

Statement of The Honorable Robert J. Dole
on The Americans With Disabilities Act
Before the Committee on Labor and Human Resources
May 9, 1989

Good morning. I would like to thank my colleagues for this opportunity to present my thoughts to the Committee, to the disability community and to others committed to building the best America possible for persons with disabilities.

I come to you this morning as a man with three perspectives which I believe are significant as we begin to examine how to further remove barriers to full participation in society for persons with disabilities. I come to you as a colleague in the United States Senate; I come to you as an advocate for persons with disabilities; and I come to you as a person with a disability myself.

Let me talk for a minute about my role as your colleague, as a fellow legislator in this body. I believe that my record on legislation for persons with disabilities speaks for itself. I have introduced, and seen enacted legislation to make airplanes accessible for persons with disabilities. Persons with disabilities no longer must face long delays and unknown happenings wondering whether or not they will be allowed to board the plane or forced to leave wheelchair batteries behind. They can now travel in the same manner other Americans do.

I have introduced and seen enacted legislation to require voting places to be accessible for persons with disabilities. As a result of the enactment of this legislation, persons with disabilities can no longer be turned away from poles and told that they cannot exercise their right to vote. They now vote in the same manner that other Americans do. The turnout at the polls this past November of a record number of persons with disabilities exercising their right to vote is testimony to the ~~power of civil rights legislation.~~ *effect of that legislation.*

I have introduced and seen enacted ^a legislation to remove disincentives to employment from the social security program. Persons with disabilities no longer must choose between a job and health benefits. Now persons with disabilities can have both, just like other Americans.

I have supported numerous other pieces of legislation along with my colleagues to promote the independence, integration and full participation in society of persons with disabilities.

The second perspective I bring here today is the perspective of a disability advocate. In 1983 I decided it was time to turn my advocacy to the private sector and establish a foundation dedicated to the economic independence of persons with disabilities. The Dole Foundation provides opportunities for persons with disabilities in competitive employment. Funds

A second area relates to the remedies available under ADA. These provisions are complex by any standard. They are also controversial and a potential source of partisan conflict. We must not hide from this problem. Let me assure you that my goal is to see that the provisions enacted result in the desired outcome: protection against discrimination. Achieving this goal however, will require consideration of the effect ADA on other anti-discrimination statutes as well as other applicable laws.

*change
wording*

?

Defining the limitations on the duty to accomodate is a difficult task but one that should be attempted by Congress. Brcause I fully support the goal of a barrier free society, I believe that we have a great education task before us. Building a partnership between the disability community, the labor community, the business community and state and local governments is essential and must be accomplished if the spirit of this legislation is to be realized.

Proponents of ADA must face these challenges head on and not obscure them in detailed legislative language. We can no longer afford to indulge in self-righteous rhetoric about cost being a small price to pay. It is time to educate ourselves about the actual costs and commit ourselves to finding ways to meet, and if possible, reduce these costs.

Open dialogue and debate among all parties involved will result in solutions to shared problems which can be embraced by all. It is in this manner, and as a result of this type of process that discrimination against Americans with disabilities will become a thing of the past.

distributed through the Dole Foundation have touched the lives of over 400,000 Americans with disabilities in the last 5 years. Opportunities have been created where once there were none. Doors have been opened where once they were shut.

Finally, I bring here today the perspective of a person with a disability. As you know I was disabled from a bullet in World War II, a bullet which temporarily paralyzed both of my legs and both of my arms. It was during the period of my rehabilitation when I learned that courage is mental as well as physical, that it means resistance to fear rather than the absence of fear. I know that many of my fellow Americans with disabilities have fought their own battles, faced their own challenges and come to their own personal understandings of courage.

I mention all of these experiences because I want to frame my comments about the Americans With Disabilities Act in that context. I know that many of you here have questioned why I have decided not to cosponsor a bill at this time and I am here to tell you why. I am here to tell you that my commitment to enacting legislation that expands and secures federal anti-discrimination protection for persons with disabilities could not be stronger. I am also here to tell you that my commitment to enacting legislation that works is equally as strong.

The bill(s) we have before us today is a revised version of last year's Americans With Disabilities Act. The introduction of this bill and these hearings mark the beginning of the examination of a very significant and complex issue: civil rights protections for persons with disabilities. I believe that our complex and extensive legislative process was designed to permit the full examination of issues as complex and significant as this one is, and I am pleased that this process is finally beginning. I intend to use this process to review the issues raised so that we are assured that the legislation we enact is legislation which can be implemented, legislation which will work to remove obstacles and promote opportunities.

