US TO MAKE INFORMED DECISIONS ABOUT THE FUTURE OF FEDERAL SUPPORT FOR EDUCATIONAL PROGRAMS FOR THE DEAF IN THIS COUNTRY.

OF PARTICULAR IMPORTANCE ARE SEVERAL AREAS WHICH WE WILL HEAR MORE ABOUT IN TODAY'S TESTIMONY, SUCH AS THE APPLICATION OF THE LEAST RESTRICTIVE ENVIRONMENT REQUIREMENT, THE ADVISABILITY OF EXPANDING FEDERAL SUPPORT TO POSTSECONDARY EDUCATION, THE ROLE AND IMPACT OF RESEARCH AT GALLAUDET AND NTID, AND THE APPLICATION OF TECHNOLOGY TO IMPROVE COMMUNICATION--WHICH I'M PLEASED TO SEE IS VERY MUCH IN EVIDENCE HERE TODAY.

FINALLY, I WOULD LIKE TO SAY HOW PLEASED I AM THAT WE HAVE WITH US TODAY THE FIRST DEAF PRESIDENT OF GALLAUDET UNIVERSITY IN ITS PROUD, 124-YEAR HISTORY. THE EVENTS OF THE LAST SEVERAL WEEKS SERVE TO REMIND US ALL OF WHAT DISABLED INDIVIDUALS CAN

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ACCOMPLISH WHEN THEY SHARE AN UNWAVERING COMMITMENT TO ACHIEVING A COMMON GOAL. WELCOME, DR. JORDAN, AND MY CONGRATULATIONS TO THE STUDENTS AND FACULTY OF GALLAUDET.

I LOOK FORWARD TO HEARING THE TESTIMONY FROM ALL OUR WITNESSES THIS MORNING, AND TO CONTINUING TO WORK WITH YOU TO ENSURE EQUALITY OF OPPORTUNITY FOR ALL OF THE DEAF AND HEARING IMPAIRED CITIZENS OF THIS NATION.

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REMARKS TO ACLD

I. OVERVIEW OF HANDICAPPED SUBCOMMITTEE

Created in the early 1970's, standing Sub of LHR

A. Jurisdiction over major federal disability programs.

1. Education of the Handicapped Act
2. Rehabilitation Act
3. Developmental Disabilities Act
4. Other bills: P&A MI, Attys. Fees, EDA

B. Having jurisdiction over these laws gives the Subcommittee the responsibility for oversight--see how the the programs are working--and changes to see that the laws keep evolving to reflect the state of the art. The process for making those changes is known as the authorizing process.

II. AUTHORIZING PROCESS

1. First, important to understand that Members of Congress are not experts in S.E./ld; but rather experts in how to make public policy.

2. So, have to rely on parents, educators, s.e. professionals, to give them information they need to make responsible decisions.

3. You can give us that info in a number of different ways--throughout the authorizing process.

3. First, Subcommittee holds hearings--testimony by parents, professionals educators
   a. Very important opportunity; Chairman is there to listen to you, represents the principal opportunity to actually have the Senator/Rep to hear your concerns firsthand
   b. What do they need to hear? Need to know how is the system working for ld--are their needs being met by the special ed system? What recommendations do you have for change to system? Needs for research?

4. Staff meet with interest groups--including same

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5. Based upon hearings, meetings, develop legislation to be introduced

6. You should comment on that legislation, whether it is workable, reflective of what the needs are.

7. The Subcommittee also works with other Members' staffs and groups.

7. Markups, (amendments) floor, conference.

8. Once law is passed, must be signed by President.

9. Watch implementation process.

9. Still important to hear from parents, professionals so aware of implementation problems

III. SUMMARY: GRASS-ROOTS EFFORTS BY PARENTS, EDUCATORS, INDIVIDUALS WITH DISABILITIES THEMSELVES ARE CRUCIAL

A. Legislators can have the best intentions, and introduce great bills, but without active support from people such as you, those intentions will never become translated into public policy

B. Just last year, with the reauthorization of the EHA, parents testified during hearings about success of early intervention programs and need to expand it.

C. Largely as a result of what we heard from parents and educators, the reauthorization bill, when introduced, contained a new program of early intervention

D. Then, after the bill was introduced, they deluged their elected officials with letters, phone calls, in support of the bill.

E. In these days, when the budget deficit too often drives public policy--which is the opposite of how it should be done--have to hear from those who know what is needed.

F. Just too easy for the naysayers to say "e.i. costs too much". We needed to show that it cost more not to do it--in both human and economic terms.

G. Without parents and educators telling their reps that

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e.i. worked and that they were willing to see their tax dollars spent on it, wouldn't have become law. It's as simple as that. Perseverance by LW, sure, but that wasn't enough.

H. After that law passed, and it was presented to the President for signature, we understand the White House was inundated with thousands of letters and phone calls, urging him to sign the bill. Key.

I. Finally, although the reauthorization times are critical for involvement, need to keep in touch with Members and their staffs during the "off years" as well. Schedule meetings with staff when you are in Washington, or when they come back to their home states.

J. Don't necessarily assume a high level of sophistication about ld--bright, but unlikely to know what you know. For example, if you think there should be greater federal support for ld research, give them that message.

K. Don't wait until there's a crisis--better to foster an ongoing relationship so that you don't have to start from scratch when something comes up. Also good to have them know who you are so they will know who to contact in their state when issues arise affecting ld.

L. BOTTOM LINE IS TO GET INVOLVED.

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STATEMENT OF SENATOR LOWELL WEICKER, JR.

LABOR AND HUMAN RESOURCES COMMITTEE MARK-UP OF S.557,

THE CIVIL RIGHTS RESTORATION ACT OF 1987

MAY 20, 1987

TODAY THE COMMITTEE MEETS TO CONSIDER S.557, THE CIVIL RIGHTS RESTORATION ACT OF 1987 -- THE MOST IMPORTANT CIVIL RIGHTS LEGISLATION THIS CONGRESS WILL CONSIDER. AFTER TWO DAYS OF HEARINGS IN MARCH AND APRIL, AND NUMEROUS HEARINGS IN THE HOUSE DURING THE PREVIOUS CONGRESS, THE OVERWHELMING CASE HAS BEEN MADE FOR PASSAGE OF THIS LEGISLATION THIS YEAR.

