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Disability Times

A Newsletter for Residents of Shawnee County
Interested in Disability Issues

January/ February 1990

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Accessibility Improvement Project Update

by Don Karr

The Fair Housing Amendments Act of 1988 requires that a person with a disability be permitted to make accessibility modifications to an existing rental unit, at the tenant's expense. According to the law, a landlord cannot:

"refuse to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises"

Section 6, (3), Public Law 100-430

In response to a need for funding the removal of architectural barriers to allow low and moderate income tenants with disabilities to acquire the full use of the dwelling unit they live in, the Topeka Independent Living Resource Center and the Community and Economic Development Department have developed this project to assist persons with physical disabilities in making their residences more accessible for fiscal year 1990. Primarily, the project will assist tenants who live in apartments that have some physical barriers such as steps or doorways that prohibit wheelchair passage. These modifications will be preformed by qualified carpenters or other designated laborers. Typical examples of accessibility modifications will include:

- construction of a wooden ramp from ground level to the apartment entrance where there are steps;

- widening 23" to 26" bathroom doors to accommodate wheelchair widths which may vary from 25" to 29" and require a larger 30" to 32" doorway;

- replacing door thresholds which are to high for wheelchairs to roll over;

- installing grab bars in he bathroom;

- installing lever-type doors which can be operated by people with little or no use of their hands;

- installation of a visual signal to inform a person who is deaf that someone is at the door or telephoning.

This project is intended to be flexible enough to fund a wide range of accessibility improvements.

NOTE: This project is to be funded possibly in May 1990. Watch your paper for public hearings / City Council meetings on the 1990 budget, attend, and give it your SUPPORT! However, the current program which is operating with no income guidelines has received $20,000 in continuation funding. Give me a call if you have access needs!

Home owners in need of similar assistance should contact the Community and Economic Development Office to check for eligibility under their program guidelines.

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Good Luck to Ray . . .

As you are all probably wondering, "What happened to Ray." Former TILRC Executive Director, Ray Petty is now with Independence, Inc. in Lawrence. Independence, Inc. is the same type of agency as ours and generally offers the same services. Ray's doing the same line of work, only as their director. I hope that in the future TILRC and Independence, Inc. will be teaming up to accomplish common goals such as legislative and transportation matters. Ray's merits were many and we at TILRC wish him our best.

The TILRC Board of Directors "Search Committee" has reviewed 29 applicant's resumes and has interviewed four individuals to fill Ray's shoes, (size 13 1/2 EEE). All four are highly qualified and offer the committee a difficult choice to make. The committee will make the important decision regarding the new director very soon. Until then, I'll do the best I can to answer and address all of your requests.

. . . and Mary too . . .

Mary Reyer, Homemaker/Home-Health Specialist has also departed after eight years with TILRC. She is currently employed at the Topeka Client Assistance Program (CAP). There, she's a client advocate for individuals in Rehabilitation Services providing information & referral and systems advocacy. The new director will hand pick her successor soon after he comes aboard.

Thank You . . .

TILRC would like to thank the following companies for their generous Christmas decorations used in our lobby: Vanguard Products Corporation, Poinsettias; McKinney & McKinney law firm, wreath and Blackburn Nursery, potted pine tree. We will be giving away the plants and tree at the end of the holidays. In an unrelated giveaway, The Red Cross of Topeka contacted us to see if we knew of anybody who could use a free stair-glide. A stair-glide is a device that fits into a staircase with an electrically driven seat that assists the mobility impaired in ascending and descending stairs. To our knowledge, this unit if fully operational and ready to go. Contact Linda if you have a need for a stair-glide.

Consumer Input Needed

Since it has been so long since our last newsletter, I feel that it's appropriate to seek input from our consumers as to how they feel about our services and what they would like to change. We're here to serve the disabled population of Topeka/ Shawnee County and would like to address every need, but in order to do so, we need your involvement. Call and let us know, or better yet, write us and say it on paper.

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For Your Information

Many Kansas residents are eligible for a homestead and/or a food sales tax refund. To qualify for the refunds the person claiming the refund must meet at least one of the following: be age 55 or older; have a disability; or have a dependent child under 18 years old residing with you. In addition, the person claiming the refund must have been a resident of Kansas for the entire year of 1989.

To qualify for the homestead tax refund your total household income for 1989 must not exceed $15,000. The refund has been expanded this year to a maximum refund of $500.

To qualify for the food sales tax refund your total income for 1989 must not exceed $13,000. This refund is based on the number of household members and your total household income.

A new refund this year is a "circuit breaker" refund of property taxes for individuals incurring at least a 50% increase in their property taxes between 1988 and 1989 due to reappraisal and classification measures passed in 1985. To qualify your total household income must not exceed $35,000.

Household income includes taxable income as well as certain non-taxable amounts received as Social Security, railroad retirement benefits, nontaxable interest, and etc.

The Kansas Homestead, the Food Sales Tax Claim and the Circuit Breaker Refund are all claimed by filing Kansas Form 40H. These refunds can be claimed even if you are not required to file a Kansas Income Tax return.

If you believe that you may qualify for either refund cited above, additional information and forms may be obtained by contacting the Kansas Department of Revenue at (913)296-2212.

Source: Rick Reese, CPA

Transportation News

by Linda Park

In November, the Center's Board of Directors approved a three month trial of providing transportation on Saturdays. Due to a delay in getting the information out to potential riders, this got off to a slow start, (only 6 riders the first Saturday) but has grown steadily as Christmas shopping increases. On November 10th, we had a total of 19 riders and we are hoping this trend continues.

In February, the Board of Directors will discuss continuation this transportation, expanding it further, or cutting back depending on the level of ridership and consumer interest.

The rides are provided for those who wish to go to doctor appointments, shopping, visiting friends, and etc. If you would like to schedule a ride for Saturday, please call early in the week.

Through Ray Petty's involvement with the Topeka Paratransit Council, we have positioned our agency to receive an additional van through the Kansas Department of Transportation 16(B)(2) program. The Topeka Paratransit Council Review Committee gave TILRC's application for an additional van a "priority" rating in their report to KDOT regarding the 16(B)(2) funding. We hope to receive the new vehicle by mid-summer.

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Employment Opportunities

The following is a list of job openings and their respective application deadlines from various city, state, and private agencies in Topeka. To request a copy of the detailed description of any of these positions, contact Lee Graybeal at TILRC, 233-6323.

Job Title:	Application Deadline:
Central Accountant I	January 31
Corrections Counselor I	January 31
Painter	January 31
Plumber I	January 31
Civil Engineer III	Open continuous
Conservation Office	Open continuous
Correctional Officer I	Open continuous
Correctional Officer Trainee	Open continuous
Disability Examiner I	Open continuous
Engineering Technician II	Open continuous
Financial Examiner I	Open continuous
Keyboard Operator I	Open continuous
Keyboard Operator II	Open continuous
Motor Carrier Inspector I	Open continuous
Motor Carrier Inspector II	Open continuous
Motor Carrier Inspector III	Open continuous
Night Housemanager	Open continuous
Office Assistant II	Open continuous
Office Assistant III	Open continuous
Relief Housemanager	Open continuous
Training Specialist	Open continuous
Youth Service Specialist I	Open continuous
Youth Service Specialist II	Open continuous

Take Some Time for Your Health

A lot of people believe they are healthy because they do not feel sick. But, the human body is like a machine, it doesn't just break down overnight. At times it takes years before the wear and tear begin to show.

Because of the hectic lifestyle we lead many of us don't eat right; don't exercise; abuse alcohol, tobacco, and other drugs; don't use our safety belts; and have a difficult time handling stress. And there are millions of excuses for why we don't take better care of ourselves.

After a long day it is hard to take time for exercise. We feel we have already had all the physical activity we need for one day.

Actually, if we would just take the time for a brisk workout, or energy could be renewed and we would feel much better than we did before.

If we could learn to take the time each day each day for a long walk and good meals, we would begin to feel better, look better, and feel more joy in life. We would learn the importance of finding time to take care of ourselves, and we would do it!

We may feel okay today, but if we are not taking care of ourselves, that will not be so tomorrow. We need to eat right, exercise regularly, learn to cope with stress, use safety belts, stop smoking, and limit use of alcohol and other drugs.

Millions of Americans quit smoking, stop drinking, or lose weight each year. Habits - both good and bad - develop over a period of time, so they aren't easy to break. It takes about 21 days to re-

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place a bad habit with a good one. If we can get through this difficult three week period, we are likely to be successful.

Change is hard. It is easy to understand why people need help to change. There are many community resources available for people who want to change a lifestyle habit. People who really want to change will find a way that works for them.

Source: Tennessee Department of Health

Civil Rights Access for TDD Users

The Kansas Commission on Civil Rights announces that it has installed a Telecommunication Device for the Deaf (T.D.D.) to communicate with individuals who are deaf or have other hearing impairments. The number is (913)296-0245.

Those utilizing the T.D.D. will be able to communicate with the Kansas Commission on Civil Rights staff who will provide information and answer questions regarding civil rights laws in Kansas.

The number can be called 24 hours a day, 7 days a week. All communications will receive a response.

The Kansas Commission on Civil Rights enforces the provisions of the Kansas Act Against Discrimination based on race, religion, color, ancestry, age, national origin, sex, and physical disability in the areas of employment, housing, and public accommodations.

For Further Information, Please Contact: Steve Ramirez, 296-3206. The Kansas Commission on Civil Rights is located in the Landon State Office Building, 900 S.W. Jackson, 8th Floor, Suite 851 S., Topeka, Kansas.

Recreation Update

Monday afternoon recreation activities have been exciting and busy. I would like to take a minute to tattle on some particularly good times.

We've been bowling a couple of times. Our surprise champion turned out to be Sharon Callahan. She bowled a whopping 150 one game. She says she's never been before but we all know better!

We went to Westridge and Target for shopping. We found that no one knows a mall better than Stacy Foster. She's up on what's new in the boutiques and who's hot and who's not in magazines and music. We ate at the finest fast-food joints in town. Ilene Timmons concluded that Grandy's makes the absolute best Catfish Dinner, especially when there's a coupon involved!

Our trips to the Topeka Public Library were always educational. You learn so much about a person by what they check out. Some choose romances, others want a good mystery. But tell me, Kurt Bailey, what do you make of a person who checks out The Walton's Christmas Album?

The Halloween Party was a success. Our two expert roll-the-apple-with-your-nose people turned out to be Marguerite Supernaw and Beverly Hendricks. We had some neat costumes, too.

The trips to the Museum of Natural History were great. We learned how to build a log house, what the old trains looked like, and what soldiers wore in World War II. Unfortunately, we also learned that the cement in front was hard enough to break Paulette Harris' camera.

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We went to the afternoon movies. We saw comedies, action packed adventures, and tear-jerkers. I think Sharon Taylor laughed almost as much as I did at When Harry Met Sally.

One evening we went to the Topeka Sizzler's game, compliments of George Davidson's step-father and the Topeka Southwest Kiwanis Club. Even though they lost, we had a good time. We weren't sure which Mike Peterson enjoyed more, the game or the drill team girls at half-time!

As you can see, we have had fun on our Monday afternoon recreation activities. We are still hoping to hire someone to help with Saturday activities. So, those of you that signed up to go on Saturdays only, hang in there and be patient for just a little longer.

A Review of . . .

Book: *Stretch & Strengthen for Rehabilitation and Development*

Authors: Bob Anderson and Dr. Donald G. Bornell

This resource was written to help those who have lost movement or range of motion. Accidents, diseases and premature aging create circumstances where the body muscle will quickly deteriorate unless exercised regularly.

What you don't use, you do, in fact, lose. Stretch & Strengthen can give persons in wheelchairs a means of physical release for frustrations and tension through a daily program of stretching and strengthening.

However, caution should be prudently exercised also, and a health care professional or the individual may have to subtract or adapt the stretches presented with each exercise to meet individual needs. Over-development of a certain set of muscles can prevent the sequential development of certain other muscle groups by substituting gross motor movement for more fine motor movement.

Proper stretching serves two main purposes. It reduces or eliminates unwanted muscle tension (pain), and it restores or improves joint mobility and muscle elasticity. In addition, one may complete the illustrated exercises at anytime and at any place, Anderson stresses. "Just remember, stretch to where you feel you are in control of the stretch. You must avoid straining and overstretching. Overstretching is simply stretching too far. To gain the benefits of stretching you do not have to stretch far, just regularly." Dr. Bornell asserts: "Muscles can only increase in strength through resistive use and when a muscle is exercised, the antagonist or opposite muscle should be exercised when possible. Each set of stretches to be used in conjunction with each exercise was worked out for the specific group (of muscles) to be strengthened."

The exercise program in this book is from a seated position, although many of the exercises can be done while standing or lying. The book also provides information on the proper breathing techniques to be utilized while completing different exercises, and cautions the reader: "Before stretching and Iso-Band [included in package] exercising, read appropriate procedures for the individual routine.

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This 91 page manual has good graphics and instructions. The exercises are largely isometric in nature; good, commonsense procedures. Excellent routine for a person using a manual wheelchair, walker, crutches, or cane for mobility. The exercises may also be simulated by persons while in a lying position to a very large degree. Exercises are vividly set forth, and lend themselves to being communicated. The narrative is basic and down to earth.

This book is available to consumers for loan or reference through the TILRC Resource Library.

The Cold Weather Rule

The Kansas Corporation Commission (KCC) regulates the disconnection of natural gas and electric service during the cold weather months. The Cold Weather Rule, adopted in 1983, was designed to provide for a manageable and orderly method of paying past and current utility bills while ensuring that human health and life are not endangered throughout the winter months.

The Cold Weather Rule serves as a safety net for low-income or financially disadvantaged individuals. Before a utility company can disconnect service during the cold weather period, the company must first attempt to phone the customer. Also, during the designated cold winter period - which started in November and which continues until March 31, 1990 - utility service cannot be disconnected if the temperature is forecast to fall below 32 degrees within the next 24 hours.

To qualify for this protection, consumers must meet the KCC's Good Faith Test which requires that customers let utility representatives know that they are unable to pay the entire bill. They must then give the utility company sufficient information to arrange a payment agreement. That agreement includes:

1. The customer's willingness to go on the level or average payment plan for one year.
2. The customer must pay one-fourth of the most recent bill or $45.00--whichever is greater--plus one-twelfth of the total owed for past bills before any service can be obtained under this rule.
3. After initial payments, the customer must also agree to pay all past bills in equal amounts over the next 12 months.
4. If service has already been disconnected, the customer must pay any charges associated with disconnection and re-connection of the service.
5. Customers must also agree to apply for any federal, state, local or other funds for which they might be eligible.

If you are behind in your utility payments, the Cold Weather Rule is worth considering, particularly in light of the dire consequences posed by inadequate heating. Check your billing envelope for a notice, or look on the back of your utility bill. Utilities also help customers who qualify for the Cold Weather Rule by notifying them of agencies that have utility assistance funds available.

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Partial funding has been made possible via Kansas Rehabilitation Services, via a grant awarded by the Rehabilitation Services Administration of the U.S. Dept. of Education. The City of Topeka and Shawnee County provide support from the local share of General Revenue Sharing funds. The City of Topeka also contributes via Community Development Block Grant monies. Private donations are welcome. The Topeka Resource Center for the Handicapped is an equal opportunity service provider.

Staff Members

Ray Petty, Executive Director
Lee Graybeal, Independent Living Specialist
Don Karr, Accessibility Specialist
Linda Park, Clerk/Typist
Anne Oliver, Advocacy Coordinator
Greg Stone, Bookkeeper/Secretary
Rod Ridgway & Marilyn Schultz Drivers
Jo Taliaferro, Media Specialist

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11/13/89

SUMMARY OF THE NEGOTIATED CHANGES — House of Rep

AMERICANS WITH DISABILITIES ACT

Changes Affecting All Titles:

1. DRUGS

Statutory additions clarify that--

* Discriminatory actions can take place against an individual based on that individual's current use of illegal drugs, even if that person is otherwise disabled;

* Entities can use drug tests to determine if a person is currently using illegal drugs, without liability under the ADA;

* Past drug users who have been rehabilitated or are in treatment and are no longer using illegal drugs are protected.

2. COORDINATION BETWEEN ADA AND SECTIONS 504 AND 503

Statutory addition to place a mandate on the administrative agencies to develop procedures to ensure that administrative complaints filed under the ADA and under Sections 504/503 are dealt with in a coordinated manner, and in a manner which avoids imposition of inconsistent standards. Statutory addition further mandates agencies to establish coordinating mechanisms for issuance of regulations.

3. TECHNICAL ASSISTANCE MANUAL

Statutory addition mandating the development and dissemination of technical assistance manuals to those who have rights and responsibilities under the ADA.

Changes Affecting Title I (Employment) and Title III (Public Accommodations)

1. CONTRACTUAL LIABILITY

Statutory changes clarify that an entity is liable in a contract that has the effect of discrimination only when that discrimination occurs against its own employees or own customers.

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Report language clarifies examples.

2. SITE-SPECIFIC FACTORS

Statutory additions establish that in the case of entities that operate at multiple facilities -- when a court considers whether a reasonable accommodation will impose an undue hardship, whether an auxiliary aid will impose an undue burden, or whether a physical access change is readily achievable -- the court may consider both the financial resources and the structure of the local facility, as well as the financial resources and structure of the overall entity.

Report language further clarifies that consideration should be given to both of these factors.

Changes Affecting Title I (Employment)

1. REASONABLE ACCOMMODATION

Statutory additions clarify that an employer's obligation to provide a reasonable accommodation is always limited by the "undue hardship" standard. Report language further clarifies this point.

Changes Affecting Title III (Public Accommodations)

1. MAJOR STRUCTURAL ALTERATIONS

Statutory changes clarify what type of alterations trigger the requirement to make a path of travel and facilities accessible (i.e., alterations to a primary function area), and establish that when alterations to the path of travel and facilities are disproportionate to the overall alterations in terms of cost and scope, they are not required. Report language further clarifies these requirements, including giving examples of what are considered to be alterations under the Act.

2. POTENTIAL PLACES OF EMPLOYMENT

Statutory change (use of the term "commercial facilities" rather than "potential place of employment") removes any confusion regarding possible overlap between employment requirements of Title I and new construction requirements of

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Title III. The substantive definition of the term remains the same. Report language clarifies the requirements of accessibility in new construction.

3. HISTORIC PROPERTIES

Statutory addition establishing guidelines for alterations that may threaten or destroy the historic significance of qualified historic buildings.

4. INTERIM ACCESSIBILITY STANDARDS

Statutory addition that clarifies what interim standards designers can use before final regulations under the ADA are promulgated.

5. CERTIFICATION OF STATE AND LOCAL BUILDING CODES

Statutory addition establishing procedure for the Attorney General to certify that state or local building codes establish accessibility requirements that meet the requirements of the ADA.

6. ANTICIPATORY DISCRIMINATION

Statutory addition in Title III (public accommodations) to clarify that there must be "reasonable grounds" to believe that one is about to be discriminated against in a public accommodation. Statutory addition uses the same term used in Title II of the Civil Rights Act of 1964.

7. MONETARY DAMAGES

Statutory addition clarifies that monetary damages and other relief available for aggrieved persons on whose behalf the Attorney General brings a suit under Title III (public accommodations) do not include punitive damages. Report language clarifies that other forms of damages (e.g., for pain and suffering) are included.

8. CIVIL PENALTIES

* Statutory addition clarifies that, when there are multiple violations that make up a pattern or practice suit brought by the Attorney General, all the violations count as the "first" violation for purposes of assessing the maximum civil penalty of $50,000. The maximum penalty of $100,000 for a "subsequent violation" can be applied only in a subsequent case.

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* Statutory addition clarifies that, in assessing whether an entity acted in "good faith," for purposes of determining whether a civil penalty should be assessed, a factor to consider is whether the entity could have reasonably anticipated an auxiliary aid needed to accommodate the unique needs of a particular disability. Report language clarifies that the "good faith" standard is not equivalent to a "wilful" or "intentional" standard, but that absence of wilful or intentional conduct is a factor to be considered.

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OWENSN080

[11-13-89]

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 2273

OFFERED BY MR. OWENS OF NEW YORK

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.--This Act may be cited as the ``Americans with Disabilities Act of 1989''.

(b) TABLE OF CONTENTS.--The table of contents is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.

TITLE I--EMPLOYMENT

Sec. 101. Definitions.
Sec. 102. Discrimination.
Sec. 103. Defenses.
Sec. 104. Illegal drugs and alcohol.
Sec. 105. Posting notices.
Sec. 106. Regulations.
Sec. 107. Enforcement.
Sec. 108. Effective date.

TITLE II--PUBLIC SERVICES

Sec. 201. Definition.
Sec. 202. Discrimination.
Sec. 203. Actions applicable to public transportation provided by public entities considered discriminatory.
Sec. 204. Regulations.
Sec. 205. Enforcement.

10:00 - May 23rd (Wed)
SD 138
Lunch - Senate & Caucus DD

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BI-PARTISAN WORKING GROUP ON DISABILITY

Proposal

To establish bi-partisan working groups on disability in both the Senate and House. The Majority and Minority Leaders of the Senate will each select interested members from the Committees on Labor and Human Resources, Finance, Banking, Housing and Urban Affairs, Commerce Science and Transportation as well as other interested Senators to serve as members of the Senate working group. The Speaker and Minority Leader of the House will each select Members from the Committees on Energy and Commerce, Ways and Means, Education and Labor, Banking, Finance and Urban Affairs as well as other interested Congressmen to serve on the House working group.

Mission

Consistent with and complementary to the goals of the "Americans with Disabilities Act", the bi-partisan working group will distill, organize and channel the recommendations of the Developmental Disabilities 1990 Reports and the National Council on Disability to the Committees of jurisdiction.

Justification

1. The working group provides Congress with a vehicle to be responsive to the issues raised by the recommendations of the Consortium for Citizens with Disabilities, the Developmental Disabilities 1990 Reports, the National Council on Disability, and other sources and show that they are willing to deal directly with difficult policy issues.

2. The working group will demonstrate to the public sustained Congressional Leadership on disability issues.

3. The working group will provide a mechanism for distilling and channeling to the appropriate committees the sea of issues affecting Americans with disabilities.

4. The working group will focus attention and channel recommendations from a variety of sources to the committees of jurisdiction on program eligibility inconsistencies.

5. The working group provides a vehicle for members who don't sit on the appropriate committees to respond to their constituents with disabilities.

Timing

The activities of the working group would occur over a 6 month period, so that the recommendations to the Committees would be made for the next Congress. At the beginning of the 102nd Congress the working group members could meet to determine the future direction of the working group.

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A. Appropriations Committee

Byrd, Chairman — Hatfield, Ranking Minority

Jurisdiction: Revenue

Subcommittee: Transportation and Related Agencies

Lautenberg, Chairman	D'Amato
Byrd	Kasten
Harkin	Domenici
Sasser	Grassley
Mikulski	

Jurisdiction: Architectural and Transportation Barriers Compliance Board

B. Banking, Housing and Urban Affairs Committee

Riegle, Chairman — Garn, Ranking Minority

Jurisdiction: Financial aid to commerce and industry; public and private housing; urban development and urban mass transit; nursing home construction

Subcommittee: Housing and Urban Affairs

Cranston, Chairman	D'Amato
Sarbanes	Mack
Dodd	Kassebaum
Sasser	Pressler
Kerry	Gramm
Bryan	

Jurisdiction: Housing; urban affairs

C. Commerce, Science and Transportation Committee

Hollings, Chairman — Danforth, Ranking Minority

Jurisdiction: Communications; transportation

Subcommittees: Aviation

Ford, Chairman	McCain
Exon	Stevens
Inouye	Kasten
Kerry	
Bentsen	

Jurisdiction: Aviation

Communications

Inouye, Chairman	Packwood
Hollings	Pressler
Ford	Stevens
Gore	McCain
Exon	Burns
Kerry	Gorton
Bentsen	
Breaux	

Jurisdiction: Communications

Surface Transportation

Exon, Chairman	Kasten
Rockefeller	Packwood
Hollings	Pressler
Inouye	Burns
Gore	Gorton
Breaux	Lott
Robb	

Jurisdiction: Surface transportation

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D. Environment and Public Works Committee *

Burdick, Chairman	Chafee, Ranking Minority
Moynihan	Simpson
Mitchell	Symms
Baucus	Durenberger
Lautenberg	Warner
Breaux	Jeffords
Reid	Humphrey
Graham	
Lieberman	

Jurisdiction: Public buildings and improved grounds of the United States generally;

** Pursuant to 42 U.S.C. §4157 (b), the ATBCB shall report to the Public Works and Transportation Committee of the House and the Public Works Committee of the Senate [Environment and Public Works] on its activities and actions to insure compliance with the ABA.*

Subcommittee: Water Resources, Transportation and Infrastructure

Moynihan, Chairman	Symms
Mitchell	Warner
Lautenberg	Jeffords
Breaux	Humphrey
Reid	Durenberger
Graham	Chafee
Lieberman	

Jurisdiction: Economic development programs

E. Labor and Human Resources Committee

Kennedy, Chairman	Hatch, Ranking Minority

Jurisdiction: Handicapped individuals

Subcommittee: Disability Policy

Harkin, Chairman	Durenberger
Metzenbaum	Hatch
Simon	Jeffords
Adams	

Jurisdiction: Disability policy

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HOUSE

A. Appropriations

Whitten, Chairman — Conte, Ranking Minority

Jurisdiction: Revenue

Subcommittees: Transportation and Related Agencies

Lehman, Chairman	Coughlin
Gray	Conte
Carr	Wolf
Durbin	DeLay
Mrazek	
Sabo	

Jurisdiction: Architectural and Transportation Barriers Compliance Board

B. Banking, Finance and Urban Affairs

Gonzalez, Chairman — Wylie, Ranking Minority

Jurisdiction: Urban development; public and private housing; financial aid to commerce and industry

Subcommittee: Housing and Community Development

Gonzalez, Chairman	Roukema
Fauntroy	Wylie
Oakar	McCollum
Vento	Bereuter
Garcia	Dreier
Schumer	Hiler
Frank	Ridge
Lehman	Bartlett
Morrison	Roth
Kaptur	Saxton
Erdreich	Saiki
Carper	Bunning
Torres	Parris
Kleczka	McCandless
Kanjorski	Baker
Neal (N.C.)	Paxon
Hubbard	Stearns
Kennedy	Gillmore
Flake	
Mfume	
Pelosi	
LaFalce	
Patterson	
Price	
McDermott	
Hoagland	
Neal (Mass.)	