Let me talk now about some of the problem areas with the bill. First, there is the issue of cost. Now I know people groan when this issue is raised. And I have even heard it said that you can't put a price tag on civil rights. Well, let me say that to stick our heads in the sand and pretend that the cost of implementing this legislation is not an area which needs considerable examination is only asking for trouble. How can we possibly expect a small businessman to be prepared to endorse this legislation, and successfully comply with this legislation, if we can't provide information about what it will cost him?

Raising the question of cost does not mean I support discrimination against persons with disabilities. Not to raise this question, to examine it, to ponder over it, is a disservice to the persons with disabilities and an invitation to disaster in the future.

put in
hearing
from
book
Let there
be no question
about my
solidarity
in the dis.
comm.

Don't this → important, how can we expect support without extensive education & technical assistance

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STATEMENT OF THE HONORABLE ROBERT J. DOLE
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Good morning. I ~~would like~~^{want} to thank my colleagues for this opportunity to present my thoughts to the Committee, to the disability community, and to others committed to building the best America possible for persons with disabilities.

~~I come to you this morning as a man with three perspectives which I believe are significant as we begin to examine how to further remove barriers to full participation in society for by persons with disabilities. I come to you as a colleague in the United States Senate; I come to you as an advocate for persons with disabilities; and I come to you as a person with a disability myself.~~

do you need this first sentence? It's more to the point without it.

~~Let me talk for a minute about my role as your colleague. As a fellow legislator in this body I believe that my record on legislation for persons with disabilities speaks for itself. I have introduced and seen enacted legislation to make airplanes accessible for persons with disabilities. Persons with disabilities no longer must face discrimination in air travel evidenced by long delays wondering whether or not they will be allowed to board the plane or forced to leave wheelchair batteries behind. They can now travel in the same manner other Americans do.~~

I'd shorten

Durenberger introduced

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it's not well enforced

is this true? check this

~~I have introduced and seen enacted legislation to remove disincentives to employment from the Social Security program. Persons with disabilities no longer must choose between a job and health benefits. Now persons with disabilities can have both, just like other Americans.~~

isn't this just true of SSI?

will change

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The second perspective I bring here today is the perspective of a disability advocate. In 1983 I decided it was time to turn my advocacy to the private sector and establish a foundation dedicated to the economic independence of persons with disabilities. The Dole Foundation provides opportunities for persons with disabilities in competitive employment. Funds through the Dole Foundation have touched the lives of ~~over 100,000~~^{over thousands of} Americans with disabilities in the last six years. Opportunities have been created where once there were none. Doors have been open where once they were shut.

number quoted at reception was much lower - where did this # come from?

Finally, I bring here today the perspective of a person with a disability. As you know, I was disabled from a bullet in World War II, a bullet which temporarily paralyzed both of my legs and both of my arms. It is easy to forget that politicians are flesh and blood people, that long before the Senate votes and presidential campaigns there are human beings that

change a man. ^{This document is from the collections at the Dole Archives, University of Kansas} ^{http://www.dolearchives.ku.edu} Let there be no question about my solidarity with the disability community. ^{http://www.dolearchives.ku.edu} I was during the period of my rehabilitation when I learned that courage is mental as well as physical, that it means resistance to fear rather than the absence of fear. I know that many of my fellow Americans with disabilities have fought their own battles; faced their own challenges; and have come to their own personal understanding of courage.

Should you say something about experiences overcoming or coming up against barriers?
Can

I mention all of these experiences because it is in this context I want to frame my comments about the Americans With Disabilities Act. The introduction of this bill and these hearings mark the beginning of the examination of a very significant and complex issue: civil rights protections for persons with disabilities. I believe that our complex and extensive legislative process was designed to permit the full examination of issues as complex and significant as this one is, and I am pleased that this process is finally beginning. I intend to use this process to review the issues raised so that we are assured that the legislation we enact is legislation which can be implemented, legislation that will work to remove obstacles and promote opportunities.

you use complex & significant too much

Let me talk now about some of the problem areas with the bill. First, there is the issue of cost. ~~Now I know people groan when this issue is raised and I have even heard it said that you can't put a price tag on civil rights.~~ Well, let me say that to stick our heads in the sand and pretend that the cost of implementing this legislation is not an area which needs considerable examination is only asking for trouble. How can we possibly expect a small businessman to ~~be prepared to endorse this legislation, and successfully comply with this legislation;~~ if we can't provide information about what it will cost him? Equally important, how can we expect support without extensive education and technological assistance being given to the small business community ~~← this sentence isn't clear to me. do you mean to say something like "the same"~~

I'm not sure I'd say this because he should probably agree

Raising the question of cost does not mean I support discrimination against people with disabilities. Not to raise this question, to examine it, to ponder ~~over~~ it, is a disservice to persons with disabilities and an (invitation to disaster) in the future.

this doesn't sound like Dole

A second area relates to the remedies available under ADA. These provisions are complex by any standard and a (source of controversy) to those who are not yet apprised of its implication. We must not hide from this problem. Let me assure you that my goal is to see that the provisions enacted result in the desired outcome: protection against discrimination. Achieving this goal however, will require consideration of the effect ADA has on other anti-discrimination statutes as well as other applicable laws. Coordination of enforcement and investigation mechanisms will need to be consistent and channeled appropriately for effective implementation of this landmark legislation. Perhaps a lead Enforcement agency could be designated to ensure that anti discrimination ~~anti-discrimination~~ laws are exerted.