SENATOR KENNEDY HAS DEMONSTRATED HIS LEADERSHIP ON THIS MATTER BY MOVING FORWARD IN A FAIR, YET EXPEDITIOUS MANNER. AND, AS A RESULT OF STAFF NEGOTIATIONS, I UNDERSTAND THAT MANY OF THE AMENDMENTS THAT WERE TO BE OFFERED WILL INSTEAD BE HANDLED THROUGH REPORT LANGUAGE. FURTHER, I UNDERSTAND THAT THESE AMENDMENTS WILL NOT BE OFFERED ON THE FLOOR, AND I APPRECIATE THE COOPERATION OF SENATOR HATCH AND SENATOR THURMOND IN THIS REGARD. CLEARLY, HOWEVER, THERE ARE SEVERAL FUNDAMENTAL ISSUES ON WHICH OUR TWO SIDES SIMPLY DISAGREE, AND THOSE MATTERS WILL BE THE SUBJECT OF DEBATE TODAY AND TOMORROW.

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I'D ALSO LIKE TO TAKE A MOMENT TO TALK ABOUT WHAT THE BILL DOES, AND WHAT IT DOESN'T DO. IT DOES RESTORE THE BROAD SCOPE OF THE NATION'S FOUR BEDROCK CIVIL RIGHTS STATUTES: TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, THE EDUCATION AMENDMENTS OF 1972, SECTION 504 OF THE REHABILITATION ACT OF 1973, AND THE AGE DISCRIMINATION ACT OF 1975. IT DOES NOT REWRITE THE SUBSTANTIVE LANGUAGE OF THOSE LAWS. IT DOES DEFINE CLEARLY WHAT CONSTITUTES "PROGRAM OR ACTIVITY", SO THAT THERE CAN BE NO MISINTERPRETATION ABOUT WHAT CONGRESS INTENDS. IT DOES NOT REDEFINE WHO IS A "RECIPIENT" OF FEDERAL FINANCIAL ASSISTANCE, NOR DOES IT REDEFINE WHAT CONSTITUTES "FEDERAL FINANCIAL ASSISTANCE".

MOST IMPORTANTLY, WHAT THE BILL DOES IS TO REAFFIRM FOR ALL AMERICANS -- INCLUDING THE DISABLED, THE ELDERLY, MINORITIES, AND WOMEN -- THAT TAX-SUPPORTED DISCRIMINATION WILL NOT BE TOLERATED.

THANK YOU, MR. CHAIRMAN.

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FLOOR STATEMENT OF SENATOR LOWELL WEICKER, JR.
INTRODUCTION OF THE AMERICANS WITH DISABILITIES ACT
APRIL 28, 1988

IN 1975, A GROUP OF INTERNATIONAL EXPERTS ON THE PROBLEMS AFFECTING PEOPLE WITH DISABILITIES REACHED THE FOLLOWING CONCLUSION:

> DESPITE EVERYTHING WE CAN DO, OR HOPE TO DO, TO ASSIST EACH PHYSICALLY OR MENTALLY DISABLED PERSON ACHIEVE HIS OR HER MAXIMUM POTENTIAL IN LIFE, OUR EFFORTS WILL NOT SUCCEED UNTIL WE HAVE FOUND THE WAY TO REMOVE THE OBSTACLES TO THIS GOAL DIRECTED BY HUMAN SOCIETY -- THE PHYSICAL BARRIERS WE HAVE CREATED IN PUBLIC BUILDINGS, HOUSING, TRANSPORTATION, HOUSES OF WORSHIP, CENTERS OF SOCIAL LIFE, AND OTHER COMMUNITY FACILITIES--THE SOCIAL BARRIERS WE HAVE EVOLVED AND ACCEPTED AGAINST THOSE WHO VARY MORE THAN A CERTAIN DEGREE FROM WHAT WE HAVE BEEN CONDITIONED TO REGARD AS NORMAL. MORE PEOPLE ARE FORCED INTO LIMITED LIVES AND MADE TO SUFFER BY THESE MAN-MADE OBSTACLES THAN BY ANY SPECIFIC PHYSICAL OR MENTAL DISABILITY.

THE NATIONAL COUNCIL ON THE HANDICAPPED EXPRESSED THE SAME SENTIMENT MORE SUCCINCTLY IN TOWARD INDEPENDENCE, ITS 1986 REPORT TO THE PRESIDENT AND CONGRESS: "PEOPLE WITH DISABILITIES HAVE BEEN SAYING FOR YEARS THAT THEIR MAJOR OBSTACLES ARE NOT INHERENT IN THEIR DISABILITIES, BUT ARISE FROM BARRIERS THAT HAVE BEEN IMPOSED EXTERNALLY AND UNNECESSARILY." THE COUNCIL IS AN INDEPENDENT FEDERAL AGENCY WHOSE MEMBERS WERE APPOINTED BY THE PRESIDENT AND CONFIRMED BY THE SENATE. ITS STATUTORY MISSIONS INCLUDE A RESPONSIBILITY TO MAKE LEGISLATION RECOMMENDATIONS TO THE CONGRESS. THE COUNCIL'S PRIMARY RECOMMENDATION IN THE TOWARD INDEPENDENCE REPORT WAS THAT "CONGRESS SHOULD ENACT A COMPREHENSIVE LAW REQUIRING EQUAL OPPORTUNITY FOR INDIVIDUALS, WITH BROAD COVERAGE AND SETTING CLEAR, CONSISTENT, AND ENFORCEABLE STANDARDS PROHIBITING DISCRIMINATION ON THE BASIS OF HANDICAP." I AM PLEASED TO ANNOUNCE THAT I AM TODAY INTRODUCING A BILL ENTITLED "THE AMERICANS WITH DISABILITIES ACT OF 1988," THAT DOES EXACTLY WHAT THE COUNCIL HAD CALLED FOR. IT WILL ESTABLISH A BROAD-SCOPED PROHIBITION OF DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES AND WILL DESCRIBE SPECIFIC METHODS BY WHICH SUCH DISCRIMINATION IS TO BE ELIMINATED. THE BILL HAS BEEN ENDORSED BY OVER (INSERT NUMBER HERE) NATIONAL ORGANIZATIONS REPRESENTING PEOPLE WITH ALL DIFFERENT KINDS OF DISABILITIES. (IF YOU WISH, INSERT A LIST OF THE ORGANIZATIONS HERE). IT IS ALSO SUPPORTED BY THE LEADERSHIP CONFERENCE ON CIVIL RIGHTS, AN

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UMBRELLA ORGANIZATIONS REPRESENTING NUMEROUS MEMBER ORGANIZATIONS CONCERNED ABOUT ISSUES OF CIVIL RIGHTS.