Jurisdiction: Regulation of the housing industry; community development and community planning, training and research; urban research and technologies

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C. Education and Labor Committee

Hawkins, Chairman — Goodling, Ranking Minority

Jurisdiction: Measures relating to education or labor generally

Subcommittee: Select Education

Owens, Chairman	Bartlett
Martinez	Ballenger
Payne	Smith
Jontz	

Jurisdiction: Education of the handicapped; rehabilitation

D. Energy and Commerce Committee

Dingell, Chairman — Lent, Ranking Minority

Jurisdiction: Interstate and foreign commerce generally; travel

Subcommittee: Transportation and Hazardous Materials

Luken, Chairman	Whittaker
Eckart	Rinaldo
Slattery	Tauke
Bloucher	Schaefer
Manton	Callahan
Swift	McMillan
Tauzin	
Sikorski	
Bates	

Jurisdiction: Travel

E. Public Works and Transportation Committee *

Anderson, Chairman	Hammerschmidt, Ranking Minority
Roe	Shuster
Mineta	Stangeland
Oberstar	Clinger
Nowak	McEwen
Rahall	Petri
Applegate	Packard
de Lugo	Boehlert
Savage	Lightfoot
Bosco	Hastert
Borski	Inhofe
Kolter	Ballenger
Valentine	Upton
Lipinski	Emerson
Visclosky	Craig
Traficant	Duncan
Lewis	Hancock
DeFazio	Cox
Skaggs	Grant
Hayes	
Clement	
Payne	
Costello	
Pallone	
Jones	
Parker	
Laughlin	
Geren	
Sangmeister	

Jurisdiction: Public buildings and occupied or improved grounds of the United States generally; transportation (excluding railroads)

** Pursuant to 42 U.S.C. §4157 (b), the ATBCB shall report to the Public Works and Transportation Committee of the House and the Public Works Committee [Environment and Public Works] of the Senate on its activities and actions to insure compliance with the ABA.*

House additions cont. Pg. 2

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E. Public Works and Transportation Committee (cont.)

Subcommittees: Aviation

Oberstar, Chairman
Kolter
de Lugo
DeFazio
Hayes
Laughlin
Mineta
Bosco
Valentine
Lipinski
Visclosky
Traficant
Skaggs
Clement
Payne
Costello
Jones
Nowak
Lewis
Parker

Clinger
Shuster
Stangeland
McEwen
Petri
Packard
Boehlert
Lightfoot
Inhofe
Ballenger
Upton
Duncan
Hancock

Jurisdiction: Federal Aviation Administration

Public Buildings and Grounds

Bosco, Chairman
Lewis
Nowak
Savage
Oberstar
Geren

Petri
Lightfoot
Duncan
Cox

Jurisdiction: Federal building prospectus users

Surface Transportation

Mineta, Chairman
Rahall
Applegate
Valentine
Lipinski
Visclosky
Traficant
Lewis
Skaggs
Clement
Payne
Costello
Pallone
Jones
Parker
Roe
Nowak
de Lugo
Savage
Laughlin
Bosco

Shuster
Stangeland
Clinger
McEwen
Packard
Boehlert
Hastert
Upton
Emerson
Craig
Duncan
Hancock
Cox
Grant

Jurisdiction: Interstate Commerce Commission matters relative to trucks and buses; urban mass transit

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ADA FACT SHEET - P.L. 101-336

TITLE I - EMPLOYMENT:

Employers with 15 or more employees may not discriminate against qualified individuals with disabilities. Employers must reasonably accommodate the disabilities of qualified applicants or employees, unless "undue hardship" would result.

The employment provisions of Title I become effective 24 months after the date of enactment. For the first two years of the effective date employers with 25 or more employees are subject to the requirments of the Act. At the end of the two year period the requirments will then apply to employers with 15 or more employees. The EEOC will issue regulations for this title.

Individuals may file complaints with the EEOC and may also file a private lawsuit. Remedies are identical to the remedies under Title VII of the Civil Rights Act of 1964. The Court may order the employer to hire or promote qualified individuals, reasonably accommodate their disabilities and pay back wages and attorney's fees.

TITLE II - PUBLIC SERVICES:

State and local governments may not discriminate against qualified individuals with disabilities. New construction and alterations to existing facilities must be accessible. Existing facilities must meet program requirements consistent with Section 504 of the Rehabilitation Act of 1973.

New buses and rail vehicles must be accessible. One car per train must be accessible. Existing "key stations" in rapid rail, commuter rail, and light rail systems must be accessible.

Comparable paratransit (personalized transport/door to door service) must be provided to individuals who cannot use fixed route bus service to the extent that an undue financial burden is not imposed.

Amtrak passenger coaches must have the same number of accessible seats as would be available if every coach in the train were accessible. All existing Amtrak stations must be accessible.

Individuals must file complaints with the Department of Transportation (DOT) concerning public transportation and with other Federal agencies to be designated by the Attorney General concerning matters other than public transportation. Individuals

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may file a private lawsuit. Remedies are the same as available under Section 505 of the Rehabilitation Act of 1973. The Court may order an entity to make facilities accessible, provide auxiliary aids and services, modifiy policies and pay attorney's fees.

The Attorney General will issue regulations except for public transportation. The DOT will issue regs for public transportation under this title and the Architectural Transportation Barrier Compliance Board (ATBCB) will issue regs to supplement the AG and DOT.

TITLE III - PUBLIC ACCOMMODATIONS:

Public accommodations such as restaurants, hotels, theaters, doctor's offices, retail stores, museums, libraries, parks, private schools, and day care centers may not discriminate on the basis of disability.

Physical barriers in existing facilities must be removed if "readily achievable" (i.e. easily accomplishable and able to be carried out without much difficulty or expense). If not, alternative methods of providing services must be offered if those methods are readily achievable.

New construction in public accommodations and commercial facilities must be accessible.

Alterations to existing facilities must be accessible. When alterations to primary function areas are made, an accessible path of travel must be provided to the altered area, and the rest rooms, telephone and drinking fountains serving the altered area must be accessible, to the extent that the added accessibility costs are not disproportionate to the overall accessibility costs.

Elevators are not required in newly constructed or altered buildings under three stories or with less than 3,000 square feet per floor, unless the building is a shopping center, mall or health provider's office. The Attorney General may determine that certain buildings require elevators.

New buses and other vehicles (except automobiles) operated by private entities must be accessible or the system in which vehicles are used must provide individuals with disabilities a level of service equivalent to that provided to the general public (depending on whether an entity is primarily enagaged in the business of transporting people and whether the system is fixed route and demand responsive).

New over-the-road buses must be accessible (Greyhound, Trailways etc.).

Individuals may file suit with the Attorney General as well

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as file a private lawsuit. Remedies are the same as available under the Civil Rights Act of 1964. The Court may order an entity to make facilities accessible, provide auxiliary aids and services, and/or modify policies and pay attorney's fees. The Court may also award monetary damages and impose civil penalties in lawsuits filed by the Attorney General but not in private lawsuits filed by an individual.

Lawsuits may not be filed against small businesses for violations occuring before July 26, 1992, or January 26, 1993 (depending on the size of the business and gross receipts) except for violations relating to new construction or alterations and facilities.

The Architectural Transportation Barriers Compliance Board will be responsible for the issuance of regs under this section.

TITLE IV - TELECOMMUNICATIONS:

Telephone companies must provide telecommunication relay services for hearing impaired and speech-impaired persons 24 hours per day.

Individuals may file complaints with the FCC. Regulations will be issued by the FCC.

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Version
Sept, 1989

ADA FACT SHEET

The ADA will protect people with disabilities from discrimination in employment, transportation, public accommodations, activities of state and local government, and telecommunications; giving protection which is comparable to that afforded other groups on the basis of race, sex, national origin, age and religion. Most provisions go into effect 2 years after enactment, other than fixed-route publicly-funded transit vehicles:

Employment: All places of employment with 25 or more employees are covered for the first 2 years; after that, employers with 15 employees or more are covered. Provisions are similar to Section 504 of the Rehabilitation Act of 1973 (application procedures must be non-discriminatory, reasonable accommodation is required unless it would pose an undue hardship, employment criteria must be substantially related to essential functions of the job, etc.) Employers may require that an individual with a currently contagious disease not pose a direct threat to the health and safety of others, and may prohibit all workplace use of drugs and alcohol. Religious entities are not restricted from preferential hiring of people holding to their particular religious tenets.

Transportation (public and private): New purchased & leased bus & rail vehicles must be accessible. For publicly-funded systems, this requirement goes into effect 30 days after passage.

Comparable paratransit service must be provided unless it would pose an undue hardship.

All demand-response service which is provided to the general public, and privately funded fixed-route service, may purchase only accessible vehicles unless it can be demonstrated that the service is accessible when viewed in its entirety. The exception is privately funded fixed route service which uses vehicles carrying over 16 passengers, in which case new vehicles must be accessible.

Over-the-road coaches (Greyhound type buses) are exempted for six years in the case of large providers and seven years for small providers; after that, newly purchased vehicles must be accessible. The President can extend this for one year further. The bill commissions a three-year study to determine the best way to provide access to over-the-road coaches.

New bus and rail facilities must be accessible. In altered facilities, the altered area must be accessible to the maximum extent feasible. In major structural alterations, a path of travel to altered areas and restrooms serving altered areas must be accessible. Existing facilities must be accessible when viewed in their entirety.

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New bus and rail facilities must be accessible. In altered facilities, the altered area must be accessible to the maximum extent feasible. In major structural alterations, a path of travel to altered areas and restrooms serving altered areas must be accessible. Existing facilities must be accessible when viewed in their entirety.

Rail: New vehicles must be accessible. One care per train must be accessible in no more than 5 years. Key rail stations must be accessible in no more that 3 years, with exemptions available for up to 20 years. Amtrak stations must be accessible within 20 years.

Public Accommodations: Includes hotels, restaurants, theaters, halls, stores, offices, transit stations, museums, parks, schools, social service agencies, gyms.

Eligibility criteria can't discriminate. Auxiliary aids and services are required unless the public accommodation can demonstrate undue hardship.

Existing facilities: Must remove barriers when such removal is readily achievable. If not, must provide alternative methods of making goods and services available.

Altered facilities: altered area must be accessible to the maximum extent feasible. In major structural alterations, a path of travel to the altered area and restrooms serving the altered area must be accessible.

New facilities must be accessible unless structurally impracticable, but elevators need not be provided in buildings under 3 floors or with less than 3000 square feet per floor, other than in shopping centers and health care facilities.

Public Services: Activities receiving funding from state and local government are covered, with requirements as in Section 504 of the Rehabilitation Act of 1973.

Telecommunications Relay Services: Telephone carriers offering services to general public (interstate and intrastate) must provide TTD relay services by 2 years after enactment.

Enforcement: Administrative remedies are available. Also, private remedies comparable to those in Titles II and VII of the Civil Rights Act of 1964 are available. Attorney's fees are available; punitive damages are not. The Attorney General can bring pattern or practice suits and seek penalties. State can be sued.

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The President's Committee on Employment of People With Disabilities

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Dignity, Equality, Independence Through Employment

FACT SHEET

AMERICANS WITH DISABILITIES ACT (ADA) OF 1989

The ADA will protect people with disabilities from discrimination in employment, transportation, public accommodations, activities of state and local government, and telecommunications; giving protection which is comparable to that afforded other groups on the basis of race, sex, national origin, age, and religion. Most provisions go into effect 2 years after enactment, other than fixed-route publicly-funded transit vehicles (see below).

Employment: All places of employment with 25 or more employees are covered for the first 2 years; after that, employers with 15 employees or more are covered. Provisions are similar to Section 504 of the Rehabilitation Act of 1973 (application procedures must be non-dicriminatory, reasonable accommodation is required unless it would pose an undue hardship, employment criteria must be substantially related to essential functions of the job, etc.) Employers may require that an individual with a currently contagious disease not pose a direct threat to the health and safety of others, and may prohibit all workplace use of drugs and alcohol. Religious entities are not restricted from preferential hiring of people holding to their particular religious tenets.

Transportation (publicly and privately owned): New purchased & leased bus & rail vehicles must be accessible. For publicly-funded systems, this requirement goes into effect 30 days after passage.

Comparable paratransit service must be provided unless it would pose an undue hardship.

All demand-response service which is provided to the general public, and privately-funded fixed-route service, may purchase only accessible vehicles unless it can be demonstrated that the service is accessible when viewed in its entirety. The exception is privately-funded fixed route service which uses vehicles carrying over 16 passengers, in which case new vehicles must be accessible.

Over-the-road coaches (Greyhound-type buses) are exempted for six years in the case of large providers and seven years for small providers; after that, newly-purchased vehicles must be accessible. The President can extend this for one year further. The bill commissions a three-year study to determine the best way to provide access to over-the-road coaches.

ADVISORY COUNCIL

The Secretary of State
The Secretary of the Treasury
The Secretary of Defense
The Attorney General
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The Secretary of Agriculture
The Secretary of Commerce
The Secretary of Labor
The Secretary of Health and Human Services
The Secretary of Housing and Urban Development
The Secretary of Transportation
The Secretary of Energy
The Secretary of Education
The Secretary of Veterans Affairs
The Chairman of the Equal Employment Opportunity Commission
The Administrator of General Services
The Director of the Office of Personnel Management
The Director of the United States Information Agency
The Postmaster General

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American Diabetes Association.

AMERICANS WITH DISABILITIES ACT

BACKGROUND

One of the most difficult problems faced by people with diabetes is employment discrimination. Misconceptions, stereotypes and a lack of knowledge about the disease among employers contribute to the continuation of discriminatory hiring and employment practices.

The Rehabilitation Act of 1973 prohibits employment discrimination on the basis of handicap within the Federal Government, its agencies and entities receiving Federal funding. Until recently, there were no Federal protections against this type of discrimination in the private sector. State protections were inconsistent at best, or nonexistent. However, with the enactment into law of the Americans with Disabilities Act, the Federal Government has taken responsibility for providing clear, strong, enforceable standards to eliminate discrimination against people with disabilities in private employment, State and local government, public transportation, accommodation (e.g., restaurants, theaters, stores) and telecommunication.

I. DEFINITION OF DISABILITY

Who is affected by the Americans with Disabilities Act?

The law's definition of persons with disabilities is based on the definition in Section 504 of the Rehabilitation Act of 1973. The law defines a person with a disability as a person with (1) a physical or mental impairment that substantially limits one or more of the major life activities; (2) a person with a record of such an impairment; or (3) or a person who is regarded as having such an impairment. Under the law, diabetes may legally be considered a disability.

II. EMPLOYMENT

What protections are offered by the law?

Title I, Section 102 of the Americans with Disabilities Act states, "No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." For a person with diabetes, this means that an individual cannot be denied employment without the benefit of knowing the specific qualification standards which preclude him/her from performing the job. For this type of decision an employer must have established written standards of employment upon which employment decisions are made. In effect, the new law shifts the burden of proof from the job applicant to the employer by requiring the employer to justify the decision.

The employment discrimination provisions of the bill are based on Title VII of the Civil Rights Act of 1964, which bars job discrimination on the basis of

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race, color, religion, sex, or national origin by private employers, and on Section 504 of the Rehabilitation Act of 1973, which bars job discrimination against persons with disabilities by entities receiving Federal funds.

The new law applies to employers of 25 or more employees for the first two years following the effective date, and to employers of 15 or more employees thereafter. With respect to the employment portion of the law, the effective date is two years after it is signed by the President. For all practical purposes the effective date is July 26, 1992.

The law's definitions of what constitutes job discrimination against persons with disabilities are the same as the definitions used in Section 504 of the Rehabilitation Act, which have been in effect since 1973.

The law prohibits all covered employers from discriminating against "any qualified individual with a disability" because of the individual's disability. This prohibition applies to all aspects of employment -- including application procedures; hiring, advancement, or discharge of employees; employee compensation; job training; and other terms, conditions and privileges of employment.

Like Section 504, the new law defines the term "qualified individual with a disability" as an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.

III. OTHER DEFINITIONS

Reasonable Accommodations: The bill provides that job discrimination includes not making "reasonable accommodations" for a person with a disability if those accommodations would allow the person to perform the essential functions of the job -- unless those accommodations would impose an "undue hardship" on the employer.

The bill stipulates that reasonable accommodations may include such steps as modified work schedules, the acquisition or modification of equipment, i.e., for the sight-impaired, and making facilities readily accessible to individuals with disabilities.

Undue Hardship Standard: Undue hardship is defined as, "an action requiring significant difficulty or expense." In determining whether an action is an undue hardship on an employer, consideration must be given to the following: 1) the nature and cost of the accommodation; 2) the financial resources of the specific facility involved; the number of employees employed at such facility; the effect on the specific facility's expenses and resources; and other possible effects on the facility's operation; and 3) the overall financial resources of the parent company and its type of operations, including the composition, structure, and functions of its workforce.

IV. ENFORCEMENT AND REMEDIES

The law provides that the same enforcement procedures and remedies used under Title VII of the Civil Rights Act are to be used by individuals with

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disabilities who are subject to employment discrimination. Thus, the Equal Employment Opportunity Commission will enforce the bill's employment provisions, and the same Title VII remedies as are available for persons based on race, color, religion, sex or national origin, will be available for persons with disabilities. Remedies include injunctive relief (a court order to stop the discriminatory practice), back pay for lost wages, and attorneys' fees. Individuals may bring private lawsuits to obtain court orders to stop discrimination, but money damages cannot be awarded. However, individuals can file complaints with the Attorney General who may file lawsuits to stop discrimination and obtain monetary damages and penalties.

V. OTHER PROVISIONS

Title II and Title III of the Act prohibit discrimination on the basis of disability with respect to public transportation and public accommodation, respectively. Title II states, "No qualified individual with a disability shall, by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination by a department, agency, special purpose district, or other instrumentality of a State or local government." Similarly, Title III prohibits discrimination on the basis of disability with respect to the enjoyment of goods, services, facilities, privileges and accommodations of any place of public accommodation.

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PCEPD FACT SHEET

Allegations have been made against disability rights leaders. Some would say these attacks have been overkill. What are the facts at the President's Committee for the Employment of People With Disabilities?

1. Jay Rochlin, Executive Director, was sent a letter of reprimand in November of 1989 from the Department of Labor for overspending approximately $240,000 (10% of the budget) in the previous fiscal year.

2. Sharon Woodward, Assistant to the Executive Director, received a promotion to GM-14 after the fiscal fiasco was discovered. She is responsible for monitoring the budget and expenditures.

3. Contractors at the President's Committee repeatedly objected to being paid in cash. Why were there cash payments with NO paperwork?

4. Contrary to Federal law, money has been improperly funnelled through the accounts of other organizations.

5. There have been longstanding and continual accusations of racism against the management of the President's Committee.

6. Jay Rochlin became aware that there were serious allegations of illegal discrimination against him and the President's Committee. He agreed to settle the complaints quietly. Instead, he has spent the last several weeks misrepresenting the facts surrounding allegations of discrimination. He has:

   ** allowed selected personnel correspondence to be circulated around the country;

   ** participated in character assassination against disabled leaders;

   ** misrepresented the reasons behind the request for his resignation.

People interested in disability rights are embarrassed by the racial and disability discrimination.

People interested in disability rights are embarrassed by the fraud, waste, abuse and mismanagement. (See attached letter to the Department of Labor's Inspector General).

People interested in disability rights are embarrassed by this Executive Director.

Jay Rochlin must resign now.

(May 1,1990)

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1-16

The President's Committee on
Employment of People With Disabilities

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Dignity, Equality, Independence Through Employment

April 9, 1990

Mr. Raymond Maria
Acting Inspector General
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Dear Mr. Maria:

President Bush appointed me to serve as Chairman of the President's Committee on Employment of People with Disabilities on July 27, 1989. Since then I have heard occasional conversational references by former and present employees to past irregularities in practices of the agency. Management assured me that the causes and results of any irregularities which might have occurred had been remedied.

However, yesterday I attended an informal meeting called by five distinguished federal officials, some of whom had had relationships with the President's Committee, to inform me of deep concerns they have about the agency's operations in regard to management, financial and personnel practices. They feel that there have been consistent patterns of serious problems over the years, and that many of these problems have not been remedied. I was urged to take immediate action. While I have the highest regard for my agency's present management, the individuals at yesterday's meeting are extremely credible people, including two Presidential appointees and one member of the Vice President's staff. At least three of them are attorneys.

I therefore respectfully request that your office undertake an immediate and thorough investigation of the financial, management and personnel practices of my agency, and make recommendations in regard to any past or existing irregularities, and for optimal management practices in the future.

ADVISORY COUNCIL

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The Secretary of Labor
The Secretary of Health and Human Services
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The Secretary of Transportation
The Secretary of Energy
The Secretary of Education
The Secretary of Veterans Affairs
The Chairman of the Equal Employment Opportunity Commission
The Administrator of General Services
The Director of the Office of Personnel Management
The Director of the United States Information Agency
The Postmaster General

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I am available to discuss these matters with you or members of your staff at your convenience.

Sincerely,

Justin Dart, Jr.
Chairman

cc: Michael Ryman
Jay Rochlin
Evan Kemp
Nell Carney
George Covington
Bob Funk
Janet Dorsey

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Look

Tom Stickney - Leg. Counsel drafted - Sen.
Jim Brennan - Leg. Counsel - House

INDEPENDENT LIVING TRUST AND CONTRIBUTIONS PROVISIONS

The intent of this provision is to codify current Social Security rules which dictate when direct or trust contributions will not be counted as income or resources for SSI eligibility. Under current law, there is no assurance that these rules will exist in the future, therefore they must be codified in statute.

This provision will:

1. Codify those rules and explicitly permit contributions other than food, shelter and cash to be excluded as income or resources from SSI eligibility. This includes such items as social services, vocational rehabilitation services, medical care, transportation, educational services, personal assistance or attendant care services, and services or equipment related to the quality and livability of the individual's shelter which are not for the purposes of rent, mortgage, real property taxes, garbage collection, sewerage services, water, heating fuel, electricity or gas.

2. Adds one new minor improvement to the current rules:

   (a) Allows an SSI recipient to receive clothing without it having an effect on the person's benefits.

3. Permits a beneficial trust to be established to continue to provide assistance to the SSI recipient once his parents have passed away. This beneficial trust will not be counted as a resource or as income as long as the SSI recipient does not have access to the trust.

4. Requires SSA to develop materials which explain the rules to SSI recipients and their families so that they will know what types of contributions will be allowed by SSA without jeopardizing the SSI recipient's eligibility for SSI and Medicaid.

The CBO estimate is zero except for the notification provisions which will cost $5 million over 5 years.

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MEMORANDUM OF UNDERSTANDING

BETWEEN

THE OFFICE FOR CIVIL RIGHTS AND

THE OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

I. PURPOSE

Section 504 of the Rehabilitation Act of 1973 (Section 504), administered by the Office for Civil Rights (OCR), and Part B of the Education of the Handicapped Act (EHA), administered by the Office for Special Education and Rehabilitative Services (OSERS), guarantee the right of handicapped children to receive a free appropriate public education and to be afforded other protections needed to ensure that they will be provided equal educational opportunities. This Memorandum of Understanding (Memorandum) establishes a framework within which OCR and OSERS will work together to ensure that Section 504 and the EHA are administered in the most effective, efficient, and consistent manner possible. Using this framework, OCR and OSERS will develop and implement agreements, policies, procedures and practices designed to ensure that handicapped children will, to the fullest extent possible, be accorded those rights guaranteed by law.

II. SCOPE

This Memorandum governs issues arising under applicable provisions of 34 C.F.R. Part 104, Subpart D (Department of Education regulations under Section 504 of the Rehabilitation Act) and 34 C.F.R. Part 300 (regulations implementing Part B of the Education of the Handicapped Act).

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MUNICATION AND COORDINATION

A. Coordinators

The Assistant Secretary for Civil Rights and the Assistant Secretary for Special Education and Rehabilitative Services agree to designate, within their respective offices, coordinators for purposes of this agreement. The coordinator for OSERS will be the Director, Office of Special Education Programs, and for OCR, the Director, Policy and Enforcement Service. The coordinator for each office shall exercise all necessary authority as the representative of each office, to perform the functions described in this Memorandum.