I don't understand this - needs reworking

Defining the limitations on the duty to accommodate is a difficult task but one that should be attempted by Congress. Because I fully support the goal of a barrier free society, I believe that we have a great educational task before us. Building a partnership between the disability community, the labor community, the business community and the state and local governments is essential and must be accomplished if the spirit of this legislation is to be realized.

don't use task twice

I mention all of these experiences because it is in this context I want to frame my comments about the Americans With Disabilities Act. The introduction of this bill and these hearings mark the beginning of the examination of a very significant and complex issue: civil rights protections for persons with disabilities. I believe that our complex and extensive legislative process was designed to permit the full examination of issues as complex and significant as this one is, and I am pleased that this process is finally beginning. I intend to use this process to review the issues raised so that we are assured that the legislation we enact is legislation which can be implemented, legislation that will work to remove obstacles and promote opportunities.

Although we have made much progress in expanding opportunities in expanding opportunities for people with disabilities over the past two decades, physical and mental barriers to full participation in our society remain. There are many segments of society where it is not unlawful to deny a highly qualified person a job merely because he or she has a physical or mental impairment. And in some parts of the country a person who relies on a wheelchair cannot depend on public transportation to get to work. The price of such exclusion is high. Every year we spend billions of taxpayer dollars to support those Americans with disabilities who unwillingly and unnecessarily trapped in dependency. The human cost is higher still. Too many citizens with disabilities face a tragic loss of dignity and independence because people fail to see beyond their disabilities to the underlying human potential.

Let me talk now about some of the areas of concern that I hope the Committee will focus on. First, there is the issue of cost. Well, let me say that to stick our heads in the sand and pretend that the cost of implementing this legislation is not an area which needs considerable examination is only asking for trouble. How can we possibly expect a small businessman to be prepared to endorse this legislation; and successfully comply with this legislation; if we can't provide information about what it will cost him?

Raising the question of cost does not mean I support discrimination against people with disabilities. Cost is not a reason for failing to go forth with legislation -- but it is a reason to subject it to study and refinement.

A second area relates to the remedies available under ADA. The impact of these provisions is complex by any standard and a source of controversy to those who are not yet apprised of its implication. We must not hide from this problem. Let me assure you that my goal is to see that the provisions enacted result in the desired outcome: protection against discrimination. Achieving this goal however, will require consideration of the effect ADA has on other anti-discrimination statutes as well as

other applicable laws. Coordination of enforcement and investigation mechanisms will need to be consistent and channeled appropriately for effective implementation of this landmark legislation. Perhaps a lead Enforcement agency could be designated to ensure that anti-discrimination laws are enforced.

Defining the limitations on the duty to accommodate is a difficult task but one that should be attempted by Congress. Because I fully support the goal of a barrier free society, I believe that we have a great educational mission before us. Building a partnership between the disability community, the labor community, the business community and the state and local governments is essential and must be accomplished if the spirit of this legislation is to be realized.

Open dialogue and debate among all parties involved will result in solutions to shared problems which can be embraced by all. It is in this manner, and as a result of this type of process that discrimination against Americans with disabilities will become a thing of the past.

The ADA's expansion of mandatory coverage and remedies are cause for further study and a well balanced approach is needed in understanding the ramifications such needed protections will have on our economy, small business and rural areas.

There is language contained in the bill which I feel is too vague and could result in implications for excessive litigation (i.e "about to be discriminated against") -- but I am certain that language can be easily negotiated -- What I am not certain about are the concerns that will be raised through the hearing process. The Administration too, will have recommendations after sufficient studies and cost analysis have been completed that will need to be balanced and incorporated into comprehensive legislation.

I will be deeply interested in the testimony that organizations and individuals will present to Congress on legislation to establish comprehensive civil rights protections for all Americans with disabilities. It will be an honor and I look forward to working with all members of this Committee and other Senate and House colleagues in developing a comprehensive civil rights law that will be enacted.

this doesn't sound like Dole
Open dialogue and debate among all parties involved will result in solutions to shared problems which can be embraced by all. It is in this manner, and as a result of this type of process that discrimination against Americans with disabilities will become a thing of the past.