PSYCHOLOGIST KENNETH CLARK, WHOSE TESTIMONY ABOUT THE DAMAGING EFFECTS OF SEGREGATION PROVIDED PIVOTAL EVIDENCE IN THE LANDMARK CASE OF BROWN V. BOARD OF EDUCATION, HAS STATED THAT "SEGREGATION IS THE WAY IN WHICH A SOCIETY TELLS A GROUPS OF HUMAN BEINGS THAT THEY ARE INFERIOR TO OTHER GROUPS OF HUMAN BEINGS IN THE SOCIETY." ON A NUMBER OF PRIOR OCCASIONS I HAVE STOOD IN THIS CHAMBER AND QUOTED VARIOUS AUTHORITIES' CONCLUSIONS THAT THE HISTORY OF SOCIETY'S FORMAL METHODS FOR DEALING WITH PEOPLE WITH DISABILITIES CAN BE SUMMED UP IN TWO WORDS: SEGREGATION AND INEQUALITY. AS A SOCIETY, WE HAVE TREATED PEOPLE WITH DISABILITIES AS INFERIORS AND HAVE MADE THEM UNWELCOME IN MANY ACTIVITIES AND OPPORTUNITIES GENERALLY AVAILABLE TO OTHER AMERICANS. SUCH SEGREGATION AND INEQUALITY ARE INSTILLED AND EFFECTUATED THROUGH THE UNFORTUNATE MECHANISM OF DISCRIMINATION.

IS SUCH DISCRIMINATION REALLY A SERIOUS AND WIDESPREAD PROBLEM FOR PERSONS WITH DISABILITIES? EARLIER THIS YEAR, THE NATIONAL COUNCIL ON THE HANDICAPPED COMPLIED WITH ANOTHER OF ITS STATUTORY MANDATES AND ISSUES A FOLLOW-UP REPORT TO CONGRESS AND THE PRESIDENT, TITLED ON THE THRESHOLD OF INDEPENDENCE, IN WHICH IT DECLARED: "IN FORUMS WITH CITIZENS WITH DISABILITIES ACROSS THE NATION, THE COUNCIL HAS HEARD OVER AND OVER THAT DISCRIMINATION IS THE NUMBER ONE PROBLEM FACED BY INDIVIDUALS WITH DISABILITIES."

IN AN EXTENSIVE 1983 REPORT ON DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES, ANOTHER INDEPENDENT FEDERAL AGENCY, THE UNTIED STATES COMMISSION ON CIVIL RIGHTS, CONCLUDED AS FOLLOWS:

> HISTORICALLY, SOCIETY HAS TENDED TO ISOLATE AND SEGREGATE HANDICAPPED PEOPLE. DESPITE SOME IMPROVEMENTS, PARTICULARLY IN THE LAST TWO DECADES, DISCRIMINATION AGAINST HANDICAPPED PERSONS CONTINUES TO BE A SERIOUS AND PERVASIVE SOCIAL PROBLEM. IT PERSISTS IN SUCH CRITICAL AREAS AS EDUCATION, EMPLOYMENT, INSTITUTIONALIZATION, MEDICAL TREATMENT, INVOLUNTARY STERILIZATION, ARCHITECTURAL BARRIERS, AND TRANSPORTATION.

FURTHER, THE COMMISSION OBSERVED THAT "DISCRIMINATORY TREATMENT OF HANDICAPPED PERSONS CAN OCCUR IN ALMOST EVERY ASPECT OF THEIR LIVES."

IN HIS COMPREHENSIVE LEGAL CASEBOOK, THE LEGAL RIGHTS OF HANDICAPPED PERSONS, ROBERT L. BURGDORF, JR. CONCLUDED: "INDIVIDUALS WITH HANDICAPPING CONDITIONS HAVE FACED AN ALMOST UNIVERSAL CONSPIRACY TO SHUNT THEM ASIDE FROM THE MAINSTREAM OF SOCIETY AND TO DENY THEM AN EQUAL SHARE OF BENEFITS AND OPPORTUNITIES AVAILABLE TO OTHERS."

A NATIONWIDE POLL OF AMERICANS WITH DISABILITIES CONDUCTED IN 1986 BY LOUIS HARRIS AND ASSOCIATES CONFIRMS THAT

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DISCRIMINATION IS A PROBLEM SUCH PERSONS ENCOUNTER FREQUENTLY. RESPONDENTS IDENTIFIED A VARIETY OF TYPES OF DISCRIMINATION THEY HAD EXPERIENCED, INCLUDING WORKPLACE DISCRIMINATION, DENIALS OF EDUCATIONAL OPPORTUNITIES, LACK OF ACCESS TO PUBLIC BUILDINGS AND PUBLIC BATHROOMS, THE ABSENCE OF ACCESSIBLE TRANSPORTATION, AND OTHER FORMS OF SOCIAL OSTRACISM. ONE FOURTH OF THOSE INTERVIEWED STATED THAT THEY PERSONALLY HAD ENCOUNTERED JOB DISCRIMINATION BECAUSE OF THEIR DISABILITIES.