The coordinator for each office shall be responsible for the implementation of this Memorandum, including, but not limited to, assuring that functions described are performed and time frames observed. The coordinator for each office shall ensure that all appropriate component units in that office are informed and involved, as necessary, to allow prompt and effective resolution of issues covered by this Memorandum.

B. Coordination

Memoranda or correspondence prepared by either office that characterize the position of the other office on any substantive issues, or that commit the other office to any follow-up action, should be jointly reviewed and approved by the two Assistant Secretaries, with consultation, as appropriate, with the Office of General Counsel (OGC).

All requests from OSERS for information from OCR regional offices will be coordinated through OCR headquarters. Such requests should be forwarded to the coordinator on a case-by-case basis.

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C. Periodic Meetings

The coordinator for OCR, the coordinator for OSERS, and such other persons as they deem appropriate, including an OGC coordinator, shall meet periodically to share information and to take such other actions as may be necessary to ensure that this Memorandum is effectively implemented.

IV. JOINT ACTIVITIES

OCR and OSERS may undertake jointly, by mutual agreement, any or all of the following activities:

1. technical assistance;
2. the investigation of any education agency;
3. the issuance of findings under the EHA and Section 504;
4. the negotiation of remedies for violations found;
5. the monitoring of compliance plans; and
6. appropriate enforcement proceedings.

V. POLICY DEVELOPMENT

The Assistant Secretaries affirm that the principal responsibility for the development of education policy under Section 504 is vested in the Assistant Secretary for Civil Rights and that the principal responsibility for development of policy under the EHA is vested in the Assistant Secretary for Special Education and Rehabilitative Services.

Both parties to this memorandum are committed to the principle that interpretations of the EHA and Section 504 should not lead to inconsistent obligations being imposed upon states and other departmental recipients.

When policy is being formulated, by either OCR or OSERS, on any issue concerning the provision of a free appropriate public education, every effort will be made

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to consult on the issue prior to issuance of the policy. Whenever possible, the offices will issue jointly developed policy, after appropriate consultation with OGC.

VI. DATA SHARING

OCR agrees to provide OSERS, upon request to the coordinator, with all available computerized data regarding matters within the scope of this Memorandum, such as 101 and 102 survey data and technical assistance (TA) data. OCR further agrees to provide additional data, to the extent feasible.

OSERS agrees to provide OCR, upon request to the coordinator, with copies of State Plans. OSERS further agrees to provide additional data to the extent feasible.

OCR and OSERS agree to exchange proposed data instruments for review and comments.

VII. COMPLAINT HANDLING

A. Definitions

For statements initially received by OCR, "complaints" mean written statements alleging facts which, if true, would constitute a violation of Section 504. This does not include inquiries received by OCR that only solicit OCR's interpretation of the law or OCR's policies.

For statements initially received by OSERS, "complaints" mean written statements asking for the Department's investigation or intervention in a matter relating to a particular handicapped child or a group of handicapped children, when those statements raise possible violations of Part B of the EHA. This does not include inquiries received by OSERS that only solicit OSERS' interpretation of the law or OSERS' policies.

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B. Complaints Initially Received by OSERS

OSERS will refer to OCR all complaints it receives that allege facts which, if true, would constitute a violation of Section 504 and/or Section 504 and the EHA. OSERS' referral to OCR will occur shortly after or simultaneously with the commencement of OSERS' usual complaint handling practices.

OSERS' current complaint handling practices customarily commence with the referral of the complaint to the relevant State educational agency (SEA) and a request that the SEA investigate the matter and report to OSERS on the investigation and disposition of the matter within 60 days. The results will be forwarded to OCR.

OCR will investigate referred complaints under its usual complaint procedures. OCR will report to OSERS on the results of all investigations of OSERS' referred complaints.

C. Complaints Initially Received by OCR

OCR will investigate according to its usual complaint procedures any complaint that is directly filed with OCR that alleges facts which, if true, may constitute a violation of Section 504 alone, or both the EHA and Section 504. If, at the beginning of its investigation, OCR determines that the complaint, or part of the complaint, alleges facts that, if true, might constitute a violation of the EHA but not Section 504, the complaint (or the relevant portion thereof) will be referred to OSERS. OSERS will handle the complaint under its usual complaint procedures (described above).

If, at the conclusion of an investigation of a complaint directly filed with OCR, OCR determines that there remains an unresolved issue that might

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constitute a violation of the EHA but not Section 504, the results of OCR's investigation will be transmitted to OSERS.

D. Changes in Internal Complaint Handling Procedures

OCR and OSERS will advise each other of any change in the usual complaint handling procedures used by the respective offices that may affect the the procedures described in the Memorandum. Either office may then initiate discussions concerning whether the change in procedures should result in a revision of this Memorandum.

E. Sharing of Complaint Information

Each office shall make available, at the request of the other, information on the status of any complaint that either office has referred to the other.

Each office will make available to the other, and keep updated, a list of names and telephone numbers including persons who can be contacted for the above information relating to: (1) cases in OCR headquarters; (2) cases in OCR regional offices; and (3) cases in OSERS.

VIII. STATE PLANS

OSERS will notify OCR of its schedule for review of state plans under the EHA. OCR will transmit to OSERS, in a timely manner, information on all enforcement activity relating to states to be reviewed. OSERS will have sole approval authority over state plans. OCR and OSERS agree that OCR has no formal role in the approval of state plans and will not be deemed to have approved any provision of any state plan for compliance with Section 504. OCR and OSERS agree that OCR is in no way bound by the provisions of the state plans in the conduct or conclusions of its investigations under Section 504.

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One day I envision a nation in which any individual will have the opportunity to live a fulfilling, productive and independent life. Expo 1991 brings us closer to that day. This conference is crucial to improving competitive employment opportunities for people with disabilities because it showcases the technological advances and information sharing necessary to ensure the rights of ALL Americans.

Although the recent passage of the Americans with Disabilities Act was historic, we must continue to pursue a partnership between the public and private sectors. The research and development of assistive technology is central to redressing discrimination in the workplace. A successful partnership, an informed citizenry and innovation utilizing technology is key to making the ADA a reality.

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BCID
Brooklyn Center for
Independence of the Disabled, Inc.

408 Jay Street
Brooklyn, New York 11201
718 625-7500 VOICE
718 625-7712 TTY
718 625-2239 FAX

December 13, 1990

Ms. Maureen West, Legislative Assistant
Office of Senator Robert Dole
SH-141 Hart Senate Office Building
Washington, D. C. 20510-1601

Dear Ms. West:

My office called you the other day to ask if Senator Dole would consider speaking at EXPO '91/ACCESS TO THE WORKPLACE on April 16, 1991. You said he might not wish to travel outside Washington.

This letter is designed to bring you up to date on what we have accomplished since our September letter to you and to persuade the Senator that this is an event worth the travel time required.

I can report to you without exaggeration that EXPO '91 seems to be the right conference at the right time. People seem very receptive to our message that DISABLED DOES NOT MEAN UNABLE and they are anxious to learn how to comply with the new Americans with Disabilities Act. As a result, we have already signed up 32 exhibitors and most of our workshop speakers. The event was listed in several hundred specialized journals, resulting in 10 or more inquiries per week from possible attendees and exhibitors. We anticipate attendance by 500 people per day, primarily employers of small to mid-sized firms, manufacturers and distributors of adaptive equipment, architects, designers, government agencies, vocational facilities, advocacy groups and, of course, many people with disabilities.

The ADA has been called "the most significant civil rights law in 25 years," and is the subject of articles in every type of magazine from The American Banker to INC. to NONPROFIT TIMES. Our workshops and exhibits are designed to answer employers' questions about what it means to them and to allay their fears about the cost of compliance.

EXPO '91 is not just a two day trade show and employment conference focusing on the Americans with Disabilities Act. It is really an attempt to eliminate the obvious and subtle barriers to independence, which hamper the lives of people with disabilities. For them, as for everyone else, a real job is the best route to an independent life. The ADA requires employers to provide reasonable access to a job and to hire people based on their real abilities and not their physical disabilities.

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I enclose information about Brooklyn Center for the Independence of the Disabled, the sponsoring organization, and about the conference itself, with the hope that they will help persuade Mr. Brady to include this event into his busy schedule.

By his participation as keynote speaker at our luncheon on April 16 from 12 to 2, he would lend his enormous prestige to the cause of opening the world of employment to people with disabilities and would, of course, have a significant influence on the attendance. We would be grateful if he could speak about what it means to become disabled in the prime of one's life, because this is a possibility facing every person, whether from guns, or accidents or strokes.

May we have his answer by January 15, so that we may use his name on our invitations? Thank you very much for considering this request.

Sincerely,

Denise Ann McQuade

Denise Ann McQuade
Executive Director

DAMQ/ts
wp5/clients/brady

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expo '91
access to the workplace

Presented by the Brooklyn Center for Independence of the Disabled, Inc. in cooperation with United Way of New York City.

EXHIBITORS AT EXPO '91
(as of December 5, 1990)

Alternatives to Barriers
American Foundation for the Blind
Baruch College Computer Center for the Visually Impaired
Braun/Monmouth Customized Vans
Brooklyn Union Gas Company
Citibank
C-Tech
Die Rad Technologies
Dragon Dictate
Easter Seals of New Jersey & National Easter Seals
Eastern Paralzyed Veterans Association
Federation Education & Guidance Systems
Federation of the Handicapped
Hygeia Design Associates
Holiday Inn
IBM
In Touch Systems
International Center for the Disabled
Kurzweil
Long Island Mobility
Mount Sinai Medical Center
National Institute of Rehabilitation (U.S. Department of Education)
New York State Office of Vocational & Educational Services for Individuals with Disabilities (VESID)
New York State Science & Technology Foundation
New York Telephone Company
Optelec
Project Open House
Search for Change
Steelcase
Visiting Nurse Association of Brooklyn
Unique Bathing Supplies
Whitakers

Early Deadline for Exhibitors 1/15/91

ADVISORY COMMITTEE
Robert Bailey, *Brooklyn Chamber of Commerce*
Carol Barness, *Brooklyn Union Gas Co.*
John Bradley, *Morgan Guaranty Trust Co.*
Dale Brown, *President's Committee for Employment of People with Disabilites*
Mary Ann Carroll, *United Cerebral Palsy*
Helen Cleary, *NYS Department of Labor*
Lewis Davis, *Davis, Brody, Inc.*
Barbara Devore, *Office of Vocational Educational Services for Individuals with Disabilities*
Ruth Dickey, *Mt. Sinai Medical Center*
Dolly DeThomas, *Holiday Inn Crown Plaza Hotel*
Anne Emerman, *NYC Mayor's Office for People with Disabilities*
Judith E. Goldberg, *Center for Students with Disabilities – NYU*
The Honorable Howard Golden
Sharon Gruenhut, *National Multiple Sclerosis Society*
Norman D. Grunewald, *National Easter Seal Society*
Linda Harris, *West Point–Pepperell*
Etha Henry, *United Way of New York City*
Cheryl Homer, *New York Telephone Co.*
Anne Impellizzeri, *NYC Partnership*
Barbara Katersky, *American Express Corporation*
John Leonard, *Manufacturers Hanover Trust Co.*
Patricia Livingston, Ph. D., *New York Universtiy*
Eleanor Luger, *New York Newsday*
Grace H. McCabe, *Empire Blue Cross/Blue Shield*
Ronald McGowan, *Private Industry Council*
Willie Menendez, *IBM*
Lorraine Merdon, *The Dime Savings Bank of New York, FSB*
Stephen Messinger, *The Equitable*
Michael Moroch, *United Cerebral Palsy*
Barbara Murnane, *Chemical Bank*
Kevin Oldis, *Republic National Bank*
The Honorable Major R. Owens
Cynthia Rountree, *Chase Manhattan Bank*
Pincus J. Rosenfeld, *NYS Office of Mental Health*
Jack Ryan, *NYS Commission for Blind and Visually Handicapped*
Mark Sanders, *Marriott Corporation*
Patricia M. Schaeffer, *Skadden, Arps, Slate, Meagher & Flom*
Roberta Shea, *Citibank*
Paul Smith, *NYS Office of Advocate for the Disabled*
Edward Specht, *Mt. Sinai Medical Center*
Mark Tebbano, *NYS Science and Technology Foundation*
Diane Valek, *Visiting Nurse Association of Brooklyn*
John Wingate, *International Center for the Disabled*
Susan J. Zimmerman, *United Way of New York City*

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expo '91
access to the workplace

Presented by the Brooklyn Center for Independence of the Disabled, Inc. in cooperation with United Way of New York City.

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Brooklyn Chamber of Commerce
Carol Barness
Brooklyn Union Gas Co.
John Bradley
Morgan Guaranty Trust Co.
Dale Brown
President's Committee for Employment of People with Disabilites
Mary Ann Carroll
United Cerebral Palsy
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NYC Mayor's Office for People with Disabilities
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John Leonard
Manufacturers Hanover Trust Co.
Patricia Livingston, Ph. D.
New York Universtiy
Eleanor Luger
New York Newsday
Grace H. McCabe
Empire Blue Cross/Blue Shield
Ronald McGowan
Private Industry Council
Willie Menendez
IBM
Lorraine Merdon
The Dime Savings Bank of New York, FSB
Stephen Messinger
The Equitable
Michael Moroch
United Cerebral Palsy
Barbara Murnane
Chemical Bank
Kevin Oldis
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Diane Valek
Visiting Nurse Association of Brooklyn
John Wingate
International Center for the Disabled
Susan J. Zimmerman
United Way of New York City

WORKSHOP SPEAKERS & MODERATORS
(as of December 5, 1990)

Chris Bell, Attorney & Advisor to the Chairman, U.S. Equal Employment Opportunity Commission

Mark Brossman, Partner, Chadbourne & Park

Richard Drach, Manager, E.I. Dupont de Nemours & Company Program on Employment & Disabilities

Fred Francis, New York State Vocational and Educational Services to Individuals with Disabilities.

Judy Goldberg, Disabilities Program Coordinator, New York University Center for Students with Disabilities

Paul Hearne, Executive Director, The Dole Foundation

Dr. Deborah S. Kearney, President, Workstations, Inc.

Barbara Murnane, Manager of Special Recruitment, Chemical Bank

Robert Marino, A.I.A., Building Codes Committee, N.Y.C. Chapter of American Institute of Architects

Terry Moakley, Associate Executive Director for Barrier Free Design & Communications, Eastern Paralyzed Veterans Association

Representatives of Love-a-Cup Beverage, Marriott Corporation, Multitasking Systems, Steelcase & Other Corporations

Carol Ann Roberson, Director of Equal Employment Opportunity, New York City Department of Employment

Edward Specht, Rehabilitation Technologist, Mount Sinai Medical Center

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expo '91
access to the workplace

Presented by the Brooklyn Center for Independence of the Disabled, Inc. in cooperation with United Way of New York City.

FACT SHEET

WHAT: EXPO '91/ACCESS TO THE WORKPLACE

A trade show and exhibition to promote independent living through employment for people with disabilities.

90 EXHIBITS, 8 WORKSHOPS, OFFICE OF THE FUTURE, THEATRICAL PERFORMANCES, CELEBRITY SPEAKERS, SOCIAL EVENTS & ADVERTISING PROGRAM JOURNAL

WHEN & WHERE: April 16-17, 1991
The Marriott Marquis Hotel,
1535 Broadway in New York's Times Square Area

SPONSORED BY: BROOKLYN CENTER FOR INDEPENDENCE OF THE DISABLED
in cooperation with
THE UNITED WAY OF NEW YORK CITY

WHY: To help employers implement the Americans with Disabilities Act

EXHIBITORS & AUDIENCE:
* National & Local Employers - Small, Medium & Large
* Human Resources/Equal Employment Opportunity Specialists
* Manufacturers & Distributors of Adaptive Equipment
* Architects & Designers
* Federal, State & Local Governments
* People with Disabilities
* Service Providers/Advocacy Organizations
* Vocational & Rehabilitation Facilities

WORKSHOPS:
"How to Comply with the New Americans with Disabilities Act"
"Workplace Accessibility"
"State of the Art Technology"
"The Hiring Process"
"Success Stories"
"Myths & Facts About Employing People with Disabilities"
"Accommodating Beyond the Physical"
"What Happens When an Employee Becomes Disabled"

CONTACT: Joyce Gersten (718-230-3200) about booths, sponsorships, advertisements, workshops, special events, attendance

ADVISORY COMMITTEE
Robert Bailey, Brooklyn Chamber of Commerce
Carol Barness, Brooklyn Union Gas Co.
John Bradley, Morgan Guaranty Trust Co.
Dale Brown, President's Committee for Employment of People with Disabilites
Mary Ann Carroll, United Cerebral Palsy
Helen Cleary, NYS Department of Labor
Lewis Davis, Davis, Brody, Inc.
Barbara Devore, Office of Vocational Educational Services for Individuals with Disabilities
Ruth Dickey, Mt. Sinai Medical Center
Dolly DeThomas, Holiday Inn Crown Plaza Hotel
Anne Emerman, NYC Mayor's Office for People with Disabilities
Judith E. Goldberg, Center for Students with Disabilities – NYU
The Honorable Howard Golden
Sharon Gruenhut, National Multiple Sclerosis Society
Norman D. Grunewald, National Easter Seal Society
Linda Harris, West Point–Pepperell
Etha Henry, United Way of New York City
Cheryl Homer, New York Telephone Co.
Anne Impellizzeri, NYC Partnership
Barbara Katersky, American Express Corporation
John Leonard, Manufacturers Hanover Trust Co.
Patricia Livingston, Ph. D., New York Universtiy
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Ronald McGowan, Private Industry Council
Willie Menendez, IBM
Lorraine Merdon, The Dime Savings Bank of New York, FSB
Stephen Messinger, The Equitable
Michael Moroch, United Cerebral Palsy
Barbara Murnane, Chemical Bank
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Pincus J. Rosenfeld, NYS Office of Mental Health
Jack Ryan, NYS Commission for Blind and Visually Handicapped
Mark Sanders, Marriott Corporation
Patricia M. Schaeffer, Skadden, Arps, Slate, Meagher & Flom
Roberta Shea, Citibank
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Edward Specht, Mt. Sinai Medical Center
Mark Tebbano, NYS Science and Technology Foundation
Diane Valek, Visiting Nurse Association of Brooklyn
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BCID
Brooklyn Center for
Independence of the Disabled, Inc.

408 Jay Street
Brooklyn, New York 11201
718 625-7500 VOICE
718 625-7712 TTY
718 625-2239 FAX

FACT SHEET

DESCRIPTION: BCID is a nonprofit organization, founded in 1956, which provides services and advocacy for people with disabilities. Its mission is to promote their full participation in society. BCID is managed and operated by people who themselves have disabilities. All services are provided free to the consumer and without a medical evaluation.

OUR GUIDING PHILOSOPHY: "DISABLED" DOES NOT MEAN "UNABLE!"

Citizens with disabilities are neither patients to be cured, nor children to be protected.

They have the right to pursue an education, get a real job, find an apartment, raise a family,

vote, go shopping, dine at a restaurant, go to the movies and ride a bus, i.e., pursue the ordinary

activities of adult life.

WHAT WE DO: We work with our consumers as partners, not preachers. Our services include:

Counseling, Community Resources & Independent Living Skills: Help with budgeting, housekeeping, travel, negotiating the social service system, supervising a home attendant, using leisure time and other aspects of living independently. BCID informs its consumers about products and refers them to useful services.

Vocational Training: BCID helps consumers access the appropriate training to which they are entitled under the Vocational Rehabilitation Act.

Entitlements: BCID teaches consumers about their civil and economic rights, how to prove eligibility, complete forms and appeal unfavorable decisions regarding SSI, SSDI, Welfare, Medicaid, etc.

Housing: BCID helps consumers to locate accessible, affordable housing and teaches them how to negotiate leases, prevent eviction, make home modifications and obtain financial grants.

Transportation Services: BCID provides van service to those not able to use public transportation and advocates for accessibility of buses, subways, trains and terminals

Systems Advocacy: BCID educates the public and works with legislators and government agencies to remove the barriers which maintain dependence. We played an active role in the passage of New York City's Local Law 58, in obtaining an accessible bus fleet and para-transit service and in passage of the Americans with Disabilities Act.

WHO WE SERVE: 1200 persons per year (three quarters of whom are of African-American or Hispanic descent)

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BOARD OF DIRECTORS

President:	Howard Silverman, Accountant
Vice President:	Ellen Nuzzi, Academic Counselor for Disabled Students, Long Island University
Secretary:	Gertrude Goldstein, Former Director, Woodward Park School, Brooklyn, New York
Treasurer:	Gerard Nuzzi, Assistant Director, Summer Youth Employment Program, Catholic Charities
Members:	Alan Ander, Senior Tax Specialist, Touche Ross & Co.
	David Dopico, Community Activist
	Olin A. Lipford, M.S. Counseling, Community Activist
	Carol Ann Roberson, Director of Equal Employment Opportunity, New York City Department of Employment & former Commissioner, Mayor's Office for the Handicapped
	Harilyn Rousso, Psychotherapist & former Director, Networking Project for Disabled Women & Girls, YWCA of New York
	Thomas K. Small, Student, Brooklyn Law School
	Thomas Walsh, Consumer Advocate, United Cerebral Palsy
Executive Director:	Denise McQuade, M.A. Rehabilitation Counseling, External V.P., National Council on Independent Living Board Member, Association of Independent Living Centers of New York Governor's Appointee, N.Y.C. Transportation Disabled Committee

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From Handicapped to Disabled

- The Handicapped Programs Technical Amendments of 1988 (P.L. 100-630 enacted on November 7, 1988) changed the names of organizations for handicapped individuals authorized by the Rehabilitation Act. The Interagency Committee on the Handicapped became the Interagency Committee on Disability Resources and the President's Committee on Employment of the Handicapped became the President's Committee on Employment of People with Disabilities. However, these changes were not made because the term "disabled" was found to be a better term than "handicapped." The changes were made to move away from referring to handicapped persons with the noun "the handicapped" and to acknowledge their status as "persons" or "individuals" first and to use "handicapped" or "disabled" only as an adjective after the noun. Thus, P.L. 100-630 also changed the Council on Handicapped American Indians to the Council on American Indians with Handicaps.

- Based on this Congressional lead, the Department of Education has begun to change the name of its offices for services to handicapped persons. The DOE Clearinghouse for the Handicapped has become the Clearinghouse for Disability Information. DOE has also made some changes in terms in publications and in regulations, from references to "the handicapped" to references to "persons with disabilities."

- The Association for the Handicapped, The National Information Center for Handicapped Children and Youth, and the Special Olympics have stated that they have no preference between the terms "handicapped" and "disabled." They all prefer the term "challenged."

- Despite several amendments, the Rehabilitation Act of 1973, as amended, continues to prohibit discrimination against persons on the basis of "handicap." A "handicapped person" is defined as a person who has a physical or mental impairment which substantially limits one or more major life activities. The Act does not have a definition for "disabled person".

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Equal Employment Advisory Council

MEMORANDUM

June 10, 1988

To: EEAC Members

From: Jeffrey A. Norris
President

John Tysse
McGuiness & Williams
789-8600

Re: Comprehensive Federal Handicap Discrimination Legislation Introduced In Congress

Introduction

Comprehensive legislation has been introduced in both the Senate and the House of Representatives to prohibit discrimination in employment on the basis of handicap. The new legislation also applies to alleged discrimination in housing, public accommodations, transportation, and broadcast or communications services.

The intent of the legislation is to give persons with disabilities the same protection against discrimination currently provided by other Federal civil rights laws which prohibit discrimination on the basis of race, sex, national origin, and religion. While most employers would not argue with the sponsors' desire to provide a national mandate for elimination of discrimination against persons with disabilities, the proposal deserves serious attention from EEAC members because of several aspects in which it appears to be significantly different from existing law.

S. 2345, the "Americans with Disabilities Act of 1988," was introduced in the Senate by Senator Lowell Weicker (R-CT). An identical companion bill (H.R. 4498) was introduced in the House by Rep. Tony Coelho (D-CA). The Senate bill has been referred to the Senate Committee on Labor and Human Resources. In the House, four different committees will consider the bill. While action by either body is unlikely this year, sponsors have informally targeted this legislation for quick passage in the next Congress.

1015 Fifteenth Street, NW, Washington, DC 20005 Telephone 202 789-8650

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ANALYSIS

Potential Inconsistencies With Existing Law

S. 2345 is structured as an entirely new effort to prohibit handicap discrimination. Its prohibitions and requirements would apply in addition to, rather than in place of, existing laws on handicap discrimination. Thus, it becomes particularly important to examine how the new requirements would differ from the requirements already imposed by the Rehabilitation Act of 1973 and various state laws.

For example, most EEAC members already are covered by Section 503 of the Rehabilitation Act of 1973, enforced by the Department of Labor, which requires government contractors to take affirmative action to employ individuals with handicaps. S. 2345 would not modify or eliminate these requirements. In fact, it specifically states that nothing in the bill should be construed to affect or change the nondiscrimination provisions in the Rehabilitation Act. Instead, it creates another, entirely separate, enforcement scheme which would be administered and enforced by the Equal Employment Opportunity Commission in a fashion similar to Title VII of the Civil Rights Act of 1964.