NEARLY FIFTEEN YEARS AGO, THE CONGRESS TOOK AN IMPORTANT STEP TO BEGIN TO ADDRESS DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES. THE ENACTMENT OF TITLE V OF THE REHABILITATION ACT OF 1973 REPRESENTED CONGRESSIONAL RECOGNITION THAT DISCRIMINATION ON THE BASIS OF HANDICAP IS A SERIOUS PROBLEM THAT OUGHT TO BE ADDRESSED BY FEDERAL LAW. PURSUANT TO SECTIONS 503 AND 504 OF THAT ACT, DISCRIMINATION ON THE BASIS OF HANDICAP WAS MADE UNLAWFUL FOR FEDERAL AGENCIES, FEDERAL FINANCIAL RECIPIENTS, AND FEDERAL CONTRACTORS. THERE IS NO DOUBT THAT THESE STATUTES, AND PARTICULARLY SECTION 504, HAVE HAD A PROFOUND EFFECT IN REDUCING DISCRIMINATION ON THE BASIS OF HANDICAP IN THE PROGRAM SAND ACTIVITIES THEY COVER. UNDER THESE LAWS IMPORTANT REGULATIONS HAVE BEEN PROMULGATED THAT HAVE HELPED TO SPELL OUT HOW TO AVOID AND ELIMINATE DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES. UNDER THESE STATUTES, NUMEROUS LAWSUITS HAVE BEEN FILED RESULTING IN COURT DECISION (A FEW EVEN REACHING THE SUPREME COURT OF THE UNITED STATES) THAT HAVE INTERPRETED AND APPLIED THE PROHIBITION OF DISCRIMINATION ON THE BASIS OF HANDICAP.

A FEW WEEKS AGO, WE PASSED THE CIVIL RIGHTS RESTORATION ACT TO MAKE SURE THAT SECTION 504, ALONG WITH CIVIL RIGHTS LAWS PROTECTING RACIAL MINORITIES, WOMEN, AND ELDERLY PEOPLE, WOULD NOT BE RESTRICTED BY THE NARROWED INTERPRETATION OF THEIR SCOPE ENGENDERED BY THE SUPREME COURT'S DECISION IN GROVE CITY COLLEGE V. BELL. THERE SHOULD BE NO DOUBT THAT PERSONS WITH DISABILITIES AND WE IN CONGRESS CONTINUE TO BELIEVE IN THE PARAMOUNT IMPORTANCE OF SECTIONS 503 AND 504, AND WILL STRENUOUSLY RESIST ANY ATTEMPTS TO UNDERCUT OR WEAKEN THEM. BUT, AT THE SAME TIME, WE MUST RECOGNIZE THAT THE EXISTING STATUTES DO NOT GO NEARLY FAR ENOUGH TOWARD ESTABLISHING A BROAD LEGAL CONDEMNATION OF THE DISCRIMINATION CONFRONTING PEOPLE WITH DISABILITIES.

SOME HAVE HERALDED SECTION 504 AS "THE CIVIL RIGHTS LAW" FOR PEOPLE WITH DISABILITIES. THE FACT IS, HOWEVER, THAT SECTION 504 ADDRESSES ONLY A FEW OF THE SOCIAL ARENAS IN WHICH DISCRIMINATION OCCURS. SECTION 504 IS MODELED ON AND TRACKS THE LANGUAGE OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964. THERE CAN BE NO DOUBT THAT BOTH OF THESE STATUTES ARE NECESSARY AND OF MAJOR SIGNIFICANCE. BUT THE CIVIL RIGHTS ACT OF 1964 AND OTHER STATUTES PROTECTING PEOPLE FROM DISCRIMINATION ON THE BASIS OF RACE, COLOR, SEX, RELIGION, OR NATIONAL ORIGIN, CONTAIN MANY OTHER PROVISIONS NOT FOUND IN STATUTES PROTECTING PEOPLE WITH

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DISABILITIES. THE 1964 ACT PROHIBITS DISCRIMINATION BY EMPLOYERS ENGAGED IN INTERSTATE COMMERCE, IN PLACES OF PUBLIC ACCOMMODATION, AND BY STATES OR POLITICAL SUBDIVISIONS OF STATES -- PEOPLE WITH DISABILITIES CURRENTLY HAVE NO SUCH PROTECTION. OTHER STATUTES, CONSTITUTIONAL PROVISIONS, REGULATORY INTERPRETATIONS, AND LONGSTANDING JUDICIAL PRECEDENTS PROHIBIT DISCRIMINATION ON GROUNDS OF RACE, COLOR, SEX, RELIGION, OR NATIONAL ORIGIN IN HOUSING, TRAVEL, AND THE COMMUNICATIONS INDUSTRY. PEOPLE WITH DISABILITIES CURRENTLY DO NOT HAVE SUCH PROTECTION.

ON FEBRUARY 1, 1960, FOUR BLACK STUDENTS ENTERED A WOOLWORTH'S STORE IN GREENSBORO, NORTH CAROLINA, PROCEEDED TO THE LUNCH COUNTER, SEATED THEMSELVES, AND ORDERED A CUP OF COFFEE. BY THIS COURAGEOUS ACT, THE YOUNG MEN INITIATED WHAT WOULD BECOME A SERIES OF SIT-INS AND OTHER FORMS OF CIVIL DISOBEDIENCE CHALLENGING THE RACIAL SEGREGATION OF LUNCHCOUNTERS, RESTAURANTS, HOTELS, MOTELS, PARKS, AND OTHER TYPES OF PUBLIC ACCOMMODATIONS. THESE EFFORTS WOULD EVENTUALLY LEAD TO THE ENACTMENT OF TITLE II OF THE CIVIL RIGHTS ACT OF 1964, WHICH PROHIBITS DISCRIMINATION ON THE BASIS OF RACE, COLOR, RELIGION, OR NATIONAL ORIGIN IN PLACES OF PUBLIC ACCOMMODATION.

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HANDICAPPED

Subcommittee on the Handicapped: Lowell P. Weicker, Jr., Chairman

The Subcommittee on the Handicapped held two hearings on February 4 and 21 on the reauthorization of the Education of the Handicapped Act. Witnesses testified to the successes of the programs authorized under the Act, and to the need for expansion of early intervention services for handicapped infants and toddlers. Subsequently, S. 2294, the Education of the Handicapped Amendments of 1986 was introduced by Chairman Weicker and 15 cosponsors. After subsequent amendment by the House, the bill became Public Law 99-457 on October 8, 1986.

In addition to reauthorizing the discretionary programs under the Education of the Handicapped Act, P.L. 99-457 establishes a new Federal grant program to assist states to develop and implement a comprehensive, coordinated, interdisciplinary program of early intervention services for handicapped infants, toddlers and their families.

With the establishment of this new early intervention program, states will be given a four-year phase in period to develop a statewide system of early intervention services for all handicapped infants, toddlers and their families. The system must include procedural safeguards to ensure access to such services.

The law would require the Governor of each participating state to designate a lead agency to administer the program. An Early Intervention Council composed of parents and professional would be established to advise and assist the lead agency with regard to early intervention. Furthermore, P.L. 99-457 amends the preschool incentive grant program under P.L. 94-142 to greatly enhance financial incentives to states to ensure universal access to special education and related services beginning at age 3.

Additionally, the Subcommittee held two hearings on March 20 and 25 on the reauthorization of the Rehabilitation Act. Witnesses addressed a broad range of issues, including the need to expand services to severely disabled individuals through supported employment and rehabilition engineering. This led to the Subcommittee Chairman's introduction, with 11 cosponsors, of S. 2515, the Rehabilitation Act Amendments of 1986. After conference with the House on the reauthorization bill in September, the bill became Public Law 99-506 on October 21, 1986.

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The Rehabilitation Act Amendments of 1986 extend the vocational rehabilitation programs through fiscal year 1991, increasing the focus on employment and independent living for severely handicapped persons.

A major initiative in the law creates a new $25 million state grant program for the development of supported employment services that allow disabled persons to hold jobs in integrated competitive workplaces rather that sheltered workshops. The new program will enable states to plan, develop and expand supported employment programs thru authorized demonstration projects, technical assistance and training of personnel in this area.

P.L. 99-506 emphasizes the importance of rehabilitation engineering as a facilitator of employment and independent living and creates a state-wide independent living council to provide long-term planning. This law mandates that Centers for Independent Living and Projects With Industry which meet national standards receive continued funding for five years. Particular attention is paid to expanding services to persons with mental illness.

In addition, the President signed into law on May 23, 1986, the Protection and Advocacy for Mentally Ill Persons Act (P.L. 99-319), which was introduced by the Subcommittee Chairman and 26 cosponsors on April 23, 1985.

P.L. 99-319 was developed in response to the 9 month joint investigation by the Handicapped Subcommittee and Labor-HHS-Education Appropriations Subcommittee staff, and 3 days of hearings in 1985 which documented the abuse and neglect of mentally disabled persons in institutions.

This law establishes a Protection and Advocacy program in every state to advocate for the rights of mentally ill persons, and investigate incidents of alleged abuse and neglect in residential facilities. Additionally, the law includes the Bill of Rights for Mentally Ill Persons formerly contained in the Mental Health Systems Act of 1980.

Under this law, the new P&A program is being operated by existing protection and advocacy agencies for the developmentally disabled in each state. An annual report to Congress detailing P&A activities, accomplishments and expenditures will be required.

Further, the President signed the Handicapped Children's Protection Act on August 5, 1986. P.L. 99-372, which was introduced

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as S. 415 by Senator Weicker and 21 cosponsors, overturns the Smith v. Robinson Supreme Court decision to authorize courts to award attorney's fees to parents who prevail in P.L. 94-142 cases at either the administrative level or in court.

The law clarifies that parents can bring suit under P.L. 94-142 and other relevant statutes, i.e. Section 504 of the Rehabilitation Act, at the same time, and allows courts to award fees retroactively since the Smith v. Robinson decision.

P.L. 99-372 requires the exhaustion of administrative remedies where appropriate, and provides for a Governmental Accounting Office to study the impact of the law and collect information on the cost of administrative hearings and court actions involving disputes with parents of handicapped children.

Finally, the President also signed S. 1874, the Education of the Deaf Act of 1986, on August 4, 1986. This bill, cosponsored by Senator Weicker and 13 others, renamed Gallaudet College as Gallaudet University, placed the University and the National Technical Institute for the Deaf on a five-year reauthorization cycle, and authorizes endowment funds for both institutions. P.L. 99-371 also creates a Commission on Education of the Deaf to study and evaluate the current state-of-the-art in deaf education, and make policy recommendations to Congress.

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FLOOR STATEMENT OF SENATOR LOWELL P. WEICKER, JR.
ON THE REAUTHORIZATION OF THE PROTECTION AND ADVOCACY
FOR MENTALLY ILL INDIVIDUALS ACT OF 1986
MAY 13, 1988

MR. PRESIDENT, I RISE TODAY WITH SENATOR HARKIN, THE DISTINGUISHED CHAIRMAN OF THE SUBCOMMITTEE ON THE HANDICAPPED, TO INTRODUCE LEGISLATION TO REAUTHORIZE THE PROTECTION AND ADVOCACY FOR MENTALLY ILL INDIVIDUALS ACT OF 1986. THIS LEGISLATION WAS ORIGINALLY ENACTED IN RESPONSE TO THE APPALLING CONDITIONS IN RESIDENTIAL FACILITIES FOR THE MENTALLY ILL WHICH WERE UNCOVERED DURING A SIX-MONTH SENATE INVESTIGATION AND THREE DAYS OF HEARINGS BEFORE THE SUBCOMMITTEE ON THE HANDICAPPED.

DURING THE COURSE OF THOSE HEARINGS, AND IN SITE VISITS TO 31 FACILITIES IN 19 STATES, TWO FACTS BECAME ABUNDANTLY CLEAR. FIRST, MENTALLY ILL INDIVIDUALS LIVING IN THOSE FACILITIES WERE SUBJECT TO ABUSE AND NEGLECT. SECOND, THOSE INDIVIDUALS OFTEN DID NOT HAVE ACCESS TO ADEQUATE REPRESENTATION OR ADVOCACY TO REMEDY THE ABUSE AND NEGLECT THAT BEFELL THEM. THE SYSTEMS THAT DID EXIST TO PROTECT MENTALLY ILL PERSONS WERE TYPICALLY UNDERSTAFFED, OVERLOADED WITH CASES, AND MANY TIMES, WERE STAFFED BY EMPLOYEES OF THE VERY ENTITY THAT HAD PERMITTED THE ABUSE AND NEGLECT TO OCCUR.

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AS THE HEARINGS THAT EXPOSED THIS SHOCKING SITUATION CAME TO A CLOSE, IT HAD BECOME PAINFULLY EVIDENT THAT, INSTEAD OF BEING TREATED WITH DIGNITY AND RESPECT, THESE INDIVIDUALS WERE BEING DEPRIVED OF THEIR MOST FUNDAMENTAL RIGHTS. CLEARLY, ACTION HAD TO BE TAKEN TO ENSURE THE PROTECTION OF THE RIGHTS OF THESE INDIVIDUALS, AND ALLOW THEM TO RECEIVE TREATMENT IN AN ATMOSPHERE FREE FROM ABUSIVE AND NEGLECTFUL CONDITIONS.