In introducing the bill, Senator Weicker stressed that it is drawn from the Rehabilitation Act and the regulations issued under that Act. Cong. Rec. S5108, April 28, 1988. A careful examination of the language in S. 2345 reveals, however, that there are significant provisions in the bill which are not taken from the current law and, in fact, are quite different from existing judicial interpretations. The most obvious of these are found in the basic definitions used in the legislation. S. 2345 abandons the current statutory definition of an "individual with handicaps" applied to determine who is protected by the Rehabilitation Act. In addition, the legislation makes a significant change in the definition and application of the concept of reasonable accommodation.

Defining Disability: Who Is Protected?

A key difference between existing law and S. 2345 is that the legislation includes no specific definition of a "handicapped individual" or "individual with handicaps" as those terms have been used under the Rehabilitation Act. Rather, the legislation seeks to define who is protected by defining "discrimination on the basis of handicap" to mean discrimination because of a physical or mental impairment, a perceived impairment, or a record of impairment.

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Defining the Duty to Accommodate: What Is Reasonable Accommodation?

Perhaps the most significant discrepancy between S. 2345 and existing law is in the definition of reasonable accommodation. As explained below, the bill's definition essentially eliminates the term reasonableness from the duty to accommodate. The only limitation on the duty to accommodate is spelled out in a later section of the bill, and that limitation is likely to apply only in the most extreme circumstances.

Senator Weicker's analysis of this issue begins by acknowledging that "reasonable accommodation" is a very important concept in the context of dealing with individuals with disabilities. The language of S. 2345 differs significantly from the definition of reasonable accommodation found in existing federal regulations. It also is different from the concept of reasonable accommodation as applied by the Supreme Court in the landmark case of Southeastern Community College v. Davis, 442 U.S. 397 (1979), and cited with approval by the Court last year in Arline.

It is unclear whether this change represents an unintended oversight or a deliberate rejection of existing law. If a change in existing law is intended, the sponsors have not indicated why they believe such a change is necessary, nor have they indicated that they have given serious attention to the implications of such a change.

The current law was described by the Supreme Court in Arline:

> When a handicapped person is not able to perform the essential functions of the job, the court must also consider whether any "reasonable accommodation" by the employer would enable the handicapped person to perform those functions. ... Accommodation is not reasonable if it either imposes "undue financial and administrative burdens" on a grantee, Southeastern Community College v. Davis, supra at 412, or requires "a fundamental alteration in the nature of [the] program" id, at 410.

107 S.Ct. at 1131 n.17.

The Supreme Court went on to note that regulations issued by the Department of Health and Human Services, as well as other federal agencies, list a series of factors to be considered in determining whether accommodation would cause undue hardship. These include: the nature and cost of the accommodation needed; the overall size of the recipients' program with respect to number of employees, number and type of facilities, and size of

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> In short, the costs associated with this bill are a small price to pay for opening up our society to persons with disabilities. Indeed, the costs to this Nation of discrimination against persons with disabilities are staggering. ... The costs to our society of discrimination -- in economic as well as humanitarian terms -- are much greater than the costs of eliminating such discrimination.

Cong. Rec. S5109-5110 (April 28, 1988).

While it is true that many accommodations carry only a modest cost, it is also true that a fair number of handicap discrimination cases have involved requests for some very expensive accommodations. Neither the language of the bill nor the explanation of Senator Weicker offers any practical guidance for such a situation.

Limitation on the Duty to Provide Accommodation -- The only apparent limitation on an employer's duty to provide such accommodations is the provision in Section 7 of the bill which states that it shall not be unlawful for an employer to fail or refuse to make an accommodation if that accommodation "would fundamentally alter the essential nature, or threaten the existence of, the program, activity, business or facility in question." Note that the provision does not refer to a fundamental change in the nature of the job, but rather refers only to situations which would involve a fundamental change in the essential nature of the business.

Thus, S. 2345 restructures the current law to exclude the concept that an accommodation is not reasonable where it would impose undue financial or administrative burdens. Instead, the employer's responsibility to provide accommodation apparently would be limited only in those situations where the cost of the accommodation would be so expensive and burdensome as to "threaten the existence of ... [the] business." To understand the practical implications of this, it is interesting to examine how several handicap discrimination cases from recent years might have been decided had the new standard been in place.

For example, in Treadwell v. Alexander, 707 F.2d 473 (11th Cir. 1983), the job at issue was the position of seasonal park technician. Individuals in these jobs were required, among other things, to collect fees from persons using the park. The job required an individual to be capable of walking six hours a day. The plaintiff acknowledged that he could not walk more than a mile a day due to a heart condition. He could not perform other required duties such as operating a motorboat, walking over rough terrain, and handling disorderly park visitors. It was suggested

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statistical analysis as a method of proving handicap discrimination.

The EEOC regulations issued under S. 2345 must include a requirement that employers engage in "outreach and recruitment efforts to increase the workforce representation" of disabled individuals. S. 2345 would require the EEOC to "establish a process and timelines for the development, implementation, and periodic revision of such outreach and recruitment efforts." It is unclear whether this process is intended to involve either counting of disabled individuals, or the setting of numerical goals and timetables with respect to disabled individuals. Nor is it clear whether and how the new enforcement authority of the Commission would be coordinated with the Department of Labor's existing enforcement authority under the Rehabilitation Act.

One area where S. 2345 spells out fairly specific requirements for employers is with regard to preemployment inquiries and physical examinations:

Preemployment Inquiries -- S. 2345 states that the Commission's rules shall generally prohibit employers from making preemployment inquiries about whether an applicant has a "physical or mental impairment, perceived impairment, or record of impairment." Nor would employers be permitted to inquire about the nature or severity of such an impairment.

As with existing procedures under Section 503, an employer engaged in affirmative action may invite an applicant to voluntarily identify a physical or mental impairment, and such information must be kept confidential. The exceptions to the confidentiality requirement found in Section 503 regulations -- for supervisors, first aid personnel, etc. -- are written into the new legislation.

During the application and interview process, an employer would be permitted to make a preemployment inquiry about the applicant's ability to "satisfy legitimate qualification standards, selection criteria, performance standards, or eligibility criteria," as defined in the bill. The burden of proving the legitimacy of such criteria is on the employer. Section 5(b) indicates that for such criteria to be nondiscriminatory they must be "both necessary and substantially related to the ability to perform ... the essential components of the particular job ... ." This language differs slightly from the language in OFCCP's current regulations under Section 503 which provide that job qualification requirements should be

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Civil Actions in Federal Court -- S. 2345 would give individuals the right to file civil enforcement actions in federal court. This, of course, is different from the existing scheme under Section 503 which is enforced by the Department of Labor and which does not permit private lawsuits by individual complainants. (Private actions currently are available under Section 504). S. 2345 appears to suggest that, once the EEOC has established enforcement procedures for handicap discrimination, an individual will be required to initially file a complaint with the agency before initiating a lawsuit in federal court. The legislation is not clear as to all of the procedures, but presumably the bill's reference to Title VII coverage means that Title VII time limits (180 days/300 days) would apply to the filing of an administrative complaint. The bill does state that if the agency has not completed processing the claim within 180 days, the individual may immediately initiate a lawsuit.

In such civil actions, the court would receive the records of any agency proceeding, would hear additional evidence submitted by the parties, and would issue a decision based on the preponderance of the evidence. That is, the judicial proceeding would not be simply a review of the administrative decision by the agency. The court would have authority to grant whatever relief it deemed to be appropriate. It is unclear whether the bill's general reference to monetary damages would permit awards of compensatory or punitive damages in addition to back pay. Such awards are not permitted in cases filed under Title VII.

In another slight deviation from existing Title VII law, S. 2345 provides that the court (or agency) may in its discretion award attorney's fees to a complaining party who prevails. Title VII's attorney's fees provision has been interpreted to permit, in certain circumstances, an award of fees to a successful defendant.

Additional Concerns

Because of the comprehensive scope of this legislation, there are several other points which deserve attention because they may have a potential impact on EEAC member companies.

Barrier Removal -- One such area is the legislation's requirement for the removal of architectural, transportation and communications barriers. Section 5 of the bill provides that it shall be discriminatory to establish or "to fail or refuse to remove" any architectural, transportation, or communication barriers that prevent the access or limit the participation of persons on the basis of handicap. While the bill is not absolutely clear, this requirement appears to apply to every entity which is subject to the discrimination provisions of the

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Conclusion

The comprehensive nature of S. 2345 makes it a piece of legislation which must receive serious examination. While the good intentions of its sponsors are clear, there is strong evidence already that the bill was drafted without giving close scrutiny to the practical impact of the numerous changes it would make in existing law. We will keep you fully informed as further developments occur.

Questions regarding this memo may be addressed to Larry Kessler or John Tysse at (202) 789-8650. Please call Karen Carra if you would like to receive a copy of the bill.

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HANDICAPPED ACCESSIBILITY COMPROMISE

Summary Description

HR 1158, as passed by the House, requires that all covered multifamily new construction dwellings be constructed so that all doors into and within the premises are wide enough for persons with wheelchairs and all public and common areas are readily accessible to and usable by the handicapped. Further, units in covered multifamily new construction must provide: an accessible route into and through the dwelling for handicapped persons, light switches and thermostats at an appropriate level; bathroom walls reinforced for later installation of grab bars at a tenant's expense; and kitchen and bathrooms in which a wheelchair can maneuver.

The Bipartisan Substitute relieves HUD of any obligation to develope or to enforce a federal building code or to generally review and approve the plans, designs and construction of covered multifamily dwellings. It encourages states and localities to adopt and implement their own laws. It authorizes state and local agencies to inspect construction and certify compliance with the requirements of the bill. It does not reduce the coverage of the bill or alter the features negotiated by the sponsors, NAHB and disability groups. The principal benefit of the bipartisan substitute is the deferral to and encouragement of state and local enforcement, thus avoiding federal monitoring of the 400,000 plus multifamily units constructed each year.

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WHO ARE PEOPLE WITH DISABILITIES?

The first nationwide study of the attitudes and perceptions of people with disabilities was conducted by the well known firm of Louis Harris and Associates in 1986. "Bringing Disabled Americans into the Mainstream" was the first study of this magnitude to actually ask people with disabilities what they thought about their lives. The following survey highlights describe and depict what it means to have a disability in America.

Demographics: (of the Harris sample)

- Gender - 44% Male, 56% Female
- Age range - 66% between the ages of 16-64
  33% 65 yrs. of age and up
- Race - 80% White; 10% Black; 6%; Hispanic; 4% Other
- Disability type - 44% Physical Disability
  13% Sensory Impairment
  6% Mental Disability
  32% Other Serious Health Impairments (heart disease cancer, diabetes, epilepsy, etc.)

Education:

- Americans with disabilities have far less education, as a group, than non-disabled Americans.
- 40% of all persons with disabilities did not finish high school.

Poverty:

- Americans with disabilities are much poorer than are non-disabled Americans --50% report household incomes of $15,000 or less.
- A disturbing rate of poverty exists among elderly persons who have disabilities -- 32% of all persons aged 65 and over report a household income of $7,500 a year or less.

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Work:

- Not working is the truest definition of what it means to be a person with a disability -- 66% of all Americans with disabilities between the ages of 16 and 64 are not working.
- A large majority of those not working say that they want to work. 66% of working-age persons with disabilities, who are not working, say that they would like to work.
- 47% of persons with disabilities who are not employed full-time say that employers won't recognize that they are capable of doing a full-time job.
- 28% say that a lack of accessible or affordable transportation is an important barrier to working.

Social Life and Leisure Time:

- Having a disability means less social life than non-disabled persons and not being able to get around and socialize as much as you would like.
- 56% report that their disability prevents them from getting around, socializing outside their home, or attending cultural or sports events as much as they would like. This statistic rises to 79% among persons with severe disabilities.
- 64% report that they had not attended a movie in the past year.
- As a group, persons with disabilities are much less involved in community life than are non-disabled persons.
- 49% report that an inability to use public transportation, a lack of accessible transportation, or not having someone to drive them, are important reasons why their social activities are limited.

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EMPLOYER ACCOMMODATION CENTER

KETCH

The **KETCH EMPLOYER ACCOMMODATION CENTER** was created to help Kansas businesses understand and comply with the Americans with Disabilities Act (ADA) and the recent amendments to the Kansas Act Against Discrimination. The Employer Accommodation Center will provide information, referral, training and support through the following mechanisms:

- Written materials
- Toll-free number, 1-800-530-5715
- Referrals to area and national services
- General orientation to the ADA
- Sponsorship of seminars and workshops
- On-site assessments
- Job restructuring consultation
- Referrals of qualified applicants for job openings
- Management training

For more information contact:

■ Employer Accommodation Center
KETCH Corporate Offices
1006 E. Waterman
Wichita, KS 67211
316-269-7796
1-800-530-5715

■ Employer Accommodation Center
KETCH Satellite Office
1115-C Kansas Plaza
Garden City, KS 67846
316-275-1736

KETCH is a not-for-profit Kansas Corporation providing comprehensive vocational rehabilitation and job placement services for individuals with physical, mental and emotional disabilities as well as employment placement and residential services to older persons. More than 22,000 persons with disabilities have received assistance in vocational rehabilitation and/or job placement since the Center's inception in 1964. The Employer Accommodation Center is partially funded by the cooperative efforts of the Kansas Department of Commerce and Kansas Rehabilitation Services.

■ ***KETCH MISSION*** — *to provide leadership to Kansans through programs and services that enable persons with special needs to achieve greater independence and self-fulfillment at work, at home and in the community.*

1006 East Waterman • Wichita, Kansas 67211-1551 • (316) 269-7700

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SRS Rehab Services TEL NO.913-296-0511 Sep 9,91 12:54 No.001 P.02
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TO HR.5251, LABOR-HHS Appropriations, 1991.

5(c)(2)(A)(ii) in fiscal year 1991 as a result of families moving off base due to a landfill or health concern or an environmental hazard, or due to risk assessment, investigation, testing or remediation for such concern or hazard, and any such local educational agency shall be deemed to belong to the category described in section 5(c)(2)(A)(ii) for fiscal year 1991.

Mr. HARKIN. Mr. President, I am proposing this amendment on behalf of the Senator from Ohio [Mr. METZENBAUM]. It has been cleared by the minority. It has no budgetary impact on the bill.

It assures that impact aid payments will not be lost to a school district where students are being temporarily removed from the district for hazardous assessment and remediation due to a possible landfill contamination.

Mr. METZENBAUM. Mr. President, my amendment will assist an Ohio school district which is facing a financial crisis due to an unusual and urgent set of circumstances.

The Fairborn, OH, school district educates students who reside on Wright-Patterson Air Force Base, and as a result is entitled to Federal impact aid payments. A number of these students live in the Woodland Hills housing development on the base. This development is located within close proximity to two landfills, and residents have been extremely concerned about the possible health hazards associated with the landfills. Because of these concerns, the Air Force is moving some 60 families off the base temporarily while risk assessment and remediation for any hazards are conducted. Obviously, the health and safety of these families must be the main concern, and I am pleased that the base has taken this action.

However, if only 54 children who attend Fairborn schools move off the base, the school district will be dropped into a lower impact aid category, significantly reducing their payment and causing a serious financial hardship.

This amendment will allow the Fairborn schools to remain in their category while the situation is being resolved, and will help to make this unfortunate situation a little easier for both the schools and families affected.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Ohio.

The amendment (No. 2960) was agreed to.

Mr. HARKIN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. SPECTER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2961

(Purpose: Technical corrections to Human Development Services and Health Resources and Services Administration accounts)

Mr. HARKIN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Iowa, [Mr. HARKIN], proposed an amendment numbered 2961.

Mr. HARKIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 16, line 24, change "$2,472,940,000" to "$2,474,940,000".

On page 40, line 6, change "$3,500,528,000" to "$3,501,278,000".

On page 40, line 19, after the word "claims" insert the following: ": *Provided further*, That of the total amount provided, $47,352,000 shall be transferred to "Human Development Services" account for part B of title IV of the Act".

Mr. HARKIN. Mr. President, first, this is a technical amendment to correct a printing error. Although this provision was in the subcommittee recommendation and adopted by the full committee, it was inadvertently left out of the bill when it was printed. The language was provided in order to provide additional funding for the child welfare services.

The second and third corrects the bill for amendments inadvertently left out of the bill totals. The first is in relation to the $750,000 for the university-affiliated program, and the second relates to $2 million for the excellence in minority education program.

I urge adoption of the amendments en bloc.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Iowa.

The amendment (No. 2961) was agreed to.

Mr. HARKIN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. SPECTER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Chair would inform the managers that the pending question is the committee amendment.

AMENDMENT NO. 2962

(Purpose: To require that funds appropriated to make grants for the establishment and operation of independent living centers be used to support entities currently receiving the grants)

Mr. SPECTER. Mr. President, on behalf of Senator DOLE, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislation clerk read as follows:

The Senator from Pennsylvania, [Mr. SPECTER], for Mr. DOLE, proposes an amendment numbered 2962.

Mr. SPECTER. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 52, line 25, insert after "deaf adults" the following: ": *Provided*, That, until October 1, 1991, the funds appropriated to carry out section 711 of the Rehabilitation Act of 1973 (29 U.S.C. 796c) shall be used to support entities currently receiving grants under the section".

Mr. DOLE. Mr. President, I am glad that this amendment has been accepted on both sides of the aisle. The purpose of this amendment is technical in nature and will delay for 1 year the competitive grant process for independent living center grantees under the Rehabilitation Act of 1973. This extension will not impede the crucial services provided by independent living centers in any way.

Next year, we will once again reauthorize the Rehabilitation Act, which will give us ample opportunity through the ovesight process to carefully evaluate these programs. The extension will also allow the Rehabilitation Services Administration additional time to develop and publish the standards and indicators that will provide important criteria for the continuation of grants.

The indicators, however, are not the sole reason for delaying implementation of the competitive grant process. We can all attest to a new direction in national disability policy, and we all look forward to discussing issues related to the independent living centers in ensuring their important contributions to enhancing the lives of Americans with disabilities.

Mr. SPECTER. This amendment would postpone for 1 year the competition of the independent living centers. These centers have been noncompetitive, I am told, since 1979. The Rehabilitation Act stipulates that in fiscal 1991 these centers will be competitively awarded.

Mr. President, I believe this has been cleared on both sides.

Mr. HARKIN. We have no objection to the amendment.

Mr. SPECTER. I urge adoption.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2962) was agreed to.

Mr. SPECTER. Mr. President, I move to reconsider the vote.

Mr. HARKIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DOLE AMDT

Liz can we draft an amdt extending support to those currently receiving grants?

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Personal Amendments Jeffords
Rural MH

Mr. President I rise today to offer an amendment that will provide the necessary funding to enhance the delivery of mental health care to our country's rural elderly. The mental health needs of people living in rural areas is not being met. Similarly, the mental health needs of the elderly are not being met. Consequently, elderly persons who live in small rural areas are at double jeopardy when faced with mental health problems. But the lack of mental health services is not the greatest issue among rural elderly -- elderly people in general are often resistant to seeking and accepting formal mental health services.

The elderly are more willing to take their mental health problems to people they have regular contact with; people they know and trust. Professionals (i.e. family physicians and clergy) and service providers (i.e. Senior Center directors and staff members, county Extension agents) have regular, trusted contact with rural elders. But, few service providers are trained to recognize warning signs of depression, suicide, Alcoholism, complicated grief or Alzheimer's Disease; many professionals were trained before gerontology was included in the curriculum. The reality is that professionals and service providers most likely to come into contact with an elder who has mental health concerns have little or no training in aging or mental health.

In Kansas, an innovative project is being developed to alleviate this rural health issue. Through the "Enhancing Mental Health Services for Rural Elderly project a core group of trusted professionals and service providers will be trained in gerontology and mental health issues of the elderly. As a result of this project the rural elderly will have trained people in their community to help them recognize and overcome problems of depression, suicide, Alcoholism, complicated grief or Alzheimer's Disease.

Training will be provided by Kansas State University faculty and selected graduate students in Human Development and Family Studies, mental health professionals in the field, and nationally recognized consultants in the area of rural mental health. Training sessions will be held in county hospital sites throughout the state for both professionals and service providers.

Training will be focused primarily in the following areas: 1) normal aging; 2) recognizing problems of aging persons; and 3) communicating with the mental health network. The professionals (i.e. physicians and clergy) will also receive advanced clinical training in ways to assess and treat these problems.

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My amendment directs $450,000 of monies be appropriated under Title III of the Older Americans Act to ensure that elderly persons be afforded appropriate and adequate mental health care. The "Enhancing Health Services for Rural Elderly" project is a step in the right direction in assuring that the mental health needs of people living in rural areas are being met.

Following their training programs, service providers who understand normal aging and the warning signs of specific mental health problems can then refer elderly persons to local clergy or family physicians. Members of the clergy or family physicians whose assessment skills are more advanced can then determine the need for specialized mental health treatment and provide the critical link to mental health services.

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MR PRESIDENT, ONE YEAR AGO TODAY, TWO THOUSAND PEOPLE GATHERED ON THE WHITE HOUSE LAWN FOR THE HISTORIC SIGNING OF THE AMERICANS WITH DISABILITIES ACT OF 1990.

THE ADA, WHICH PROHIBITS DISCRIMINATION ON THE BASIS OF DISABILITY IN EMPLOYMENT, PUBLIC SERVICES, PUBLIC ACCOMMODATIONS, AND TELECOMMUNICATIONS, WAS THE MOST COMPREHENSIVE CIVIL RIGHTS LAW TO BE ENACTED SINCE 1964. IT'S ABOUT THE INTEGRATION OF ALL CITIZENS INTO EVERY ASPECT OF AMERICAN SOCIETY. IT'S ABOUT REAL PEOPLE WITH REAL LIFE ISSUES.

A FEW MONTHS AGO FOR EXAMPLE, I HEARD ELOQUENT AND MOVING TESTIMONY BEFORE THE COMMITTEE ON LABOR AND HUMAN RESOURCES ON THE NEED TO ENSURE INDEPENDENCE AND EQUAL OPPORTUNITY FOR PEOPLE WITH DISABILITIES.

THE HEARING, WHICH ADDRESSED THE USE OF PERSONAL ASSISTANCE SERVICES (PAS), MADE IT CLEAR THAT CONGRESS NEEDS TO BUILD ON THE GAINS ACHIEVED ONE YEAR AGO TODAY. IN HIS POIGNANT TESTIMONY, TIM STEININGER OF DODGE CITY, KANSAS PERSUASIVELY JUSTIFIED THE REVISION OF CURRENT POLICIES TO INCLUDE A COMPREHENSIVE AND FLEXIBLE PAS PROGRAM. NO DOUBT ABOUT IT, THE TIMELY AND THOROUGH CONSIDERATION OF SUCH A PROGRAM IS ONE OF MY TOP PRIORITIES.

WHY? BECAUSE I BELIEVE, AS DO MY COLLEAGUES, THAT EVERYONE DESERVES THE RIGHT TO SELF-DETERMINATION. IS THIS TOO MUCH FOR A PERSON WITH A SEVERE DISABILITY TO EXPECT OUT OF LIFE? INCLUSION SHOULD MEAN ENJOYING THE RIGHTS THAT THOSE OF US FORTUNATE TO BE SELF-SUFFICIENT TAKE FOR GRANTED EVERYDAY. ISN'T THAT WHAT THE ADA IS ALL ABOUT?

MR. PRESIDENT, I BELIEVE WE NEED TO ENHANCE THE DELIVERY OF PERSONAL ASSISTANCE SERVICES IN THIS COUNTRY IF WE ARE TO AFFORD PEOPLE WITH DISABILITIES THEIR RIGHT TO LEAD INDEPENDENT AND PRODUCTIVE LIVES. I AM OPTIMISTIC ABOUT THE FUTURE OF DISABILITY POLICY. LET'S BUILD ON THE GAINS WE'VE MADE TO ENSURE INDEPENDENCE AND FREEDOM FOR ALL AMERICANS.

THE AMENDMENT I AM OFFERING TODAY WILL INVEST IN THE PROMISE OF AN ALL INCLUSIVE SOCIETY BY DEVELOPING INNOVATIVE APPROACHES TO THE DELIVERY OF CONSUMER-RESPONSIVE PERSONAL ASSISTANCE SERVICES. WITHIN THE PROJECTS OF NATIONAL SIGNIFICANCE UNDER THE ADMINISTRATION ON DEVELOPMENTAL DISABILITIES, THE MONIES APPROPRIATED FOR THE EXPANSION OF PERSONAL ASSISTANCE PROGRAMS WILL BE A STEP IN THE RIGHT DIRECTION IN BUILDING A COMPREHENSIVE ARRAY OF PERSONAL ASSISTANCE SERVICES.

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ADVISORY COMMITTEE CHARTER

The Committee's official designation

Advisory Committee on Special Minimum Wages

The Committee's objectives and the scope of its activity

Provide advice and recommendations which will enable the Wage and Hour Division to effectively administer the Fair Labor Standards Act, the Public Contracts Act, and the McNamara-O'Hara Service Contract Act as they apply to workers with disabilities that impair their productive capacity.

The period of time necessary for the Committee to carry out its purposes

Indefinite as long as its advice and recommendations are needed in connection with the applicable minimum wage laws.

The Department to whom the Committee reports

Secretary of the Department of Labor

The Department's agency responsible for providing the necessary support for the Committee

Employment Standards Administration, Wage and Hour Division

Membership

The Committee shall consist of 23 members selected to represent the respective viewpoints of the following groups: one each from labor, industry (other than workshops), the public, a State rehabilitation agency and a State labor agency; 9 consumer members (workers with disabilities or representatives of organizations representing such workers with disabilities or the parents or guardians of such workers); and 9 officials representing workshops, hospitals, or institutions or organizations of workshops, hospitals, or institutions. Committee members shall not be employees of the Government by virtue of their nomination to the Committee, except those who are compensated by the Department of Labor for their services on the Committee. The Committee may establish subcommittees from among its members as may be necessary.

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A description of the duties for which the Committee is responsible

The Committee shall: (1) represent the various viewpoints involved in providing advice and recommendations on the administration and enforcement of the wage and hour laws as these pertain to the employment of workers with disabilities at wages below the legal minimum; (2) represent the various viewpoints involved in providing information and advice to the Wage and Hour Division in its consideration of positive changes in the working conditions of workers with disabilities; and (3) represent the various viewpoints involved in providing advice and recommendations for special projects and experimental programs to improve the earnings or employment opportunities of the workers with disabilities coming under the program.

The estimated annual operating costs in dollars and staff-years for such Committee

$27,000 and 1.0 staff per year

The estimated number and frequency of Committee meetings

Twice a year

The Committee's termination date

Two years from the date of this charter unless renewed or terminated prior to that time.

This charter is filed on the date indicated below.

Elizabeth Dole
Secretary of Labor

October 26, 1989
Date

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Bush Administration Offers on Disability Legislation

Employment Issues:

1. Agreed to cover the private sector in same way that minorities are protected by title VII of the Civil Rights Act of 1964: all employers with 15 or more employees to be covered in 4 years (25 or more in 2 years).

2. Agreed to use existing, tough standard for reasonable accommodation/undue hardship from Federal regulations for section 504 of the Rehabilitation Act.

3. Agreed to extend nondiscrimination protections to the private sector for those with AIDS or who test positively for the HIV-virus.

4. Agreed to place severe restrictions on preemployment physicals and preemployment inquiries about applicants' disabilities, like those in section 504.

Coverage of State and Local Governments:

5. Agreed to cover state and local governments using section 504 standard, even those that do not receive federal funds.

6. Agreed to use Harkin/Kennedy formulation for including "undue burdens" language (crossreference to existing regulations).

7. Agreed to handle duplicative coverage and administrative remedies in Justice Department regulations, not in statute.

Public Accommodations:

8. Agreed to cover public accommodations in the private sector in the same way that minorities are protected in title II of the Civil Rights Act of 1964, and have further offered to include medical offices.

9. Agreed to use Harkin/Kennedy concept of "readily achievable" (provided we agree on its definition) for retrofitting existing facilities (as long as coverage of public accommodations conforms to our offer).

10. Agreed to use existing section 504 standards for applying nondiscrimination concepts to public accommodations (for example, for new construction and for auxiliary aids, again based on our scope of coverage of public accommodations).

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Public Transportation:

11. Agreed that all new buses and all new rail vehicles must be accessible, except where impractical.

12. Agreed that all new facilities built by providers of public transit must be accessible.

13. Agreed to require provision of paratransit services, subject to cap based on operating expenditures.

14. Agreed to include mentally retarded and physically disabled people in supplemental paratransit if unable to use accessible system.

Telecommunications:

15. Agreed to the concept of providing functionally equivalent phone service for persons with hearing impairments, including both interstate and intrastate service.

General:

16. Offered position on coverage of drugs and alcohol under the ADA: exclusion of those who currently use illegal drugs or who have been convicted of drug trafficking, and coverage of those who use legal drugs, including alcohol, in the same manner as section 504, thus protecting rehabilitated former drug and alcohol users.

16. Agreed to numerous changes in language, including not having the word "solely" in the general prohibitions of the ADA.

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Issue	Kennedy/Harkin Position	Administration Position
Title II Employment		
1. Religious entities	Exemption for religious tenets only	Exempt entities altogether
2. Illegal Drug Users	Limited exclusion	Total exclusion
3. Phase-in	No response to Administration offer	2 yrs, 25 employees 4 yrs, 15 employees
4. Remedies	Sec 1981 - jury trial, compensatory and punitive damages	Title VII remedies only (EEOC, non-jury trials)
5. Def. of "undue burden"	"not significant"	Leave undefined so current case law definitions apply
6. Insurance language	Haven't shared language	Must say no change from current law intended
7. Burden of proof	Shift to employer	Current law: Claimant has burden
8. Various report language items	Pending	Pending

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Issue	Kennedy/Harkin Position	Administration Position
Title III Transportation/State Local Government		
1. Paratransit Cap	3% effective in 12 years	2% effective now
2. Key stations/phase in	Follow NYC definition/allow 20 years	?
3. Private transportation	all new buses must be lift equipped in 3 years	Do a study of the issues
4. Secretarial discretion waivers from all "new buses" requirement	None	Some
5. Local government exemption	No response to Administration position	Same size exemption as for private

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Issue	Kennedy/Harkin Position	Administration Position
Title IV Public Accommodations		
Scope of Definition	All businesses	Title II & medical offices
Timetable for Implementation	?	2 - 4 years
Standards - general	Broad and vague	Standard in bill OK only if scope is Title II and medical
Retrofit of existing buildings	"readily achievable" language to be explained in report language	more precise language needed in bill
Remedies	Fair Housing Act - includes monetary damages	Title II (Injunctive relief only)

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Jan 913-532-6969 913-532-5780

"ENHANCING MENTAL HEALTH SERVICES FOR RURAL ELDERLY"

PROBLEM STATEMENT: The mental health needs of people living in rural areas are not being met. Similarly, the mental health needs of the elderly are not being met. Consequently, elderly persons who live in rural areas are at double jeopardy when faced with mental health problems. But the lack of mental health services is not the greatest issue among rural elderly -elderly people in general are often resistent to seeking and accepting formal mental health services.

The elderly are more willing to take their mental health problems to people they have regular contact with; people they know and trust. Professionals (i.e. family physicians and clergy) and service providers (i.e.Senior Center directors and staff members, county Extension agents) have regular, trusted contact with rural elders. But, few service providers are trained to recognize warning signs of depression, suicide, Alcoholism, complicated grief or Alzheimer's Disease; many professionals were trained before gerontology was included in the curriculum. The reality is that the professionals and service providers most likely to come into contact with an elder who has mental health concerns have little or no training in aging or mental health.

PLAN OF ACTION: Professional and service providers will receive intensive training in the following three areas: 1) normal aging; 2) recognizing problems of aging persons; and 3) communicating with the mental health network. The professionals (i.e. family physicians and clergy) will also receive advanced clinical training in ways to assess and treat these problems.

The training will be provided by Kansas State University faculty and selected graduate students in Human Development and Family Studies, mental health professionals in the field, and nationally recognized consultants in the area of rural mental health. Training sessions will be held in county hospital sites throughout the state for both the professionals and service providers.

Following their training programs, service providers who understand normal aging and the warning signs of specific mental health problems can then refer the elder to local clergy or family physician. Members of the clergy or family physicians whose assessment skills are more advanced can then determine the need for specialized mental health treatment and provide the link to mental health services.

EXPECTED OUTCOMES: Through the *Enhancing Mental Health Services for Rural Elderly* project a core group of trusted professionals and service providers will be trained in gerontology and mental health issues of the elderly. As a result of this project the rural elderly will have trained people in their community to help them recognize and overcome problems of depression, suicide, Alcoholism, complicated grief or Alzheimer's Disease.

BUDGET: It is estimated that $450,000 will support the project director and training staff; consultants; training materials; travel; inservice trainings and secretarial support.

5780

1-913-532-6011 Title III Older Americans Act

Carolyn S. Wilken, Ph.D.
Assistant Professor, Human Development & Family Studies
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Rural Health Appt?

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3/1/88

COSTS OF ACCESSIBILITY

1. Making Buildings Accessible

--Retrofitting a building of 150,000 square feet with a fair market value of $10 million for complete accessibility: $25,000 to $50,000 (R.D. Lynch, "Accessibility Costs for Existing Buildings in Pennsylvania," Sept. 1, 1986)

--Retrofitting a building of 75,000 square feet with a fair market value of $5 million for complete accessibility: $15,000 to $38,000 (Id.)

--Retrofitting a building of 25,000 square feet with a fair market value of $1.5 million for complete accessibility: $11,000 to $24,000 (Id.)

--Retrofitting a building with 7,000 square feet with a fair market value of $500,000 for complete accessibility: $10,000 to $30,000 (Id.)

--Retrofitting a building of 4,000 square feet with a fair market value of $250,000 for complete accessibility: $7,500 to $22,500 (Id.)

--Three-story residential elevator: $35,000 (Kenmark, Inc., Edgewater, Maryland)

--Multi-story commercial elevator: $25,000 per floor (National Center for Education Statistics, "The Impact of Section 504 of the Rehabilitation Act of 1973 on American Colleges and Universities," June 1979)

--Wood ramp: $75 per linear foot (Id.)
E.g., Ramp for entrance with 6-inch rise: $450

--Concrete ramp:
1-3 steps:	$ 1,000
4-6 steps:	$ 3,000
7+ steps:	$10,000 (Id.)

--Retrofitting an existing commercial bathroom: $500 to $4,000 (Ronald Mace, "Accessibility Modifications," 1976)

--One-story motorized lift for wheelchair users: $2,000 to $6,000 ("Homes Without Barriers," Changing Times, March 1988)

--Widening an existing entrance door and installing new door: $3,000 (National Center for Education Statistics, supra)

--Widening an existing interior doorway and installing new door: $300 to $600 (Id.; Mace, supra)

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are you proceeding on MW?
What are you marking up?
until we are successful
Bill Roper more room

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--Lowering existing water fountain: $200 (National Center for Education Statistics, supra)

--Installing new water fountain: $1,000 (Id.)

2. Accommodating persons with disabilities

--Certified sign language interpreter for a deaf person:
$23.00 per hour for freelance interpreter (Sign Language Associates, Washington, D.C.)
$21,000 to $23,500 for interpreter for one year (Registry of Interpreters for the Deaf, Rockville, Maryland)

--Closed-captioned videotape: $1,200 to $2,650 per hour of tape (U. S. Department of Commerce; National Captioning Institute, Falls Church, Virginia)

--Open-captioned 16mm film: $2,100 to $2,400 per 20 minutes of film (Special Programs and Populations Branch, Division of Visitor Services, National Park Service; Pilgrim Film Services, Inc., Hyattsville, Maryland)

--75 pages of written text on audio tapes: $1,720 for 200 copies (Taylor Royal Casting, Washington, D.C.)

--Written text in Braille form: $2.50 per page (Clovernook Home and School for the Blind, Cincinnati, Ohio)

--Computer with speech synthesizer and appropriate software for blind persons: $5,000 (Baruch College, "Computer Equipment & Aids for the Blind and Visually Impaired," 1985)

--TDD (Telecommunication Device for Deaf Persons): $150 to $700 per unit (Ultratec, Inc., Madison, Wisconsin; Krown Research, Los Angeles, California; Plantronics, Santa Cruz, California)

--Assistive Listening Devices for hearing-impaired persons:
Transmitters: $500 to $2000 each
Receivers: $15 to $350 each
(Cardinal Systems Corp., Silver Spring, Maryland)

3. Transportation

--Installing lifts on buses to make them accessible to wheelchair users: $10,000 to $15,000 each (5 to 6 % of the cost of the bus) (Architectural and Transportation Barriers Compliance Board, Washington, D.C.)

--Maintaining accessible bus lifts: $497 per year per lift Ronald J. Tober, "Seattle Metro's Experience with Accessible Transit Service," October 25, 1983)

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hand-outs
letter to members
delay in mark up

/ alarm systems for people who are deaf

/ hotels - aesthetic design - put in steps

old hotels

/ employment - modified criteria

/ w/ facility w/ prior training b/c of antiquated

older structures system

older systems

people must access info on how to do - take time to set up information system

place to go for info

JAN now - no system now

Dole Foundation working on that

now -

not unachievable

where to go to get it

rehab org to come in & modify furniture

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--Van with accessibility modifications: $25,000 (Architectural and Transportation Barriers Compliance Board)

4. Housing

--Making a one bedroom apartment in a high rise building accessible: $2,417 (U.S. Department of Housing and Urban Development, "The Estimated Cost of Accessible Buildings," 1979)

--Making a one bedroom garden apartment accessible: $2,469 (Id.)

--Oversized showerstall for wheelchair users: $1,000 (Changing Times, supra)

--Adaptable kitchen cabinets: $200 for 30 inch cabinet (Department of Housing and Urban Development, "Adaptable Housing," 1987)

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✓ workplace

✓ building access -

✓

✓

outside elevator - Expensive
liability when you
choose to alternative
not harm b/c 2
simplicity

problem not
modern but old
on up upper floors
and how far we
go in renovating ()
- issues Expense

i.e.,
entrances
width of doors
width of automatic
doors

accommodation

workplace
voice Telephones
furniture of different sizes
& configurations
special equipment for 1 handed
or no handed
voice synthesizer for computers
flexible work schedule b/c
person can sit for long time
lighting for sensitive eyes
assistance from another
readers interpreters
guide for physical & sensory -
impairments

technology - accommodation into workplace

where to purchase
depending on a

easily acquired
from
Others not
Expensive
done

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Tier 1:

PUBLIC ACCOMMODATIONS--The following entities are considered public accommodations for purposes of this Act:

(a) inns, hotels or motels or other similar places of lodging, except for an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his or her residence;

(b) restaurants, bars or other establishments serving food or drink;

(c) motion picture houses, theatres, concert halls, stadiums, or other places of exhibition or entertainment;

(d) auditoriums, convention centers or lecture halls;

(e) bakeries, grocery stores, clothing stores, hardware stores, shopping centers, or other similar retail sales establishments;

(f) laundromats, dry-cleaners, banks, barbers or beauty shops, travel services, shoe repair services, funeral parlors, gas stations, accountants' offices, lawyers' offices, pharmacists, insurance offices, professional offices of health care providers, hospitals, or other similar service establishments;

(g) terminals used for public transportation;

(h) museums, libraries, galleries and other similar places of public displays or collections;

(i) parks and zoos; incl rides

(j) nursery, elementary, secondary, undergraduate or post-graduate private schools;

(k) day care centers, senior citizen centers or other similar social service centers;

(l) gymnasiums, health spas, bowling alleys, golf courses or other similar places of exercise or recreation.

[NOTE: (a)-(c) are currently covered under Title II of the Civil Rights Act of 1964)]

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Tier 2:

The following entities are covered solely with regard to requirements of new construction:

(1) Places of potential employment, such as office buildings and factories;

("Places of potential employment" means facilities that are intended for nonresidential use, whose operations affect commerce. Such term does not include facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968 (42 U.S.C. 3601 et seq.)).

2

(2) Places of worship; and

(3) Private club establishments exempted from coverage under 42 U.S.C. §2000a(e).

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7/18/89
2 HLS
Draft

TITLE III--PUBLIC SERVICES

ec. 301. Definition of qualified individual with a disability.
ec. 302. Discrimination.
ec. 303. Actions applicable to public transportation considered discriminatory.
ec. 304. Regulations.
ec. 305. Enforcement.

ITLE IV--PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

ec. 401. Definitions.
ec. 402. Prohibition of discrimination by public accommodations.
ec. 403. Prohibition of discrimination in public transportation services provided by private entities.
ec. 404. Regulations.
ec. 405. Enforcement.

ITLE III--PUBLIC SERVICES

EC. 301. DEFINITION OF QUALIFIED INDIVIDUAL WITH A DISABILITY.

As used in this title, the term "qualified individual with a isability" means an individual with a disability who, with or without easonable modifications to rules, policies and practices, the removal f architectural, communication, and transportation barriers, or the rovision of auxiliary aids and services, meets the essential ligibility requirements for the receipt of services or the articipation in programs or activities provided by a State or agency r political subdivision of a State or board, commission or other nstrumentality of a State and political subdivision.

EC. 302. DISCRIMINATION.

No qualified individual with a disability shall, by reason of his r her disability, be excluded from the participation in, be denied he benefits of, or be subjected to discrimination by a State, or gency or political subdivision of a State or board, commission, or ther instrumentality of a State and political subdivision.

EC. 303. ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION CONSIDERED DISCRIMINATORY.

(a) Definition.--As used in this title, the term "public transportation" means transportation by bus or rail, or by any other conveyance (other than air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(b) Vehicles.--

(1) New buses, rail vehicles, and other fixed route

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vehicles.--It shall be considered discrimination for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for an individual or entity to purchase or lease a new fixed route bus of any size, a new intercity rail vehicle, a new commuter rail vehicle, a new rapid rail vehicle, a new light rail vehicle to be used for public transportation, or any other new fixed route vehicle to be used for public transportation and for which a solicitation by such individual or entity is made later than 30 days after the date of enactment of this Act, if such bus, rail, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) Used vehicles.--If an individual or entity purchases or leases a used vehicle after the date of enactment of this Act, such individual or entity shall make demonstrated good faith efforts to purchase or lease a used vehicle that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(3) Remanufactured vehicles.--If an individual or entity remanufactures a vehicle, or purchases or leases a remanufactured vehicle, so as to extend its usable life for 5 years or more, the vehicle shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) Paratransit as a Supplement to Fixed Route Public ansportation System. --

(1) it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), to fail to provide sufficient paratransit or other special transportation services such that a comparable level of services is not provided to individuals with disabilities, including individuals who use wheelchairs as is provided to individuals without disabilities using fixed route public transportation; and

(A) the Department of Transportation of each state, or other appropriate agency responsible for regulating public transportation services, shall develop a plan to implement paratransit or other special transportation services.

(i) the Department of Transportation of each state, or other appropriate agency responsible for regulating public transportation services, shall directly involve transit operators, individuals with disabilities, consumer advocacy organizations for individuals with disabilities, and other relevant agencies or organizations in developing such a plan.

(B) the Department of Transportation of each state, or other appropriate agency responsible for regulating public transportation services, shall ensure that paratransit or other special transportation services are provided consistent with such a plan.

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(2) such comparable paratransit or other special transportation services shall be provided to individuals with disabilities who cannot otherwise use fixed route public transportation and to other individuals associated with such individuals with disabilities in accordance with service criteria and procedures established under regulations promulgated by the Secretary of Transportation.

(d) Community Operating Demand Responsive Systems for the General blic.--If an individual or entity operates a demand responsive stem that is used to provide public transportation for the general blic, it shall be considered discrimination, for purposes of this t and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), r such individual or entity to purchase or lease a new vehicle, for ich a solicitation is made later than 30 days after the date of actment of this Act, that is not readily accessible to and usable by dividuals with disabilities, including individuals who use eelchairs unless the entity can demonstrate that such system, when ewed in its entirety, provides a level of service to individuals th disabilities equivalent to that provided to the general public.

(e) New Facilities.--For purposes of this Act and section 504 of ne Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered iscrimination for an individual or entity to build a new facility hat will be used to provide public transportation services, including us service, intercity rail service, rapid rail service, commuter rail ervice, light rail service, and other service used for public ransportation that is not readily accessible to and usable by ndividuals with disabilities, including individuals who use heelchairs.

(f) Alterations of Existing Facilities.--With respect to a acility or any part thereof that is used for public transportation nd that is altered by, on behalf of, or for the use of an individual r entity later than 1 year after the date of enactment of this Act, n a manner that affects or could affect the usability of the facility r part thereof, it shall be considered discrimination, for purposes f this Act and section 504 of the Rehabilitation Act of 1973 (29 .S.C. 794), for such individual or entity to fail to make the lterations in such a manner that, to the maximum extent feasible, the ltered portion of the facility, the path of travel to the altered rea, and the bathrooms, telephones, and drinking fountains serving he remodeled area are readily accessible to a d usable by individuals ith disabilities, including individuals who use wheelchairs.

(g) Existing Facilities, Intercity Rail, Rapid Rail, Light Rail, nd Commuter Rail Systems, and Key Stations.--

(1) Existing facilities.--Except as provided in paragraph (3), with respect to existing facilities used for public transportation, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for an individual or entity to fail to operate such public transportation program or activity conducted in such facilities so that, when viewed in the entirety, it is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

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(2) Intercity, rapid, light, and commuter rail systems.--With respect to vehicles operated by intercity, light, rapid and commuter rail systems, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for an individual or entity to fail to have at least one car per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in any event in no less than 5 years.

(3) Intercity rail stations.-- For purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for an individual or entity to fail to make stations in intercity rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than 20 years after the date of enactment of this Act.

(A) the Department of Transportation of each state, or other appropriate agency responsible for regulating public transportation services, shall develop a plan to implement accessibility of intercity rail stations.

(i) the Department of Transportation of each state, or other appropriate agency responsible for regulating public transportation services, shall directly involve transit operators, individuals with disabilities, consumer advocacy organizations for individuals with disabilities, and other relevant agencies or organizations in developing such a plan.

(ii) such a plan shall contain milestones to achieve accessibility within the time prescribed by section 303 (g)(3) of this Act.

(4) Key stations.-- For purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for an individual or entity to fail to make key stations in rapid rail, commuter rail and light rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than 3 years after the date of enactment of this Act, except that the time limit may be extended by the Secretary of Transportation up to 20 years for extraordinarily expensive structural changes to, or replacement of, existing facilities necessary to achieve accessibility.

(A) the Department of Transportation of each state, or other appropriate agency responsible for regulating public transportation services, shall develop a plan to implement accessibility of key stations in rapid rail, commuter rail and light rail systems.

(i) the Department of Transportation of each state, or other appropriate agency responsible for regulating public transportation services, shall directly involve

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transit operators, individuals with disabilities, consumer advocacy organizations for individuals with disabilities, and other relevant agencies or organizations in developing such a plan.

(ii) such a plan shall contain milestones to achieve accessibility within the time prescribed by section 303 (g)(4) of this Act.

(B) a plan to implement accessibility of key stations in rapid rail, commuter rail and light rail systems shall include stations that have high ridership, stations that serve as feeder stations, and stations that serve as transfer stations.

. 304. REGULATIONS.

(a) Attorney General.--Not later than 180 days after the date of ctment of this Act, the Attorney General shall promulgate ulations in an accessible format that implement this title (other n section 303), and such regulations shall be consistent with this le and with the coordination regulations under part 41 of title 28, e of Federal Regulations (as in existence on January 13, 1978), licable to recipients of Federal financial assistance under section of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(b) Secretary of Transportation.--

(1) In general.--Not later than 240 days after the date of enactment of this Act, the Secretary of Transportation shall promulgate regulations in an accessible format that include standards applicable to facilities and vehicles covered under section 303.

(2) Considerations.--The Secretary of Transportation may promulgate regulations which consider financial burdens to individuals or entities that provide paratransit or other special transportation services if the individual or entity can demonstrate that providing such paratransit or other special transportation services as required by section 303 (a) of this Act would result in undue burden after base service accessibility is achieved.

(3) Conformance of standards.--Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 604(b).

EC. 305. ENFORCEMENT.

The remedies, procedures, and rights set forth in section 505 of he Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be available ith respect to any individual who believes that he or she is being or bout to be subjected to discrimination on the basis of disability in iolation of any provisions of this Act, or regulations promulgated nder section 304, concerning public services.

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IV--PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

401. DEFINITIONS.

As used in this title:

(1) Commerce.--The term "commerce" means travel, trade, raffic, commerce, transportation, or communication among the everal States, or between the District of Columbia and any State r between any foreign country or any territory or possession and ny State or the District of Columbia or between points in the ame State but through another State or the District of Columbia r foreign country.

(2) Public accommodation.--

(A) In general.--The term "public accommodation" means privately operated establishments--

(i)(I) that are used by the general public as customers, clients, or visitors; or

(II) that are potential places of employment; and

(ii) whose operations affect commerce.

(B) Inclusions.--Public accommodations referred to in clause (i)(I) include auditoriums, convention centers, stadiums, theaters, restaurants, hopping centers, inns, hotels, and motels (other than inns, hotels, and motels exempt under section 201(b)(1) of the Civil Rights Act of 1964 (42 U.S.C. 2000a(b)(1))), terminals used for public transportation, passenger vehicle service stations, professional offices of health care providers, office buildings, sales establishments, personal and public service businesses, parks, private schools, and recreation facilities.

(3) Public transportation.--The term "public transportation" eans transportation by bus or rail, or by any other conveyance other than by air travel) that provides the general public with eneral or special service (including charter service) on a egular and continuing basis.

402. PROHIBITION OF DISCRIMINATION BY PUBLIC ACCOMMODATIONS.

(a) General Rule.--No individual shall be discriminated against he full and equal enjoyment of the goods, services, facilities, ileges, advantages, and accommodations of any place of public mmodation, on the basis of disability.