SHORTLY THEREAFTER, I INTRODUCED S.974, TO CREATE AN INDEPENDENT, FEDERALLY FUNDED SYSTEM OF PROTECTION AND ADVOCACY FOR MENTALLY ILL PERSONS IN EACH STATE. AFTER THIRTEEN MONTHS OF NEGOTIATIONS WITH THE ADMINISTRATION, SERVICE PROVIDERS, CONSUMERS AND ADVOCATES, THIS BILL BECAME LAW. WITH ITS ENACTMENT, A SYSTEM WAS ESTABLISHED TO AFFORD MENTALLY ILL PERSONS ASSISTANCE TO HELP THEM SECURE THEIR RIGHTS GUARANTEED UNDER FEDERAL AND STATE STATUTES AND THE U.S. CONSTITUTION.

IT HAS NOW BEEN TWO YEARS SINCE THAT LEGISLATION WAS SIGNED INTO LAW, DURING WHICH TIME THIS SYSTEM HAS BECOME OPERATIONAL IN EVERY STATE. PRELIMINARY DATA REGARDING THE PROGRAM INDICATE THAT PROTECTION AND ADVOCACY SYSTEMS AROUND THE COUNTRY HAVE HAD AN ACTIVE YEAR, SERVING A TOTAL OF 9,758 CLIENTS LAST YEAR THROUGH BOTH INDIVIDUAL PROTECTIVE ACTIONS AND SYSTEMS ADVOCACY CASES.

UNFORTUNATELY, THE DEPLORABLE CONDITIONS UNCOVERED DURING THE INVESTIGATION THREE YEARS AGO HAVE NOT BEEN ERADICATED DESPITE THE

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VALIANT EFFORTS OF THE PROTECTION AND ADVOCACY SYSTEMS. TESTIMONY PRESENTED THIS WEEK TO THE SUBCOMMITTEEE INDICATE THAT MENTALLY ILL PERSONS CONTINUE TO SUFFER INJUSTICE AT THE HANDS OF A SYSTEM THAT IS SUPPOSED TO HELP THEM.

SINCE CONGRESS FIRST BEGAN ITS CONSIDERATION OF THE PROTECTION AND ADVOCACY LEGISLATION, APPROXIMATELY $30 MILLION IN FEDERAL FUNDS HAVE BEEN PROVIDED TO ESTABLISH AND OPERATE THESE PROGRAMS. HOWEVER, THE FACT REMAINS THAT LIMITED FINANCIAL RESOURCES PREVENT PROTECTION AND ADVOCACY AGENCIES FROM REACHING A SUBSTANTIAL NUMBER OF INDIVIDUALS WHO REQUIRE ADVOCACY AND ASSISTANCE TO SECURE THEIR RIGHTS. SOME AGENCIES, SUCH AS THE OFFICE OF PROTECTION AND ADVOCACY IN MY OWN STATE OF CONNECTICUT, HAVE BEEN FORCED TO LIMIT THEIR ACTIVITIES TO ONE PART OF THE STATE. AGAIN FOR LACK OF SUFFICIENT RESOURCES, MANY PROTECTION AND ADVOCACY AGENCIES ARE SIMPLY UNABLE TO REACH ENTIRE FACILITIES WHICH PROVIDE CARE AND TREATMENT TO MENTALLY ILL INDIVIDUALS. CLEARLY, WHEN SUCH AN INDIVIDUAL IS BEING ABUSED OR NEGLECTED, HE OR SHE SHOULD BE ABLE TO RECEIVE ASSISTANCE UNDER THIS LEGISLATION.

THEREFORE, IN ORDER TO RESPOND TO THE PRESSING NEED FOR ADDITIONAL RESOURCES, THE REAUTHORIZATION PROVIDES FOR SUBSTANTIAL INCREASES IN FUNDING LEVELS. SPECIFICALLY, THE BILL PROVIDES FOR A 30 PERCENT ANNUAL GROWTH IN THE PROGRAM FOR EACH OF THE NEXT THREE YEARS.

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IN ADDITION, THE BILL INCLUDES REFINEMENTS WHICH WILL IMPROVE THE ABILITY OF PROTECTION AND ADVOCACY SYSTEMS TO INVESTIGATE ABUSE AND NEGLECT, AND PROVIDE FOR ENHANCED INVOLVEMENT BY CONSUMERS IN ESTABLISHING THE PRIORITIES OF THE SYSTEMS IN THEIR STATES.

THESE REFINEMENTS INCLUDE A PROVISION THAT PERMITS PROTECTION AND ADVOCACY SYSTEMS TO INVESTIGATE INCIDENTS OF ABUSE AND NEGLECT OF INDIVIDUALS WHO HAVE EITHER DIED, WHOSE WHEREABOUTS ARE UNKNOWN, OR WHO ARE IN THE PROCESS OF BEING ADMITTED TO A HOSPITAL. ADDITIONALLY, THE BILL STATES THAT REPORTS OF ABUSE AND NEGLECT AS WELL AS DISCHARGE SUMMARIES PREPARED BY THE FACILITY ARE CONSIDERED "RECORDS" AND THEREBY ACCESSIBLE TO THE PROTECTION AND ADVOCACY SYSTEM. THESE CLARIFICATIONS WILL STRENGTHEN THESE SYSTEMS' ABILITY TO CARRY OUT THEIR LEGISLATIVE CHARGE TO PURSUE LEGAL, ADMINISTRATIVE AND OTHER REMEDIES TO PROTECT MENTALLY ILL INDIVIDUALS FROM ABUSE AND NEGLECT.

THE BILL FURTHER STATES THAT THE ADVISORY COUNCILS, AS RENAMED IN THE BILL, WILL JOINTLY DEVELOP PROGRAM PRIORITIES WITH THE GOVERNING BOARD OF THE PROTECTION AND ADVOCACY SYSTEM, ALTHOUGH THE FINAL DECISION REGARDING PRIORITIES WILL REMAIN WITH THE GOVERNING BOARD. THIS PROVISION WILL ASSURE THAT THE ADVISORY COUNCIL WILL BE AN ACTIVE PLAYER IN THE PRIORITY-SETTING PROCESS.