(b) Construction.--As used in subsection (a), the term criminated against" includes--

(1) the imposition or application of eligibility criteria that identify or limit, or tend to identify or limit, an

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individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, and accommodations;

(2) a failure to make reasonable modifications in rules, policies, practices, procedures, protocols, or services when such modifications may be necessary to afford such privileges, advantages, and accommodations unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such privileges, advantages, and accommodations;

(3) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would result in undue burden;

(4)(A) a failure to remove architectural and communication barriers that are structural in nature in existing facilities, and transportation barriers in existing vehicles used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles by the installation of a hydraulic or other lift), where such removal is readily achievable; and

(B) where an entity can demonstrate that removal of a barrier under subparagraph (A) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, and accommodations available through alternative methods if such methods are readily achievable;

(5) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment later than one year after the date of enactment of this Act in a manner that affects or could affect the usability of the facility or part thereof, a failure to make the alterations in such a manner that, to the maximum extent feasible, the altered portion of the facility, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the remodeled area, are readily accessible to and usable by individuals with disabilities;

(6) a failure to make facilities constructed for first occupancy later than 30 months after the date of enactment of this Act readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to do so, in accordance with standards set forth or incorporated by reference in regulations issued under this title; and

(7) in the case of an entity that uses a vehicle to transport individuals not covered under section 303 or 403--

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(A) a failure to provide a level of transportation services, within 12 months, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs unless the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to the general public; and

(B) purchasing or leasing a new bus, or vehicle that can carry in excess of 12 passengers, for which solicitations are made later than 30 days after the date of enactment of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

403. PROHIBITION OF DISCRIMINATION IN PUBLIC TRANSPORTATION SERVICES PROVIDED BY PRIVATE ENTITIES.

(a) General Rule.--No individual shall be discriminated nst on the basis of disability in the full and equal enjoyment of ic transportation services provided by a privately operated entity is primarily engaged in the business of transporting people, but ot in the principal business of providing air transportation, and e operations affect commerce.

(b) Construction.--As used in subsection (a), the term crimination against" includes--

(1) the imposition or application by an entity of eligibility criteria that identify or limit, or tend to identify or limit, an individual with a disability or any class of individuals with disabilities from fully enjoying the public transportation services provided by the entity;

(2) the failure of an entity to--

(A) make reasonable modifications consistent with those required under section 402(b)(2);

(B) provide auxiliary aids and services consistent with the requirements of section 402(b)(3); and

(C) remove barriers consistent with the requirements of section 402(b)(4); and

(3) the purchase or lease of a new vehicle (other than an automobile) that is to be used to provide public transportation services, and for which a solicitation is made later than 36 months after the date of enactment of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(A) the Office of Technology Assessment shall conduct and complete a study prior to when a privately operated entity that is primarily engaged in the business of transporting people is

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required to purchase or lease a new vehicle that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(i) such a study shall determine the most feasible method to provide individuals with disabilities, including individuals who use wheelchairs, with accessibility to private vehicles (other than an automobile) that are to be used to provide transportation services for the general public.

(ii) such a study shall directly involve transit operators, individuals with disabilities, consumer advocacy organizations for individuals with disabilities, and other relevant agencies or organizations.

(c) Existing charter bus and fixed route private bus service.--If an ividual or entity operates a charter bus or fixed route private bus vice that is used to provide public transportation for the general lic, it shall be considered discrimination, for such individual or ity to provide such service that is not readily accessible to and usable individuals with disabilities, including individuals who use wheelchairs ess the entity can demonstrate that such system, when viewed in its irety, provides a level of service to individuals with disabilities ivalent to that provided to the general public.

SEC. 404. REGULATIONS.

(a) Accessibility Standards.--Not later than 240 days after the e of enactment of this Act, the Secretary of Transportation shall ue regulations in an accessible format that shall include standards licable to facilities and vehicles covered under section 403.

(b) Other Provisions.--Not later than 240 days after the date of ctment of this Act, the Attorney General shall issue regulations in accessible format to carry out the remaining provisions of this le not referred to in subsection (a) that include standards licable to facilities and vehicles covered under section 402.

(c) Standards.--Standards included in regulations issued under sections (a) and (b) shall be consistent with the minimum idelines and requirements issued by the Architectural and ansportation Barriers Compliance Board in accordance with section 4(b).

C. 405. ENFORCEMENT.

Sections 802(i), 813, and 814 (a) and (d) of the Fair Housing Act 2 U.S.C. 3602(i), 3613, and 3614 (a) and (d)) shall be available th respect to any aggrieved individual, except that--

(1) any reference to a discriminatory housing practice or breach of a conciliation agreement shall be considered to be a reference to a practice that is discriminatory under this title concerning a public accommodation or public transportation service operated by a private entity; and

(2) subparagraph (B) of paragraph (1) and paragraphs (2) and (3) of subsection (a) of section 813 shall not apply.

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SELECTED ADA ISSUES

Attorney General's letter	Senate Response 7/27
Employment	
25 or more after two years; 15 or more after four years	Probably acceptable; leave until end of discussion.
Clarify non-coverage of insurance or what services insurance covers.	New language clarifies; not a problem to either side.
Remedies	
In addition to Title VII and Title II of 64 Civil Rights Act enforcement, allow Attorney General "pattern or practice" suits to seek civil penalties.	Must have compensatory and punitive damages.
Public Accommodations	
Two-tier scheme:	Agreeable in concept to two tiers.
Tier I, same scope as '64 Act plus health care providers: Nondiscrimination, new construction minimal retrofitting ("readily achievable") and auxiliary aids.	Tier I: should also include supermarkets, dry cleaners, etc.
Tier II: Scope Small firm exemption Coverage: nondiscrimination, new construction.	Tier II: might be willing not to require elevators in small buildings.
Religious Entities	
Exclude entirely.	Amenable to exemption from employment requirements on grounds of religious tenant/ preference. Possibly amenable to full exemption from public accommodation requirements.

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Public Transportation

Limited waiver for new bus requirement.	No waiver on new buses.
2% cap on paratransit.	No percentage limit on paratransit.
No key station requirement beyond current law.	Must have a limited key station retrofit.

Private Transportation

Study by the Secretary of Transportation.	Amenable to Durenburger amendment: study + requirements mandated for 3-4 years in the future.

Telecommunications

Negotiations pending.	McCain and Harkin are discussing.

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THE WHITE HOUSE
WASHINGTON

July 17, 1989

MEMORANDUM FOR WILLIAM L. ROPER

FROM: DANIEL R. HEIMBACH

SUBJECT: Religious entities exemption from ADA

As you know, one of the important differences between Administration and Senate negotiators on the "Americans with Disabilities Act" (S. 933) is over the way religious entities should be treated under the provisions of the bill. The Administration has argued that religious entities should be fully exempted, while the Democratic sponsors of the bill are resisting such an exemption.

When this issue was first raised during negotiations, Bobby Silverstein, of Senator Harkin's staff, challenged the legitimacy of our Church-State concerns by showing a list of religious entities which have given their endorsement to the bill. I have obtained a partial list of these entities from the Senate Labor & Human Resources Committee, and in discussing specific Church-State concerns with representatives of these entities have found that, of those contacted, most (if not all) share the concerns we have been raising and support the Administration's efforts seeking a full exemption.

I am attaching several items for your use in leading negotiations for the Administration on this issue. These include:

- A list of religious entities (to date) which have been confirmed as supporting a full exemption.
- List of Constitutional concerns which may be used to sustain the Administration's position.
- An analysis of Church-State Constitutional issues by William Bentley Ball.
- Letter to Senator Harkin presenting the concerns of the National Association of Evangelicals.

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RELIGIOUS ORGANIZATIONS SUPPORTING AN EXEMPTION OF RELIGIOUS ENTITIES FROM TITLES II & IV OF THE ADA

(7/14/89)

Confirmed:

*National Council of Churches
*American Baptist Churches, USA
Agudath Israel of America (Orthodox educators)
American Association of Christian Schools
American Association of Bible Colleges
Association of Christian Schools International
Christian Schools International
Baptist Joint Committee on Public Affairs
Southern Baptist Convention
Catholic League for Religious & Civil Rights
Center for Catholic Policy
Christian Legal Defense and Education Foundation
Christian College Coalition
Christian Leagal Society
Coalitions for America
Committee for Family America
Concerned Women for America
Focus on the Family/Family Research Council
International Church of the Foursquare Gospel
St. Joseph Foundation
National Association of Evangelicals -- whose members include:
- Advent Christian General Conference
- Assemblies of God
- Baptist General Conference
- Brethren in Christ Church
- Christian Catholic Church
- Christian Church of North America
- Christian & Missionary Alliance
- Christian Reformed Church of North America
- Christian Union
- Church of the Nazarene, The
- Church of the United Brethren in Christ
- Conservative Congregational Christian Conference
- Conservative Lutheran Association
- Evangelical Christian Church
- Evangelical Church of North America
- Evangelical Congregational Church
- Evangelical Free Church of America
- Evangelical Friends Alliance
- Evangelical Mennonite Church
- Evangelical Methodist Church
- Evangelical Presbyterian Church
- Evangelical Missionary Fellowship
- Fellowship of Evangelical Bible Churches
- Fire Baptized Holiness Church of God of the Americas
- Free Methodist Church of North America

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Full Gospel Pentecostal Association
General Association of General Baptists
International Pentecostal Church of Christ
Mennonite Brethren Churches, USA
Missionary Church, Inc.
Open Bible Standard Churches
Pentecostal Church of God
Pentecostal Free Will Baptist, Inc.
Pentecostal Holiness Church, International
Prysbyterian Church in America
Primitive Methodist Church, USA
Reformed Presbyterian Church of North America
Wesleyan Church, The

Likely:

Lutheran Church of America, Missouri Synod
U.S. Catholic Conference
*United Church of Christ
General Conference of Seventh Day Adventists

Possible:

*Union of American Hebrew Congregations

* Signed a letter to Harkin and Kennedy supporting the ADA

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DEVELOPED IN-HOUSE — ARGUMENTS FOR A FULL RELIGIOUS EXEMPTION

The Americans With Disabilities Act of 1989

* The Administration's proposal entirely to exempt religious organizations from the scope of the Americans with Disabilities Act of 1989 (ADA) is well-advised as a matter of constitutional law and is preferable as a matter of constitutional policy. A more narrow exemption would inappropriately entangle courts in the internal affairs of religious organizations. To determine whether a particular job includes religious activities or whether an organization's religious tenets dictate its choice of employee for a certain job, courts invariably would have to render decisions about delicate and potentially controversial questions of religious doctrine. Courts are neither competent, nor the appropriate entities, to undertake this task.

* Narrow exemptions of religious organizations from laws governing the employment relationship pose a substantial threat to religious liberty. Indeed, the Supreme Court recently said in describing an exemption that required courts to decide what jobs entailed religious activities and which did not:

> "[I]t is a significant burden on a religious organization to require it, on pain of substantial liability, to predict which of its activities a secular court might consider religious. The line is hardly a bright one; and an organization might understandably be concerned that a judge would not understand its tenets and sense of mission. Fear of potential liability might affect the way a religious organization carried out what it understood to be its religious mission.

Corporation of Presiding Bishop v. Amos, 107 S. Ct. 2862, 2868 (1987). Justice Brennan opined that such a narrow exemption "results in considerable ongoing entanglement in religious affairs," which "raises concerns that a religious organization might be chilled in its Free Exercise activity." Id. at 2872.

* Justice Kennedy recently noted that, the Supreme Court is "ill-equipped to sit as a national theology board." County of Allegheny v. A.C.L.U., No. 87-2050, slip op. at 24 (U.S. Sup. Ct. July 3, 1989) (Kennedy, J., dissenting). An example of the Court's inability to make decisions concerning religious tenets and doctrine are its statements concerning creches and Channukah lamps placed on public property, which have been offensive to many believing Christians and Jews. The Court has all but said that a depiction of the birth of Jesus Christ is a secular symbol. Similarly, the Court recently characterized as a cultural, not religious artifact a candelabra Jews are required by religious law to light to commemorate what they consider a miracle. Requiring courts to scrutinize the religious tenets of

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a religious organizations invites them to determine what is and is not church doctrine.

* Adding only the exemption currently in Title VII to this bill accomplishes little, if anything. Unlike Title VII, the ADA does not bar discrimination on the basis of religion. The current Title VII exemption of religious discriminations in hiring is therefore appropriate to Title VII, with its unique requirements. The purpose of the Administration's proposed exemption of all religious organizations from the ADA is to ease the burden the ADA would needlessly place on religious organizations, and avoid entangling courts in the day-to-day affairs of religious organizations.

* The ADA would impose extensive requirements on religious organizations. There is no indication that these requirements are at all necessary, for the evidence does not establish that religious organizations discriminate against Americans with disabilities. In fact, we believe the evidence points the other way.

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WILLIAM BENTLEY BALL

July 13, 1989
FEDERAL EXPRESS

Dr. William L. Roper
Director
Office of Policy Development
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Re: Constitutional Issues Presented
by Senate Bill 933 ("Americans
With Disabilities Act of 1989")

Dear Dr. Roper:

I write you to summarize the concerns which I have with respect to certain constitutional problems which this important bill presents. The concerns which I express, and the conclusions which I reach, reflect, I believe accurately, the controlling decisions of the Supreme Court under the Religion Clauses (the Free Exercise and Establishment Clauses) of the First Amendment. It would be unthinkable that these problems would not be eliminated at this stage but would be left to litigation later. The government should not be forced to expend tax resources later in litigation; churches and other religious entities should not be bled white by litigation to protect basic liberties.

The fundamental issue raised by the ADA Bill pertains to the constitutional independence of religious institutions. Our country's tens of thousands of religious institutions are essentially law-abiding and highly cooperative with government in the protection of the common good. By and large, only where they are threatened by excessive demands by government, do we see them resisting government.

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Legislation sometimes attempts to override First Amendment rights (of speech, press, religion, petition, assembly) on the ground that those who want to exercise those rights shouldn't be treated differently from anyone else. Why shouldn't newspapers be subject to the same use taxes that all other enterprises must pay? The Supreme Court's answer: newspapers are protected from undue burdens on publications because they have the special protection of the Free Press Clause of the First Amendment. They have that protection even where the regulation or statute is one of general application and does not single out publications, or free expression, for regulation. (Minneapolis Star v. Minnesota Commr. of Revenue, 460 U.S. 575 (1983)).

That point is directly applicable to the argument made by ADA sponsors, that religious groups should be treated no differently from anyone else under the ADA Bill. Whether they should or should not depends, not on whether the ADA Bill is good legislation needed for the common good, but whether a different, supremely important aspect of the common good - namely, protection of First Amendment liberties - is going to be injured by any provisions of the legislation.

To get the answer to that, we must pose three basic questions:

I. Is religious exercise really involved? (The Constitution protects the "free exercise" of religion.)

II. If so, will any provision of ADA injure that exercise?

III. If it will, then is that injury one which must be borne because a compelling state interest justifies the injury?

This is the outline of inquiry required by Supreme Court decisions (e.g., Sherbert v. Verner, 374 U.S. 398 (1963), Wisconsin v. Yoder, 406 U.S. 205 (1972), Hobbie v. Unemployment Appeals Commission, 480 U.S. 136 (1987)). The objections of religious groups today to the ADA can only be sorted out by following through on the above outline.

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I. WHY RELIGIOUS EXERCISE IS REALLY INVOLVED IN ADA REQUIREMENTS

Our courts have consistently held that the free "exercise" of religion constitutes far more than worship, or what goes on under the steeple. It involves the operating of churches (Kedroff v. St. Nicholas Cathedral, 344 U.S. 94 (1952); the conducting of religious schools (Pierce v. Society of Sisters, 268 U.S. 510 (1975)); religious publication (Cantwell v. Connecticut, 310 U.S. 296 (1939)); self-governance of ministries (Sherbian Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976)); the right to evangelize (Murdock v. Pennsylvania, 319 U.S. 105 (1943)); the pursuit of the life of a religious community (Wisconsin v. Yoder, supra)); and numerous other activities.

Legislators and government agencies sometimes claim that particular religious ministries should be treated as "secular." The NLRB, in the 1970s, sought to exercise its jurisdiction over religious schools on the ground that they were engaged in educating a segment of the public - hence were essentially "secular" enterprises and subject to the labor-management provisions of the National Labor Relations Act. The Supreme Court rejected this view, holding (1) that when the Congress used the word "employer," in the NLRA, it could not have meant religious school employers, (2) but that if it had so intended, then the Free Exercise rights of religious schools would be jeopardized. (NLRB v. Catholic Bishop of Chicago, 440 U.S. 490 (1979)).

Our courts, further, have made it clear that it is not the legislature or any other agency of government which has power to determine what is religious or not. As Professor Tribe has well stated:

> ". . . '[R]eligion' must be defined from the believer's perspective. Excessive judicial inquiry into religious beliefs may, in and of itself, constrain religious liberty. Thus the Court held in Thomas v. Review Board [450 U.S. 707 (1981)], beliefs are adequately religious even if they are not 'acceptable, logical, consistent, or comprehensible;' even if the religious adherent's; beliefs are, although sincerely

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> held, not fully developed; and even if other beliefs construe and apply the religious tenets differently from the claimant. In other cases, too, the Court has emphasized the believer's own perspective."

L.H. TRIBE, AMERICAN CONSTITUTIONAL LAW, 1181.

Obviously, the claim that something is "religious" may be fraudulent, and the claimant may seek to perpetrate a fraud in the name of religion. The relevant Supreme Court decisions, acknowledging that fact, have held religious claimants to requiremnets of sincerity and their claims to being bona fide. But as the Court, almost a half-century ago, warned: "Men may believe what they cannot prove" (United States v. Ballard, 322 U.S. 78, 86-87 (1944)) and restated its warnings against government's defining of religious belief and practice.

Bearing the foregoing principles in mind, it is clear that religious exercise - not mere secular endeavor - is involved in the requirements of the ADA Bill.

First, the conducting of churches, religious schools and religious welfare agencies constitutes the conducting of religious ministries. Second, it is not the place of the Congress or of any agency of government to say what is, or is not, a religious ministry. As has been seen, if the religious claim is sincere and not fraudulent, it must be treated as bona fide.

The position taken on ADA by organizations such as the Association of Christian Schools International (the largest organization of Protestant schools in the nation) consists of this:

Churches, religious schools, religious day cares and other religious social agencies are religious ministries - do, in other words, constitute exercises of religion. It can readily be shown that religious groups would not conduct and maintain churches - or other forms of religious agencies - but for religious purposes and out of religious motivation. What other reason can possibly exist for the work, expenditures and sacrifices which religious people put into these enterprises? They deem them, they intend them, for the service of God.

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Further, the character of these ministries is religious. Churches and synagogues are by definition religious. But, as the Supreme Court has repeatedly stated, so are religious elementary and secondary schools. In the words of the Court, church schools are "an integral part of the religious mission of the. . . Church" (Lemon v. Kurtzman, 403 U.S. 602, 616 (1971)), that mission "being the only reason for the schools' existence" (Meek v. Pittenger, 421 U.S. 349, 366 (1975)), whose "affirmative, if not dominant, policy is to assure future adherents to a particular faith." (Tilton v. Richardson, 403 U.S. 672, 685-686 (1971)). The same religious character exists for religious child care activity, homes for unwed mothers, and like social endeavors.

I think it is imperative that all concerned with ADA call a spade a spade in this matter: in some of the advocacy in favor of ADA, the strong implication has been that these enterprises are "not all that religious," that they are, in fact, virtually secular - and hence should be regulated commonly with all secular enterprises. Such a conclusion flies in the face of the facts. Further, it contradicts what the Supreme Court has insistently said respecting the meaning of the "exercise" of religion as that term is used in the First Amendment.

CONCLUSION: Religious exercise, within the meaning of the First Amendment will be directly involved if churches and religious schools are not expressly exempted from the terms of the ADA.

II. CERTAIN PROVISIONS OF THE ADA BILL WILL INJURE RELIGIOUS EXERCISE

In four respects, the ADA Bill, as now drafted, will prove injurious to religious exercise:

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1. Its definition of "public accommodation."

2. Its definition of "disability" as related to legal consequences

3. Its potential cost requirements.

4. Its calling for excessive entanglements between government and religious ministries.

1. "Public Accommodations." The ADA Bill, in Section 401(2) states that "public accommodation"

> ". . . means privately operated establishments -
>
> (i)(I) that are used by the general public as customers, clients, or visitors; or
>
> (ii) that are potential places of employment; and
>
> (iii) whose operations affect commerce."

"Commerce" is given a standard definition which includes "travel, trade, traffic, commerce, transportation, or communication among the several states . . . [etc.]." Absent exclusionary language, or specific exemption, churches, under increasingly broad interpretations of the concept of interstate commerce, plainly can be found to be engaged in "commerce." That being so, they come within the definition of "public accommodation." They are "privately operated" establishments. They are frequently used by "visitors," and are "potential places of employment."

Religious schools are explicitly made "inclusions" under Section 401(2)(B), since they are "private schools."

Designation of a church, a religious school or religious social agency as a "public accommodation" would effect a radical change in its legal nature. As has been seen with respect to religious schools, for example, they are founded solely to carry out a pervasively religious mission to children and would not exist except for that purpose.

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Religious schools are not open to the general public either in the sense that their premises are places to and from which the public is free to roam at will, or in the sense that they are forced to open their staff and enrollment to the public at large.

Attempting to transform these schools by the device of labeling them "public accommodations" simply contradicts the reality that they are, by their very nature, not "public accommodations."

This arbitrary transformation is an extremely threatening precedent. If these schools are not "private" accommodations, "private" has no meaning. If they are, by statutory device, made "public" for purposes of ADA, why not for purposes of any and all other federal regulatory acts? They either are, or are not, "public" accommodations. In fact, they do not accommodate the public. They accommodate solely those whose faith commitment seeks them out.

I have found no precedent in federal or state statutes for rendering religious schools "public accommodations." But there is indeed precedent to the contrary.

The State of Iowa, in its Civil Rights Act of 1965 (Iowa Code Anno., §601A.2.10), defines "public accommodation" as "every place, establishment, or facility that caters or offers services, facilities, or goods for a fee or charge to nonmembers of any organization or association utilizing the place, estabishment, or facility . . ." If the facility offers its services gratuitously to the nonmembers "it shall be deemed a public facility if the accommodation receives governmental support or subsidy." The Iowa statute goes on to say:

> "Public accommodation shall not mean any bona fide private club or other place . . . which by its nature is distinctly private [except where it offers its services to nonmembers]."

Last year the Iowa Supreme Court held that the Jaycees, a secular, private organization, was not a "public accommodation." (U.S. Jaycees v. Iowa Civil Rights Commission, 427 N.W.2d 450 (1988)).

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Alaska defines "public accommodation" as

> ". . . a place that caters or offers its services, goods or facilities to the general public . . ."

California's courts have expressly held that a private school is not a place of "public accommodation" within the meaning of its Civil Rights Act. (Reed v. Hollywood Professional School, 338 P.2d 633 (1959)). Involved in that case was a mere private professional school, not a religious school.

Idaho's Human Rights statute provides, in part:

> "(3) This act does not apply to a private club, or other establishment not in fact open to the general public, except to the extent that the goods, services, facilities, privileges, advantages, or accommodations of the establishment are made available to the customers or patrons of another establishment that is a place of public accommodation."

Illinois' courts have held "place of public accommodation" to mean places "where the public is invited to come and partake of whatever is being offered therein." (People v. Murphy, 145 Ill. App. 813 (1986)). Indiana's anti-discrimination statute defines "public accommodation" as "any establishment that caters or offers its services or facilities or goods to the general public." (Ind. Stats. Anno. II §22-9-1-3).

Religious schools should never be classified as the ADA Bill seeks to classify them.

In light of the foregoing, it is surprising that, in Title II ("Employment") the ADA Bill exempts "a bona fide private membership club that is exempt from taxation under Section 501(c) of the Internal Revenue Code of 1986." All religious schools (and all churches) are likewise exempt from Section 501(c). It is puzzling that the ADA Bill would want to saddle those religious entities with the requirements of Title II while exempting secular private clubs. Conversely: if it is believed that America's myriad private clubs should not be covered, how can it be that ADA does not exempt America's churches and religious schools?

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2. "Disability" As Related to Legal Consequences. "Disability," under Sec. 3(2), means (with respect to an individual):

> "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such impairment; or (C) being regarded as having such an impairment."

This definition obviously embraces the conditions of having AIDS, of being alcoholic (or intoxicated) and of being under the influence of drugs. It is with respect to the legal consequences which ADA attaches to that definition that injury to religious life and practice flow. The Bill is replete with requirements which it would impose on religious agencies which did in fact discriminate against individuals having one of the foregoing disabilities. The array of forms of discrimination set forth in Sec. 101 is comprehensive.

A Christian school is morally required (as a matter of clear and unconditional religious principle) to discriminate against carriers of AIDS where AIDS was incurred through immoral conduct. A Christian school is required to discriminate against users of alcohol and users of drugs. The penalties imposed by the ADA on such religiously required discrimination are patently extremely injurious to the free exercise of religion by such schools (or churches, day cares or other religious agencies).

The "defenses" to charges of such discrimination (see Sec. 101(B)) are totally inadequate. Indeed the defense set forth under Sec. 101(b)(2) poses an express contradiction of religious rights in regard to AIDS, alcohol and drugs, since it implies that a religious entity shall employ individuals with such disabilities; the religious entity is then left with no defense in the way of a "qualification standard" if the government can show that the alcoholic or drug abuser did not pose a "direct threat to property or the safety of others in the workplace or program" - and so with the carrier of AIDS. The legitimate interest and responsibility of Christian schools to the children in their care, and to their parents, goes far beyond mere concerns over "property," "safety," and "direct" threats.

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3. Cost. Churches, religious schools, and religious child cares are not governmental entities. They are not tax-supported. They are myriad in number in our nation. Almost all operate on narrow budgets and must manage with funds in their stewardship which are donated by their particular supporters. In addition to funds, they receive from their supporters much voluntary, unpaid service. Religious schools' teachers are universally on comparatively low pay and offer their services as sacrifices in a religious vocation.

Living as they do on a financial knife edge, religious schools cannot undertake extraordinary financial burdens and survive.