IN ADDITION, THE LEGISLATION AUTHORIZES A STUDY TO BE CON-

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DUCTED BY THE GENERAL ACCOUNTING OFFICE ON THE SUBJECT OF ABUSE AND NEGLECT OF MENTALLY ILL INDIVIDUALS IN JAILS AND PRISONS. THIS STUDY WILL PROVIDE THE SUBCOMMITTEE WITH IMPORTANT INFORMATION PRIOR TO THE NEXT REAUTHORIZATION ON A NUMBER OF ISSUES, SUCH AS THE EXTENT OF INAPPROPRIATE PLACEMENT OF MENTALLY ILL INDIVIDUALS IN JAILS AND PRISONS, THE EXTENT TO WHICH SUCH INDIVIDUALS ARE AT RISK OF ABUSE AND NEGLECT, AND INFORMATION ON MODEL PROGRAMS WHICH ARE DESIGNED TO DIVERT MENTALLY INDIVIDUALS INTO APPROPRIATE MENTAL HEALTH PROGRAMS.

THE REAUTHORIZATION OF THIS LEGISLATION REFLECTS OUR CONTINUED COMMITMENT TO ENSURING THAT INDIVIDUALS WITH MENTAL ILLNESS ENJOY THE FULL PROTECTION OF THEIR CONSTITUTIONAL AND STATUTORY RIGHTS. I AM PLEASED TO BE AN ORIGINAL COSPONSOR OF THIS LEGISLATION AND LOOK FORWARD TO WORKING WITH SENATOR HARKIN AND THE OTHER MEMBERS OF THE SUBCOMMITTEE ON THE HANDICAPPED TO EXPEDITE ITS PASSAGE.

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FLOOR STATEMENT OF SENATOR LOWELL P. WEICKER, JR.

HANDICAPPED PARKING AMENDMENT TO S.853

APRIL 24, 1987

MR. PRESIDENT, I AM PLEASED TO COSPONSOR WITH SENATOR KERRY AN AMENDMENT TO S.853 TO ESTABLISH A UNIFORM SYSTEM OF RECIPROCITY FOR HANDICAPPED PARKING PERMITS ACROSS ALL STATES. FOR OVER SIX MILLION DISABLED AMERICANS, THE FREEDOM TO TRAVEL BETWEEN STATES IS SERIOUSLY IMPEDED BY THE LACK OF SUCH A SYSTEM OF RECIPROCITY.

CURRENTLY, A VARIETY OF IDENTIFYING SIGNS ARE USED TO DESIGNATE PARKING SPACES FOR HANDICAPPED PERSONS, WHICH HAS IMPEDED THE USE OF THESE SPECIAL PARKING SPACES FOR PERSONS TRAVELING FROM OUTSIDE JURISDICTIONS. AN EASILY RECOGNIZABLE AND CONSISTENT SYMBOL FOR IDENTIFYING VEHICLES IS NEEDED TO ENSURE RECIPROCITY IN HONORING HANDICAPPED PARKING PERMITS FROM STATE TO STATE. THEREFORE, THE AMENDMENT BEING INTRODUCED TODAY WILL REQUIRE ALL STATES TO ADOPT THE INTERNATIONAL SYMBOL OF ACCESS AS THE ONLY RECOGNIZED SYMBOL FOR THE IDENTIFICATION OF VEHICLES OPERATED BY DISABLED INDIVIDUALS.

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THIS AMENDMENT FURTHER ALLOWS STATES UP TO EIGHTEEN MONTHS TO COMPLY WITH THE RECIPROCITY REQUIREMENT, AND, SHOULD STATES FAIL TO DO SO, REQUIRES THE SECRETARY OF TRANSPORTATION TO WITHHOLD TWO PERCENT OF STATES' HIGHWAY SAFETY FUNDING. FURTHER, THE AMENDMENT PROHIBITS THE DISCRIMINATORY PRACTICE OF CHARGING DISABLED INDIVIDUALS HIGHER FEES FOR LICENSING AND VEHICLE REGISTRATION THAN ARE CHARGED TO NON-DISABLED INDIVIDUALS.

MOBILITY IS SOMETHING THE MAJORITY OF AMERICANS TAKE FOR GRANTED. BUT FOR THE DISABLED CITIZENS OF THIS COUNTRY, MOBILITY IS TOO OFTEN A STRUGGLE. WE HAVE A RESPONSIBILITY TO THOSE INDIVIDUALS TO ENSURE THAT CONFLICTING STATE LAWS DO NOT CREATE ADDITIONAL BARRIERS TO THEIR MOBILITY.

I URGE MY COLLEAGUES TO JOIN US IN REMOVING YET ANOTHER BARRIER TO THE FULL INTEGRATION OF DISABLED INIVIDUALS BY SUPPORTING THIS AMENDMENT.

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SENATOR LOWELL WEICKER, JR.
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Statement of
Senator Lowell Weicker, Jr.
on the
Civil Rights Restoration Act
January 26, 1988

Mr. President, I rise in support of the Civil Rights Restoration Act.

Passage of this legislation will be a landmark in the historic struggle to bring all Americans -- black and white, old and young, women and men, the disabled and the able-bodied -- into full enjoyment of their inalienable rights. While we have come a long way in this struggle, there is still some distance to go to put an end to racism, sexism, and the attitudes that stereotype the elderly and the handicapped and relegate them to second-class citizenship.

Mr. President, discrimination of any kind is wrong and goes against the American grain. Individuals who practice it must answer to their own conscience. But when institutions that depend on the federal government for support discriminate, the Constitution and its guarantees come into play.

A generation ago, the civil rights movement forced us to face up to this fact, and as a result, the nation made some important promises. One of them was contained in the Civil Rights Act of 1964. It stated that "no person shall, on the ground of race, color or national origin... be subjected to discrimination under any program or activity receiving federal financial assistance."

In subsequent years, this promise was extended to women, by way of Title IX of the Education Amendments of 1972; to the handicapped under Section 504 of the Rehabilitation Act of 1973; and to the elderly via the Age Discrimination Act of 1975. Congress made it plain: there will be no government subsidy for racism.

These pledges, together with the enforcement provisions which provide the statutory teeth, represent our most powerful tools for doing away with a separate and unequal existence for any American.