That fact - along with one other - seems to have escaped the notice of the drafters of the ADA Bill. That other fact is the enormous contribution which religious agencies make to the communities of this nation. As perhaps the least of their public contributions, religious elementary and secondary schools save local taxpayers immense sums of money in every school year.

The ADA Bill provides government a virtual blank check in respect to power to require expenditure of money by churches, religious schools, child cares, etc. See, e.g., Sections 202(b)(1), 402(a), 402(b)(3), 402(b)(4), 402(5), 402(6), 402(7).

The provisions of the ADA Bill insofar as they pertain to government facilities, to industries, and to governmentally funded entities are understandable. However, the budgets of most religious entities contain no "reserve" funds, escrowed for emergencies or unforseen expenses. Uncontemplated construction and equipment requirements. will, without any doubt whatever, force many a worthwhile religious entity, now doing invaluable work for people, to close.

4. Entanglement. The Supreme Court of the United States has repeatedly held that any substantial involvement

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of government with churches or religious schools is violative of the Establishment Clause. In Walz v. Tax Commission, 397 U.S. 664 (1970), the Court warned against governmental involvements with churches which produce "a kind of continuing day-to-day relationship which the policy of neutrality seeks to minimize." The Court did so in the specific context of social services and aid to children carried on by churches, being particularly concerned over the introduction of any "element of governmental evaluation and standards." The Court warned, on Establishment Clause grounds, against legal policies which can lead to "confrontation and conflicts" between government and churches. (Id. at 674.)

In Lemon v. Kurtzman, 403 U.S. 602 (1971), the Court described as a "classic warning" Mr. Justice Harlan's separate opinion in Walz wherein he spoke of "programs, whose very nature is apt to entangle the state in details of administration." (Id. at 615.) The Court also warned against "sustained and detailed administrative relationships [between government and these schools] for enforcement of statutory or administrative standards." (Id. at 621.)

The ADA Bill not only allows excessive government-religion entanglements but requires them. ADA's broad regulatory scheme is such that governmental enforcement agencies' judgments will have to be made with respect to many matters which necessarily lie within the judgment of the religious entity in terms of its ability to carry out its mission.

More specifically are certain provisions of ADA which require excessive entanglements. For example, Sec. 101(b)(2) (which provides the aforementioned "qualification standards" language) requires government to determine whether, in its judgment, the AIDS carrier, alcoholic or drug abuser poses a "direct" threat to property or safety. That determination can be made only by on-the-scene intervention.

Sec. 202(b)(3) requires governmental surveillance to determine whether the religious entity has used tests which can be shown to be necessary and substantially related to the ability of individuals to perform "the essential functions of the particular employment position." This requires government (a) to monitor the religious agency to assure that discriminatory testing is not taking place, (b) to make government's own determination of what are "the essential functions of the particular employment position." Recall: we are here speaking of a religious employment.

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Sec. 402(b)(2) moves heavily into the internal life of the religious entity. It refers to "failure [by a religious entity] to make reasonable modifications in rules, policies, practices, procedures, protocols and services" (when necessary) under the terms of the Bill.

CONCLUSION: The ADA Bill, by seeking to transform churches and religious entities into "public accommodations," by imposing burdensome costs, by the consequences of its definition of "disability," and by its extremely invasive entanglements, poses the prospect of severe and needless injury to religious exercise.

III. ADA IS NOT JUSTIFIED BY A COMPELLING STATE INTEREST

Our courts have upheld the churches and other religious bodies in resistance to government action where two things have been proved: (1) that there is no supreme societal interest which requires imposing the particular regulation, (2) but that, even if such an interest is proved, there are no alternative, less restrictive, means available to government by which to achieve that interest. These principles are well spelled out in such Supreme Court decisions as Sherbert v. Verner, 374 U.S. 398 (1963); Hobbie v. Unemployment Appeals Commission, 480 U.S. 136 1987).

When our courts speak of "compelling state interest" in such cases, it is not the interest in a specific law or regulation which they are talking about, but the interest in applying that law or regulation to the objecting religious party. For example, in the landmark Amish case, Wisconsin v. Yoder, 406 U.S. 205 (1972), the State of Wisconsin contended that it should be able to apply its compulsory attendance law to force Amish children to attend high school because the compulsory attendance law represented a compelling state interest. The Supreme Court agreed that education of the young represents such an interest. It said, however, that the constitutional question was not whether the compulsory attendance law represented a supremely important and valuable public interest, but whether applying it to the Amish did.

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The above is very relevant to the argument made, that, since there is a compelling state interest in having a bill to protect the handicapped, there is a compelling public interest in making it apply to churches and other religious bodies who have strong, bona fide, religious objections to it.

Always placed in the balance, in cases in which religious entities resist government regulation, are two questions of "compelling state interest." The first is the question of whether a proved supreme societal interest is at stake in imposing the regulation. The other is whether the supreme public interest in the First Amendment right to the free exercise of religion will be jeopardized by imposing the regulation. Nothing can be clearer than that the free exercise of religion will be seriously impaired by imposing the ADA on religious bodies. Nothing has been shown to indicate that there is a national necessity to apply the ADA Bill to churches, religious schools, and other ministries. That absence of evidence, in itself, indicates that religious organizations are by and large, within their means, and in keeping with their compassionate traditions, acting to protect and accommodate persons with disabilities.

* * * * * *

In light of all the foregoing, it is to be hoped that the following amendment to the ADA Bill will be adopted:

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Amend Section 201(3)(B) to read:

(B) EXCEPTIONS. - The term "employer" does not include -

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986; OR

(iii) CHURCHES, RELIGIOUS CORPORATIONS, ASSOCIATIONS AND SOCIETIES WHICH ARE EXEMPT FROM TAXATION UNDER SECTION 501(c)(3) OF THE INTERNAL REVENUE CODE OF 1986.

and

Amend Section 401(2)(A) to read:

(A) IN GENERAL. - The term "public accommodation" means privately operated establishments, EXCEPT CHURCHES, RELIGIOUS CORPORATIONS, ASSOCIATIONS AND SOCIETIES WHICH ARE EXEMPT FROM TAXATION UNDER SECTION 501(c)(3) OF THE INTERNAL REVENUE CODE OF 1986 -

I respectfully submit that Title VII of the Civil Rights Act is not remotely adequate in light of the problems which I have presented above. Nor would the narrow concept of affording exemption on the basis of "tenet." If a religious school were to tell an enforcement agent that the prospective cost of a building alteration meant closing the school's doors, would that position be interpreted as "based on religion?" The Title VII rationale simply does not fit here. Too readily, under ADA, the government enforcement agency will tend to respond: "Surely, you have no religious tenet which precludes your altering the building?"

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Finally, I note that eighteen religious organizations have endorsed the ADA Bill. I point out, first, that only one of those organizations operates schools (and very few). Second, I would hope that each of the eighteen might be furnished a copy of this letter opinion, since I am not at all sure that they can have explored the extensive ramifications of this bill in terms of religious liberty. Third, I note that absent from this list of endorsers are almost all of the religious organizations which operate religious schools.

Very truly yours,

William B. Ball

WBB:dh

cc: Dr. Daniel Heimbach ✓
Mr.Hans Kuttner

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NATIONAL ASSOCIATION of EVANGELICALS

Office of Public Affairs

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Dr. Billy A. Melvin
Executive Director

July 14, 1989

The Hon. Tom Harkin
United States Senate
Washington, D.C. 20510

Dear Senator Harkin:

The National Association of Evangelicals (NAE) represents some 37,000 local congregations in forty-five denominations, with a total service constituency of fifteen million people. Our Office of Public Affairs addresses the governmental concerns that impact these various ministries.

The goals of your bill, the Americans with Disabilities Act of 1989, are laudable in seeking to accommodate the special needs of the handicapped and thus to help them realize their full capabilities. We commend your goals. The NAE has been active urging that the needs of the handicapped be met. At our March 1989 convention the NAE adopted a resolution entitled "Ministry To Persons With Disabilities." A copy is enclosed.

However, some features of S. 933 pose very serious problems for our community. The application of the legislation to churches and religious ministries is unacceptable on constitutional grounds. Both the inevitable entanglement of regulation and the suppression of religious free exercise inherent in the substance of the regulation lead us to this conclusion. A laudable goal does not warrant the disregard of constitutional and other traditional limits on the scope of intrusion into private religious ministries, or the preemption of funds which are already placed in trust for specific charitable and religious purposes.

Private clubs are already excluded from coverage in your legislation, and quite properly so. It is even more fundamental that the right to privately associate for religious purposes, under the "free exercise" principle, be free of intrusive government regulation and entanglement.

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The exercise of religion has traditionally included such religious ministries as teaching and training the young in a biblically-based life of faith. This occurs in such religious charitable institutions as schools, camps, and youth homes, characterized by disciplined Christian or Jewish community living.

Where charitable funds are privately donated for religious ministry to some particular kind of need, and believers have responded to a calling to serve that particular need (quite often on a sacrificial basis) there is no governmental warrant to force that ministry to a particular mode and expense of serving some other kind of need. For example, a charitable ministry to handicapped persons of one kind should not be forced to accommodate needy persons of some other kind; nor should a ministry to errant youth be forced to invest and divert charitable funds donated for that purpose into capital facilities for handicapped persons.

A particular odious affront to persons both serving and giving sacrificially is the artificial classification of their private religious endeavor as a place of "public accommodation," in defiance of past legal concepts of public accommodation as well as religious liberty rights.

A definition of the handicapped, which is far too broad in any case and beyond the general public understanding of the burdens the law would put upon enterprise, whether profit or non-profit, should certainly not be applied so as to suppress in religious communities the exercise of traditional behavioral disciplines with respect to alcohol, drugs, gambling, or sexual immorality. The failure of voluntary community members, who are often the recipients of private charity, to obey religious standards, cannot be treated as a license for favored treatment as a protected class, or as a shield from disciplines which apply to other voluntary and employed participants. This would violate our faith commitments.

Still another serious problem, pertinent to most charitable endeavors (particularly small ones), is the prospect of radical expansion of costs very often not warranted by the particular needs of anyone actually on the premises. In the case of voluntary religious activity, in which the participants have a constitutional right to engage, free of burdens (if such are not called for by health or safety considerations), the burdens are impermissible.

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For all the above reasons, we urge amendments to provide that S. 933 not be applicable to tax-exempt religious institutions, such as churches, and religious schools, camps and youth homes, for example, and that in no case are such ministries to be classified as places of "public accommodation."

I would be pleased to meet with you or your staff to discuss these concerns. And, of course, the NAE would be pleased to offer formal testimony on these and all matters related to S. 933.

Faithfully yours,

Robert P. Dugan, Jr.

Robert P. Dugan, Jr.
Director

Enclosures

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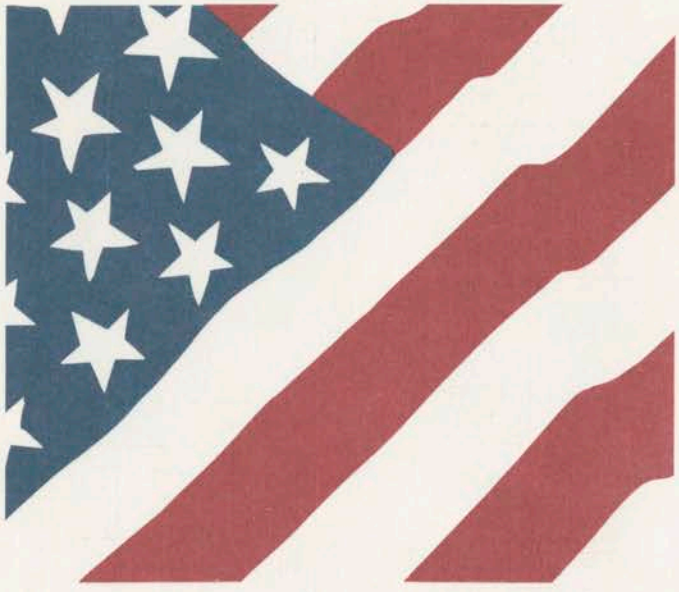
America Is A Promise To Be Kept



Liberty And Justice For All

The Disability Community Welcomes Senator Bill Frist
Washington, D.C. March 8, 1995

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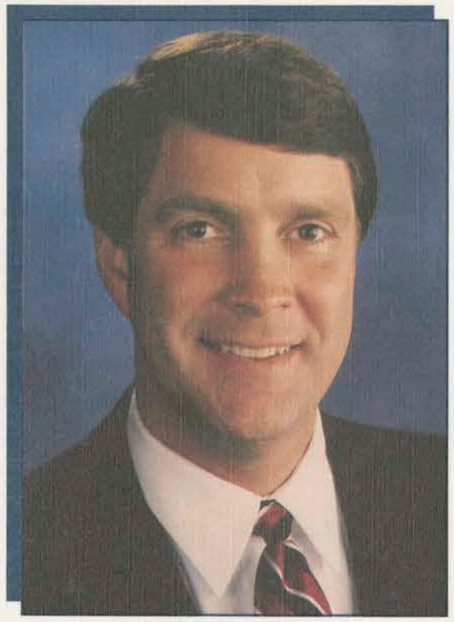
Welcome Senator Bill Frist



Forty-nine million Americans with disabilities, their families, advocates and service providers welcome Senator Bill Frist as Chairman of the Senate Subcommittee on Disability Policy. He is a pioneer at the cutting edge of science, a consistent achiever of excellence. He is an honor graduate of Princeton and of Harvard Medical School. He is a nationally acclaimed specialist in heart and lung transplant surgery. He founded the prestigious transplant unit at the Vanderbilt University Medical Center. He successfully organized a statewide grassroots campaign to return the organ donation card to the Tennessee driver's license. He served as Chair of the Tennessee Task Force on Medicaid.

He is establishing a task force of Tennessee disability community leaders to advise him. He has appointed two outstanding disability community persons to important positions: the highly respected Pat Morrissey as Staff Director of the Subcommittee and former National Council on Disability staffer Ramona Lessen as his executive assistant. He has pledged to continue the Subcommittee's strong tradition of bipartisanship.

Senator Frist, we congratulate you on your election. We congratulate you on your appointment as Chairman of the Subcommittee. We congratulate you on your initial actions. We will work with you for harmonious, cost effective implementation of the Americans with Disabilities Act. We will work with you to maintain and improve the Individuals with Disabilities Education Act and all programs that enable people with disabilities to move from welfare to jobs, from institutions and back rooms to full participation in their families and communities, from poverty to lives of dignity and quality. We will work with you to focus the full force of science and free enterprise democracy on the empowerment of all citizens with disabilities to achieve their God given potential. We will work with you to keep the promise of America: Liberty and Justice for All.

The Program

The Senate Dirksen Office Building
Washington, D.C.
March 8, 1995

	Master of Ceremonies *John Kemp*
8:00 a.m.	Invocation *Ginny Thornburgh*
	Breakfast
8:30	Welcoming Remarks by Leaders of the Disability Community
8:50	*Senator Tom Harkin*
9:00	*Pat Morrissey*
9:05	*Senator Bill Frist*

"I agree with you that this nation is founded on the principle that each human life is sacred and inviolable. People with disabilities have an absolute right and responsibility to participate fully and equally in society and to maximize their quality of life potential in manners of their own choosing."

Ronald Reagan, January 5, 1984

"Let the shameful wall of exclusion finally come tumbling down. . ."

George Bush, July 26, 1990

"We've got a long way to go. Millions of Americans with disabilities could be working and contributing if this society opened it to them."

Bill Clinton, July 27, 1994

"Disability policy must be based on the principles of independence, not dependence; inclusion, not exclusion; empowerment, not paternalism."

Tom Harkin, July 26, 1990

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Julie Jones
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John Kemp
Doro Bush Koch
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Mary Jane Owen
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Joseph Romer
Leonard Rubenstein
Barrett Shaw
Patty Smith
Ben Soukup
Jim & Jane Storrs
Peter Thomas
Dick & Ginny Thornburgh
Ann Tourigny
Rae Unzicker
Sylvia Walker
Nancy Ward
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Proposed Language: State/local Governments

SEC. 302. DISCRIMINATION.

(a) [Same language as ADA, § 302]

(b)(1) Nothing in subsection (a) requires a State, or agency or political subdivision of a State, or board, commission, or other instrumentality of a State or political subdivision to take any action that it can demonstrate would result in a fundamental alteration in the nature of its operations or that would result in undue financial and administrative burdens on its operations.

(2) The decision that any action would result in such alteration or burdens must be in writing and include a written statement of the reasons for reaching that conclusion. In determining whether financial and administrative burdens are undue, all resources available for use in the affected operations of the State, or agency or political subdivision of the State, or board, commission, or other instrumentality of the State or political subdivision should be considered.

(3) If a State, or agency or political subdivision of a State or board, commission, or other instrumentality of a State and political subdivision determines that an action would result in a fundamental alteration in the nature of its operations or in undue financial and administrative burdens, it shall take other appropriate action that ensures a qualified individual with a disability meaningful access to the benefits and services of the State, or agency or political subdivision of the State or board, commission, or other instrumentality of the State or political subdivision.

SEC. 304. REGULATIONS.

Add at the end of subsection (a):

and with the regulations under part 39, Code of Federal Regulations (as in existence on the date of enactment), applicable to the programs and activities of the Department of Justice under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

Inquiry: Why does §302 use the phrase on coverage of State and local governments? Why not use the phrase in §504, from the Civil Rights Restoration Act?

"a department, agency, special purpose district, or other instrumentality of a State or of a local government"

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PART E--PROJECTS OF NATIONAL SIGNIFICANCE

PURPOSE

SEC. 161. The purpose of this part is to provide for grants and contracts for projects of national significance to increase and support the independence, productivity, and integration into the community of persons with developmental disabilities, and to support the development of national and State policy which enhances the independence, productivity, and integration of persons with developmental disabilities through data collection and analysis, technical assistance to program components, technical assistance for the development of information and referral systems, educating policymakers, Federal interagency initiatives, and the enhancement of minority participation in public and private sector initiatives in developmental disabilities.

GRANT AUTHORITY

SEC. 162.(a) The Secretary may make grants to and enter into contracts with public or nonprofit private entities for--

(1)projects of national significance relating to persons with developmental disabilities, including projects to educate policymakers, develop an ongoing data collection system, determine the feasibility and desirability of developing a nationwide information and referral system, improve supportive living and quality of life opportunities which enhance recreation, leisure and fitness, and pursue Federal interagency initiatives, and other projects of sufficient size and scope and which hold promise of expanding or otherwise improving opportunities for persons with developmental disabilities (especially those who are multihandicapped or disadvantaged, including minority groups, Native Americans, Native Hawaiians, and other underserved groups); and

(2) technical assistance and demonstration projects (including research, training, and evaluation in connection with such projects) which expand or improve the functions of the State Planning Council, the functions performed by university affiliated programs and satellite centers under part D, and protection and advocacy system described in section 142.

Projects for the evaluation and assessment of the quality of services provided persons with developmental disabilities which meet the requirements of subparagraphs (A), (B), and (C) of paragraph (1) may be included as projects for which grants are authorized under such paragraph.

(b) No grant may be made under subsection (a) unless an application therefor has been submitted to, and approved by, the Secretary. Such application shall be in such form, submitted in such manner, and contain such information as the Secretary shall by regulation prescribe. The Secretary may not approve such an application unless each State in which the applicant's project will be conducted has a State plan approved under section 122, and unless the application provides assurances that the human rights of all persons with developmental disabilities (especially those persons

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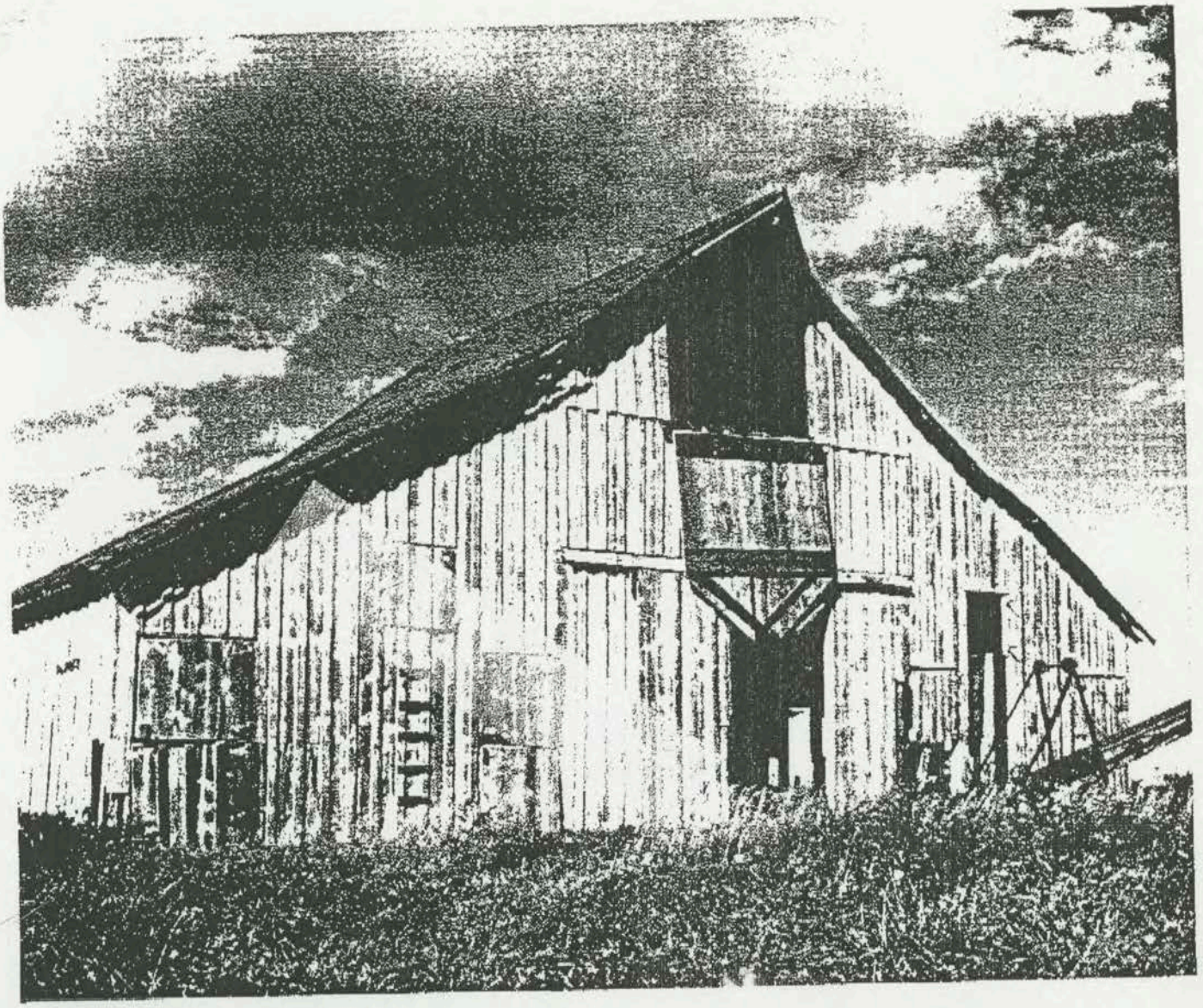

Report of the National Action Commission on The Mental Health of Rural Americans

National Mental Health Association

© 1988

Please deliver to:
Maureen West.
Office of Senator
Robert Dole

From: Jim Finley

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RURAL AMERICANS AND MENTAL HEALTH

The economic problems and social changes occurring in rural America have serious emotional and psychological impacts on the people who live there. The psychological and interpersonal problems of many rural Americans, some of which are truly tragic and dramatic, initially caught the attention of the national news media and motion picture industry in 1985 and 1986. While these events and the resulting psychological disabilities which many rural people suffer no longer capture newspaper headlines or box office sales, their occurrence and seriousness have not declined. Those familiar with rural America continue to indicate that these events are just the tip of the iceberg.

Too often, the isolated case of one individual who is taking unfair advantage of the U.S. crop subsidy programs receives wide notoriety and erases the concern that should be focused on the young and the elderly of rural America—concern for their mental health and the high risk they run for developing serious emotional and psychiatric disabilities.

In 1977, the President's Commission on Mental Health first pointed out that there was a lack of data and research on rural mental health. More than 10 years later, that statement is still true; but information which does exist is poignant and disturbing.[15]

In North Carolina, Dan Blazer, M.D., (Duke University, 1985) reported on the results of a rural/urban comparison of psychopathology from the Piedmont region of North Carolina. Using a household survey questionnaire developed by the National Institute of Mental Health for its Epidemiological Catchment Area study of the incidence and prevalence of mental illnesses, 3,921

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vere interviewed. The research investigators
.u significantly higher rates of alcohol abuse and/or
pendence and of cognitive deficit problems in rural areas as opposed to urban areas.[16]

In Minnesota, Barry Garfinckel, M.D., and Harry Hoberman, Ph.D. (University of Minnesota, School of Medicine, Department of Psychiatry, 1986) reported the results of a study of 4,300 adolescents in three communities in rural Minnesota. The teenagers, age 15-19, came from farm and non-farm rural community families. Of the 2,200 adolescents surveyed in the first community, three out of every 100 had attempted suicide in the last month, and the incidence of depression among them was twice the national average.