Unfortunately, these tools were taken out of our hands in 1984. The Supreme Court, in the decision Grove City College v. Bell and later rulings, wrongly interpreted what Congress sought to do in these statutes. It determined that the discrimination ban applied merely to the specific program or activity receiving federal money, not the entire organization or entity.

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Although the Grove City ruling applied to Title IX and education programs, it clearly contracted the scope of coverage of all four laws. The same day the Supreme Court handed down Grove City, it issued Consolidated Rail Corporation v. Darrone, a Section 504 case involving employment discrimination by a railroad against a disabled worker. In that ruling, the Court explicitly held that its narrow interpretation of "program and activity" in Grove City applied with full force to Section 504.

For nearly four years now, recipients of federal funds -- hospitals, nursing homes, corporations, local governments and universities -- have been able to take government money with one hand and discriminate with the other. And they continue to get away with it.

Today in America a black person can walk into a satellite clinic of a major hospital and be denied treatment because no federal funds support the operation of that particular facility. An elderly person can be denied equal access to bus service if a city uses all its federal mass transit funds for its subway system, then chooses not to buy "step-up" buses which many older people rely on. A disabled employee, no matter how qualified, can be denied a promotion if the specific department involved receives no federal money. A student can be sexually harassed without protection of the law if the building in which it occurs was not built with federal funds.

The force and the promise of the Fourteenth Amendment, of due process and equal protection of the laws, and the intent of our civil rights laws, are being denied because of a technicality.

A few specific examples will serve to illustrate the ludicrous way in which these laws are being applied. In Foss v. City of Chicago (N.D. Ill. 1986), the court held that a handicapped firefighter who claimed to be improperly fired because of a disability could not sue the Chicago Fire Department under Section 504 of the Rehabilitation Act. The Fire Department did, in fact, receive federal funds, but the court found that those funds did not cover the specific duties performed by Foss and therefore he had no protection under Section 504.

In United States v. the State of Alabama, a case decided just last October, the 11th Circuit Court of Appeals reversed and remanded a district court finding that the State of Alabama had perpetuated a "dual system" of higher education. According to the District Court memorandum, Alabama students were channeled into schools on the basis of their race and the predominantly black schools received far less state funding than white colleges. On appeal, the 11th Circuit, citing Grove City, held that the United States could not maintain an action under Title VI of the Civil Rights Act of 1964 against a state's system of higher education without specifying which programs and activities within the various institutions received federal funds and how those specific programs and activities were discriminatory.

In Walters v. President and Fellows of Harvard College (D. Mass. 1985), a former employee of the building and grounds department of Harvard University alleged that she was harassed on the job and ultimately forced to quit because of her sex. The court agreed that employment discrimination was prohibited by Title IX but dismissed her claim because it found that the maintenance of school buildings where teaching took place was not directly enough related to the education programs that received federal funds.

In the case Moire v. Temple University School of Medicine (E.D. Pa. 1985), a psychiatry student claimed she received a failing grade because she rebuffed a professor's sexual advances. The district court dismissed her Title IX claim because the professor in question received no federal grant money, even though the University receives millions of dollars of federal funds.

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These are all court cases. The impact of Grove City has also been felt, with a vengeance, in the executive branch. It is disheartening to recall that the Court's ruling was welcomed by the Department of Justice, which had adopted the limited view of the laws a year before the Supreme Court did. Grove City amounted to a judicial stamp of approval and other federal agencies followed suit. From compliance reviews of institutions receiving federal financial assistance to investigations of discrimination complaints, these agencies have taken a new and narrow view of their responsibilities. Case upon case has been closed, narrowed in scope or never opened. Our once vigorous enforcement efforts have been replaced by bureaucratic paper chases to pinpoint federal dollars.

This is particularly true in the U.S. Department of Education. It is estimated that a total of 834 discrimination cases have been dismissed or narrowed due to Grove City. Just days after the Court's ruling, the Department dropped its investigation of sex discrimination in the intercollegiate athletic program at the University of Maryland because the program received no direct federal funding. And this was so, even though the Department had already documented discrimination in travel and other support services to female athletes.

To take another example, a black high school student filed a complaint alleging that her school's chapter of the National Honor Society failed to induct her because of her race. Although she was ranked fifth in her class and took part in many extracurricular activities, she was not among the 16 students invited to join the Society. The Department's Office of Civil Rights closed the case because it found the alleged discrimination did not occur in a program or activity directly receiving federal financial assistance.

In yet another instance involving the Massachusetts Department of Youth Services, an employee claimed that although he passed the exam to become "supervising group worker" and was ranked first on the list for such a position, he was denied it because of his disability. The Office of Civil Rights advised the complainant that although the Department received federal funds the custodial program did not. Case closed.

Mr. President, for almost four years now, cases such as these, involving vital civil rights, have been taken off the dockets or decided in the discriminator's favor. It's time the Congress of the United States put an end to it. The Civil Rights Restoration Act would do just that.

As its name suggests, this legislation would restore the broad scope of the nation's four bedrock civil rights statutes. It does not rewrite the substantive language of those laws. It does not redefine who is a "recipient" of federal financial aid, nor does it redefine what constitutes "federal financial assistance."

The federal government can no longer afford and the American people can no longer tolerate discrimination in any program or activity receiving tax dollars. Last week we celebrated the birthday of Dr. Martin Luther King, Jr. In his letter from the Birmingham jail, Dr. King wrote: "Injustice anywhere is a threat to justice everywhere." No matter how few it affects or how subtly it occurs, injustice has no excuse. We must never forget that "equal justice under law" is not merely a phrase that graces the Supreme Court building but a principle by which this nation lives. Unless and until Congress acts to restore full civil rights to minorities, women, the disabled and the elderly, that principle is in peril. I urge my colleagues to join me in giving this legislation their unqualified support.

I also call upon the President to push for its passage. It was Ronald Reagan who said once: "My belief has always

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been....that wherever in this land any individual's constitutional rights are unjustly denied, it is the obligation of the federal government -- at point of bayonet if necessary -- to restore that individual's constitutional rights." Right now, President Reagan, the bayonet is being held at the throat of the victims. The federal government, by virtue of its funds, is a co-conspirator in countless cases of discrimination. Congress and the President must cooperate to restore government to its proper constitutional role as defender against, rather than perpetrator of, discrimination.