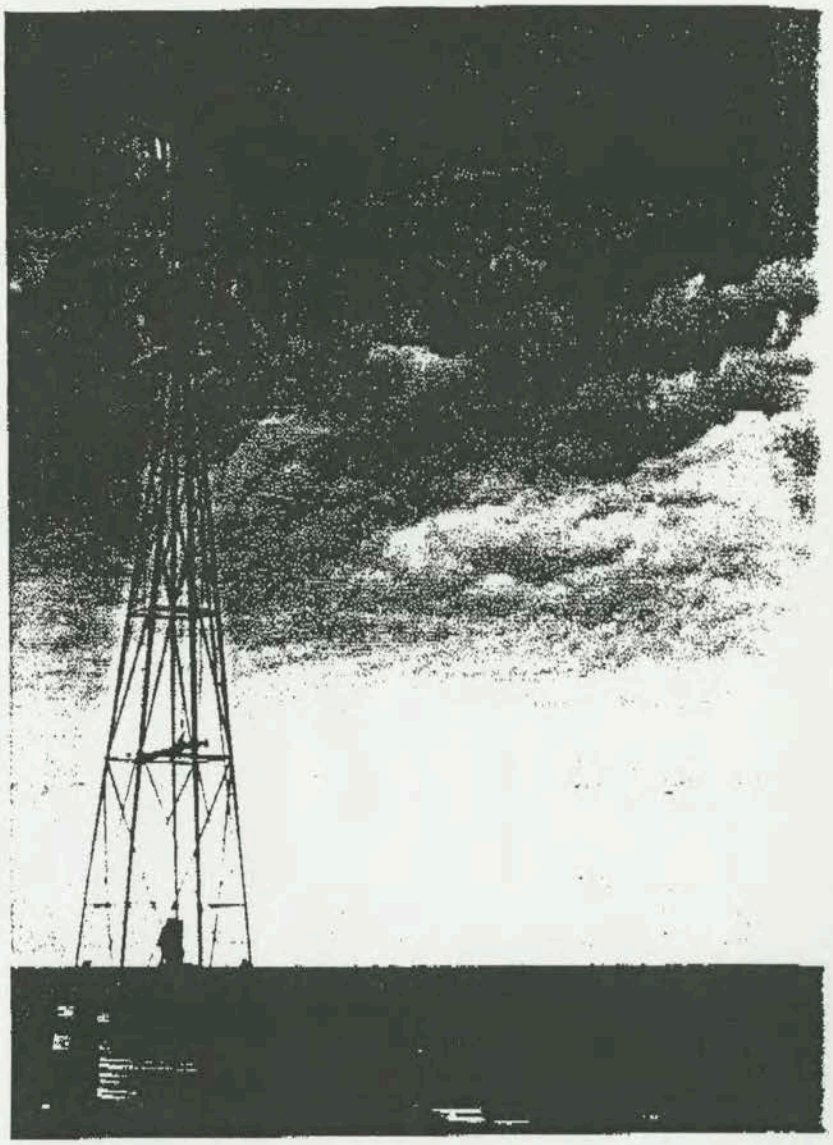
More specifically:

- ☐ three out of every 100 attempted suicide in the last month. This is 15 times more frequent than the national average which is two out of every 1,000.
- ☐ 72 percent of the suicide attempts were young women.
- ☐ 80 percent of the suicide completions were by young men.
- ☐ 88 percent of those who attempted suicide were clinically depressed.

Both the incidence and severity of depression among the 4,300 adolescents were measured in several different ways. In a self-report, 34 percent reported being depressed within the last month, 35 percent reported being depressed in the last six months. Perhaps the most startling piece of data was that when these adolescents were given the standard Beck Depression Test, 18 percent were determined to be moderately or severely depressed. This 18 percent is more than double the percentage of adolescents reported to be moderately or severely depressed in a similar study conducted in New York State. Of even more concern was the fact that, on average, these depressed adolescents living at home had a score on the Beck Depression Test greater than that for the adolescents hospitalized at the University of California at Los Angeles (UCLA) Neuropsychiatric Institute at the same time.[17]

In Missouri, a study by William Heffernan, Ph.D., and Judith Heffernan (University of Missouri at Columbia, 1985) reported on 42 farm families in one of Missouri's top agricultural counties. These families had all been forced out of farming. They tended to be young and had an average of three children. It is significant that all of the women and all but one of the men indicated that they had experienced depression at some point during the process of exiting farming. More than half of the men and three-quarters of the women continued to experience depression one year after losing the farm. Almost two-thirds of the men and women became withdrawn from family members and friends. Increased substance abuse (mostly alcohol) was reported. Half of the men and one-third of the women reported that they had become more physically aggressive toward family members.[18]

A study of 50 community mental health centers in 12 midwestern states by Joanne Mermelstein and Paul Sundet, Ph.D. (University of Missouri at Columbia,



1986) reported that almost two-thirds of the centers had experienced a moderate to very large increase in dysfunctioning among their client populations. Twenty to 50 percent of the rural mental health clinicians' caseloads were people suffering from problems related to the agricultural economy. The ranking of mental health problems, as seen by the clinicians, in these 50 centers was: 1) depression, 2) withdrawal/denial, 3) crisis behaviors, 4) substance abuse and 5) spouse abuse.[19]

In Colorado, a 1986 survey of factors associated with admissions to mental health centers in rural and urban Colorado counties by the Colorado Department of Mental Health observed that:

- ☐ Child abuse cases had increased more rapidly in rural community mental health centers than in urban centers.
- ☐ Spouse abuse had a slightly higher incidence in rural community mental health centers than in urban centers.
- ☐ Alcohol abuse had increased in both urban and rural areas, but in rural community mental health centers, alcohol abuse had increased from a lower incidence to a level of incidence

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equal to urban areas, most notably for adolescents.

- Child/adolescent depression admissions to rural community mental health centers had almost doubled.
- Depression and anxiety disorders had increased in rural community mental health centers, in contrast to urban areas.[20]

In Nebraska, a study by Peter Beeson, Ph.D., and David Johnson (Nebraska Department of Public Institutions and University of Nebraska, 1987) reported that residents of farm households went from having among the lowest rates of psychological distress in 1981 to among the highest in 1986.

Results of the study indicated that in 1981 when farmland values peaked, the greatest percent of respondents with depression were found among the large urban and urban area residents, with farmers and rural residents having the lowest rates. By 1986, the highest rates for depression were among the farmers and rural segments of the sample, with the lowest rates in the urban and large urban areas. In fact, from 1981 to 1986 the percentage of farmers experiencing symptoms of depression doubled.

In all except the large urban areas, the incidence of depression increased. The increase in depression was greatest among residents of farm households, followed by progressively lesser increases in the rural and the smaller urban areas.

Of the farmers reporting high economic distress, 28 percent also reported symptoms of depression, compared to 12 percent of the farmers reporting low economic distress. Farmers also had the greatest increase in psychosocial dysfunction.

The study also revealed that, even when not personally affected by economic decline in their own household, those most closely linked to the agricultural economy were significantly more likely to be depressed, have more psychosocial dysfunction and greater psychopathology than those in the large urban areas.[21]

Building on these research data were the two days of hearings that the commission conducted on December 2 and 3, 1987. A total of 37 witnesses from 14 states provided testimony on the conditions of rural Americans. (See Appendix for list of witnesses.) Their vivid presentations to the commission assured the commissioners of the pervasiveness and depth of the problems.

Hearing in Des Moines, IA, December 2, 1987

Norma Harms testified before the commission as a farmwife. Harms and her family have endured many hardships, some of them directly related to the crisis they experienced with their own farm, and others directly related to the tragedy of mental illnesses. In her testimony, Harms stated that a 1984 University of Nebraska study projects that by 1990 all towns in Nebraska of less than 900 people will disappear. She went on to cite U.S. Department of Labor statistics which show that at least three jobs are lost every time a farm is liquidated, and that one business fails in rural America for every 10 farms that are sold.

Harms' home town of Hartington, NE once had a satellite mental health clinic. But because of the economics and the stigma of mental illnesses, which led to a low utilization rate, it was closed in 1981. With the abandonment of the satellite clinic, the closest mental health facility is 35 miles away in Yankton, SD.

Harms told of how school officials in her local school district were alarmed at the number of reported incidents involving mental, physical and sexual abuse. Two of Harms' sons, both deceased, refused to seek help from the health or mental health system because they claimed their brother, who was institutionalized, wasn't being helped by that system. Despite these experiences, Harms sought the assistance of the mental health system available to her, when she needed attention and treatment. Hospitalized for 29 days for depression, she returned home only to find that her health insurance policy would not pay for her illness.

Myrt Armstrong, Executive Director of the Mental Health Association of North Dakota, began her testimony in a most poignant manner, trying to sort through the many facts she had stored in her mind that would be useful and important to the commission and its work. But as she said, "Facts aren't very useful to me at 2:00 in the morning, as I talk with a panic-

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The Imbalance of Mental Health Service to Rural America

The data and testimony presented to the commission during the course of its three meetings indicate that the symptomology of serious mental health problems in rural areas is increasing at a rate that parallels or exceeds urban areas. In addition, people both directly and indirectly affected by the restructuring of the rural economy are suffering emotional and psychological disabilities.

While the data, to this point, have not indicated an increase in such disorders as schizophrenia or dementia, the illnesses and problems described are truly debilitating. While hospitalization may not be required, a declining mental health status nevertheless causes people to become dysfunctional and leads to the development of serious disorders such as prolonged depression. In some cases, most clearly pointed out by the studies in Minnesota, this depression can lead to a serious psychiatric disability, especially in view of the data from the Beck Depression Test that was given to rural adolescents.

At the same time that more rural people are suffering serious mental health problems, the system of mental health services to care for them shows signs of serious impairment. This is not a new development. In 1969, the federal publication *Mental Health Services for All Americans: The Challenge of Rural Mental Health* showed the degree to which rural mental health services were deficient. It noted that only 1 in 14 rural counties had a general hospital with a psychiatric facility, compared with 1 in 3 in urban centers. Only 10 percent of outpatient psychiatric clinics were in rural areas and many of those were part-time. A 1965 survey found that only 3 percent of the psychiatrists in the United States reported their place of employment as a rural county.

The implementation of the Community Mental Health Centers Act of 1963 held great promise to correct the imbalance for rural America. Between July 1965, when the first grant under the Act was awarded, and June 1973 more than 500 community mental health centers (CMHCs) were funded. Approximately 40 percent of these served catchment areas (geographical areas of approximately 250,000 people) with one or more rural counties. However, when rural counties having access to a central city were excluded the number was considerably smaller. Only 76 of those 500, or 13 percent served all-rural catchment areas.

In 1981, the last year of the Community Mental Health Centers Act, it was found that only 97 of the 768 CMHCs served all-rural catchment areas,— less than 13 percent. As the CMHC program expanded, the proportion of centers serving all-rural catchment areas remained static. The promise of correcting the imbalance of mental health services to rural America was unfulfilled.

Whether this imbalance would have been corrected became a moot point in 1981. One of the early pieces of legislation in the Reagan Administration was the Omnibus Reconciliation Act of 1981-P.L. 97-35. Under the philosophy of less government, it repealed the Mental Health Systems Act and in its place enacted the Alcohol, Drug Abuse and Mental Health Services Block Grant. While espousing the same principles of community mental health, the block grant was used to cut federal support for mental health services. In 1980, $314 million was appropriated by the Congress for the operation of federally-initiated community mental health centers. That plummeted to $204 million in 1982 under the block grant and has risen to only $238 million in

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1988. A "normal" rate of inflation of 5 percent would project the 1980 figure to be $463 million in 1988.

How have mental health services fared over the past few years under the block grant? A few studies have been done, but perhaps the most revealing, concerning rural mental health services, was done by Ahr and Holcomb in 1985.[22] They surveyed the priorities of the 50 state mental health directors and found that services for the severely disordered were ranked highest. The next-to-lowest ranking—62 out of 63—was given to developing a model of community mental health center services in rural areas.

Myth versus Reality in Rural America

As we have seen from the data and the testimony, there are many false assumptions about rural America which need to be corrected. The myth of a close-knit community and family structure needs to be dispelled. It should no longer be assumed that everyone in a typical rural community knows each other. The accepting of a second and sometimes third job at distances far from home does not permit time for neighborly visiting or even attendance at civic or church gatherings. While one's word or a handshake were once accepted as a commitment, now only a contract is accepted.

Churches are no longer the primary focus or link to people that they once were. In fact, many church organizations place new pastors or priests in rural areas who do not understand the nature of rural America. Concurrently, these new clergy tend to use a rural assignment as a springboard to better assignments elsewhere and therefore concentrate their attention on church members who are large contributors. Researchers have found that churches were one of the least used resources during a time of crisis.

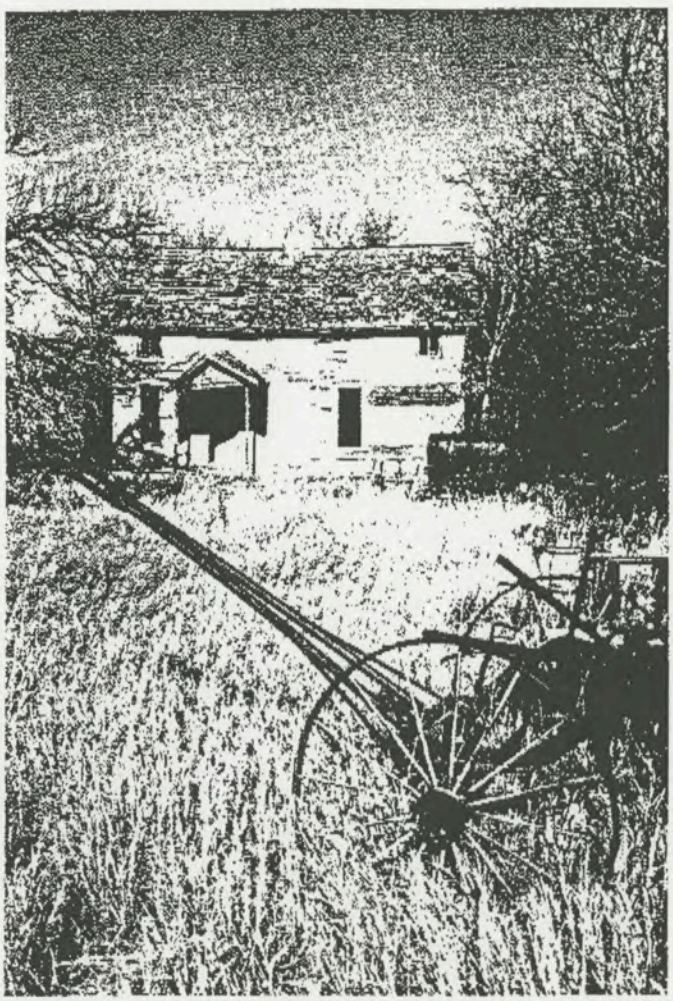
The commission has seen that the stigma of mental or emotional problems is as strong as ever among rural Americans. Rural Americans often are individualistic in style, self-reliant in their approach and tend to hide their problems. The display of strong emotion is equated with irrationality and weakness. There is a reluctance to view counseling and/or therapy in a positive light.

As noted earlier, two-thirds of all farm families have off-the-farm employment. This usually means women (wives) taking off-farm jobs to make up for the loss of income, to help repay loans or sometimes to become the sole income provider. This situation repeats itself with the families of the unemployed miner, lumberman, oil driller or textile worker.

With this comes a sometimes painful role reversal. Women in the work place and two-income families are not only accepted, but close to the norm in urban areas. However, in rural areas, the situation is perceived differently. When the wife takes an off-farm job because the husband does not have a job or cannot provide sufficient income from the farm, often the result is a serious adjustment problem for the entire family.

With more mothers and fathers taking second jobs and being home less, rural America is now facing latchkey children. This is a problem with which many rural communities have never before had to deal. Another phenomenon is a teenage pregnancy rate that is rising faster than for urban areas.[23] All of these factors have led to young people wanting to leave rural communities. With the out-migration of its youth, rural America will lose its future leadership.

While the number of elderly persons in rural areas grows, their percentage of the rural population is growing even faster because of the rapid out-migration of younger people. This is increasing the problems of the elderly in rural areas. Though they often do not have access to adequate medical care where they live, they often cannot leave their farms because of their poor or failing health. In addition, their assets and life savings are tied up in the land they own, which they are reluctant to sell because the depressed land values would not give them an adequate return. At the same time, the nuclear family has become dispersed because the younger members have scattered in order to find work. This leaves their older parents and/or grandparents in communities without emotional or financial support.



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start such programs or at least upgrade their current programs. However, no system or mechanism exists to offer consultation and technical assistance to those states and counties that want to set up such programs.

Action:

Legislation should be introduced and enacted to establish an Office of Rural Mental Health within ADAMHA and to authorize an appropriation of $3 million to fund a Clearinghouse and Technical Assistance Center, and at least three policy research centers.

Recommendation 2

Congress should enact legislation to authorize health/mental health linkage programs that develop mental health services in community health centers and migrant health centers, or link community mental health centers with community health and migrant health centers.

Rationale:

There are approximately 1,000 community health centers in the United States, 70 percent of which are in rural areas. In 1979, the National Institute of Mental Health and the Bureau of Community Health Services participated in a program to link the work of those centers with mental health programs. The evaluation of this program found that the provision of mental health and consultation services at the Community Health Center itself was more effective than referrals to the mental health center.

In addition, there is an economic benefit to the delivery of several services in a multi-use facility. The commission believes that because of scarce resources, initiatives that make better use of such resources must be developed and encouraged. Concurrently, the linking of health and mental health treatment can help to break down the stigma associated with mental health problems.

Action:

Legislation should be introduced into Congress and enacted that authorizes $10 million for each of five years to establish such a program. This period should be sufficient to initiate and develop such programs in a majority of rural areas served by community mental health centers and community health or migrant health centers.

Recommendation 3

The U.S. Department of Agriculture's Extension Service Program that provides crisis counseling should be expanded from its current eight states to include all states. Funding should be increased to $12.5 million to finance this expansion.

Rationale:

P.L. 100-219, the Rural Crisis Recovery Program Act of 1987, amended Section 1440 of the 1985 Food Security Act to provide support for education, retraining and counseling assistance to financially stressed and dislocated farmers and to rural families in general. Services that can be provided through this program include "outreach counseling."

The commission welcomes the recognition by Congress and the USDA that clinical mental health services are a basic part of the rural assistance initiative. The commission also is pleased that the legislation encourages coordination between Extension Service's crisis counseling programs and state mental health systems.

The commission believes that there should be required coordination. The commission is concerned that despite the critical role played by hot lines, there must be an integrated system that links these community caregivers to the formal mental health system if their maximum potential is to be realized. Community workers can quickly become overwhelmed by the complicated nature of a serious mental illness as well as the sheer volume of those people affected. If there is not adequate linkage with the mental health system, the community worker may create a false expectation, still leaving the individual at risk.

Action:

Congress should amend the language in Section 1440 of the 1985 Food Security Act to allow all states to participate and increase the amount appropriated to $12.5 million.

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Rationale:

Current data from the NIMH Epidemiological Catchment Area Study indicate that one out of every 20 Americans needs services from the mental health delivery system. The commission believes that the state mental health planning process needs to review, evaluate and develop service delivery initiatives for the general population at risk for depression, suicide, anxiety, situational stress, alcohol abuse, etc. This planning process needs especially to take into account rural mental health systems or the need to establish such systems.

Resources can and should be made available through the State Mental Health Planning Grants, the Alcohol Drug Abuse and Mental Health Services Block Grant and a state's own resources.

Action:

State mental health plans must be state-wide, comprehensive mental health service system initiatives that deal with all people at risk of becoming disabled due to a diagnosable mental health problem.

Recommendation 11

Coverage of treatment for mental illnesses and mental health under public and private insurance programs should be on par with other illnesses and treatments.

Rationale:

Medicare and Medicaid, as currently mandated and administered, discriminate against those in need of mental health services. Concurrently, many private health insurance plans provide minimal or inadequate coverage for mental health problems. This discrimination and inadequate coverage prevent people from seeking and obtaining needed assistance and services, promotes inappropriate and unnecessary institutional care and reinforces public stigmatization of people with mental illnesses through law, regulation and practice — even though research has proven the efficacy of mental health treatment.

Community mental health agencies, unless part of a hospital, are unable to receive reimbursement for Medicare services. Many of the community mental health programs in rural areas are not part of or affiliated with a hospital, due to the demographics of rural areas. This policy not only hurts the financial viability of existing programs, but also discourages the initiation of new ones.

Action:

Congress should repeal exclusionary provisions in current law and discourage discrimination against those with mental health problems in any future legislation which finances health services.

Public Education

Recommendation 12

Local programs must be developed to provide adequate training to general caregivers and resource people (bankers, clergy, teachers, small business people, and law enforcement officers) in recognizing and referring distressed individuals and families to appropriate services.

Rationale:

The commission felt that this was the most important recommendation with regard to the lay person in rural America. Community resource workers are the people most likely to come into contact with a distressed person or family, yet they often do not know what to do when this happens. These people are critical to breaking down the stigma of mental illnesses, because it is often to this type of person which someone with emotional distress will first tell his or her problem(s). To effectively help, these resource people must have adequate training and there must be an adequate professional mental health system to back them up.

The commission felt strongly that community mental health agencies need to assume an advocacy position in developing such a program. Concurrently, the commission felt that it was incumbent upon the private sector at the local level to fund an effective training program to ensure that its staff is prepared to fully serve its clientele.

Action:

Community resource and lay people and their employers have a responsibility to ensure that they are prepared to effectively work with their clientele. Community mental health agencies must develop and deliver required training to these people.

Recommendation 13

Staff and administrators of community mental health agencies must become active participants in the communities they serve through effective outreach strategies designed to reduce the stigma of mental health treatment and attract community members into programs and services.

Rationale:

Stigma is one of the biggest barriers to a person in a rural area who needs the help of a mental health professional. Many people are concerned about being seen going into a facility marked "mental health." The commission was impressed by the approaches to this problem offered by the programs in Wyoming and Illinois and felt that much could be accomplished if such efforts were more widespread.

Action:

The National Council of Community Mental Health Centers, the National Mental Health Association and other appropriate organizations should, through their local affiliates, encourage the use of mental health facilities for other public purposes, thereby reducing the stigma placed on mental health facilities. These organizations should also consider using other public facilities for the delivery of mental health services.

Recommendation 14

Community mental health agencies and affiliates of local Mental Health Associations should work with public school systems to enhance the schools' capacity to provide mental health information to students and provide assistance to teachers and counselors in their efforts to aid children with mental health needs.

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White House Comments on ADA

DISABILITY

Issues Needing Answers

1. **Costs and Benefits**

What are the costs and benefits associated with the Americans with Disabilities Act (ADA)? Many provisions have costs. There does not now exist an analytic base for understanding the size of those costs and how the costs could be most efficiently allocated.

AT&T has estimated that its costs for complying with the telecommunications provisions of ADA would be $200 million per year. Operating both lift-equipped buses and paratransit could cost public transit authorities $270 million per year. How could these costs be mitigated consistent with ADA's goals? Who will ultimately pay these costs? Also, what are the gains to society that offset these costs? Where do these gains occur in relationship to the costs? What can be done to mitigate the most extreme costs?

2. **Scope of Provisions**

How widely should ADA's net be thrown? The public accommodations section seems to suggest that every office building in America would have to be accessible. Another reading suggests every doctor's and dentist's office would have to be accessible.

What provision should be made for small entities? Large employers and large firms can spread costs over a large base. Small firms and small organizations would find themselves with costs that threaten viability or ability to fulfill a principal mission. What provision should be made for these entities? Total exemption? Case by case good faith effort? What size entities should be exempted? ADA does not allow cost as a defense, and so an organization would have to comply no matter what the cost.

Remember the example that bedeviled Joe Califano when implementing Section 504 of the Rehabilitation Act. A library in a farming town in Iowa, population under a thousand, thought the federal government (actually it was the State librarian) was requiring it to install a ramp allowing for wheelchair access of the library. The ramp would have cost about $7,000, close to the library's operating budget. And the town had no residents who used a wheelchair, making the proposed ramp a monument to useless regulation.

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3. Implementation and the Courts

ADA contains many ambiguities that should be resolved in the statutory language. Because ADA is silent on many points, definitive elaboration would be left to the courts. For example, are transvestites protected? In effect, the real meaning of ADA would not be known for years until a number of cases move through the courts applying "undue hardship" and other vague concepts to specific fact patterns.

How can implementation be handled most smoothly? A law that took effect on enactment or shortly thereafter would expose many entities to litigation risks of which they are not aware.

Also, the uniform requirement for promulgating regulations in 180 days does not consider the comparative difficulty of regulating new areas as compared to altering existing regulatory schemes. For example, the Department of Transportation is asked to undertake a new area in the regulation of private transit.

What flexibility can offered to encourage non-confrontational dispute resolution and prevention as opposed to litigation and administrative processes?

4. Persons Covered and Implications

What is to be done where ADA overlaps the current structure of civil rights law? The Rehabilitation Act of 1973 and the Fair Housing Act of 1988 cover some of the same populations as ADA, have different compliance standards and different remedies. Absent specific instruction from the statute, resolution will be turned over to the courts and will entail significant litigation costs.

The potential for covering drug and alcohol abusers within the protection offered those with disabilities deserves long and hard consideration. On its face, such a move would appear to end the "drug free workplace" concept.

With respect to accessibility, does an emphasis on removing barriers exclude assistance to those for whom affirmative action is required, e.g., the sight and hearing impaired?