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can you say "result in"
There is language contained in the bill which I feel is too vague and could ~~have serious implications~~ for excessive litigation (i.e. "about to be discriminated against") -- but I am certain that language can be easily negotiated -- What I am not certain about are the concerns that will be raised through the course of hearings ~~and feedback after the bill has been disseminated.~~ The Administration, too, will have recommendations after sufficient studies and cost analyses have been completed that will need to be balanced and incorporated into comprehensive legislation.

I will be deeply interested in the testimony that organizations and individuals will present to Congress on legislation to establish comprehensive civil rights protections for all Americans with disabilities. ~~It will be an honor and I, I~~ look forward to working with all members of this Committee and other Senate and House colleagues in developing a comprehensive civil rights law that will be enacted. *← need one ringing line of rhetoric to conclude with.*

Why is there a need for comprehensive legislation

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Good Morning: I greatly appreciate the opportunity of providing me time on this distinguished panel to comment on (an approach to a comprehensive civil rights bill) the Americans with Disabilities Act. I am honored to precede two long time advocates who have worked hard to eliminate barriers which prevent people with disabilities from full participation in the mainstream of American life. Dr. I King Jordan and Justin Dart have been instrumental in educating the world on judging individuals on the basis of their abilities and not their disabilities.

The hearing today is a beginning step toward securing comprehensive civil rights protections to approximately 43 million Americans with disabilities. Although we have made much progress in expanding opportunities for people with disabilities over the past two decades, physical and mental barriers to full participation in our society remain. The price of such exclusion is high. Every year we spend billions of taxpayer dollars to support those Americans with disabilities who are unwillingly and unnecessarily trapped in dependency. The human cost is higher still. Too many citizens with disabilities face a tragic loss of dignity and independence because people fail to see beyond their disabilities to the underlying human potential.

The Americans with Disabilities Act is intended to ensure that people with disabilities have an equal opportunity to contribute to and succeed in our society. I fully support this goal, although I anticipate that some of the specific provisions of the bill will have to be refined in the course of the legislative process.

The primary Federal statute prohibiting discrimination on the basis of a disability, Section 504, of the Rehabilitation Act of 1973, has had a tremendous impact in reducing discrimination against persons with disabilities. Our Nation went further with it's commitment to equality of opportunity for its citizens, with the enactment of the Civil Rights Restoration Act and the Fair Housing Amendments last Congress.

Let me note at the outset that I remain dedicated to the enactment of comprehensive civil rights with vigorous enforcement laws assured for people with disabilities. However, I have concerns that address the costs and ramifications this complex legislation will have on small businesses and America's rural areas. In my view, there are at least two key factors that I believe Congress will need to bear in mind (want explored).

II Content

The bill before us today is a new version of

a) Last year's bill which I ~~was~~ cosponsored
This year we are looking at new revisions

b) Go to higher level: Philosophical

ADA opportunity to advance our society...

into the 21st Century

Very complex legislative process set up to permit
all ~~constituencies~~

c)

opposing views

+ competing concerns and to recognize this is

not to support discrimination against persons of disabilities

but, rather, to assure that whatever social policy
we enact truly is operational

d) problems

1) cost — economic assessment — no one knows the cost
does that recog of cost mean we don't care or
that persons of dis are second class citizens. NO
It is recog of a honest problem denial of
which will create backlash

Chamber of
Commerce

2) Sm business — want a policy which will enable
Sm businesses to hire people with disabilities

3) remedy

First, we will expand current federal civil rights statutes afforded women and minorities to the private sector to rightfully include people with disabilities to assure equality of opportunity. While doing so we expand the costs and obligate all private and public entities to coverage.

The ADA's expansion of mandatory coverage and remedies are cause for further study and a well balanced approach to understanding the ramifications such needed protections will have on our economy, small businesses and rural areas.

There is language contained in the bill which I feel is too vague and could have serious implications for excessive litigation (i.e. "about to be discriminated against") -- but I am certain that could be easily negotiated. -- What I am not certain about are the concerns that will be raised through the course of hearings and feedback after the bill has been disseminated. The Administration too, will have recommendations after sufficient studies and cost analysis have been completed that will need to be balanced and incorporated into comprehensive legislation.

I will be deeply interested in the testimony that organizations and individuals will present to Congress throughout the year on the bills introduced which establish comprehensive civil rights protections for all Americans with disabilities. It will be an honor and I look forward to working with all members of this Committee and other Senate and House colleagues in developing a comprehensive civil rights law that will be enacted.

I. Introduction

I come to you.

Colleague

advocate

person of disability

My record is clear ...

- Air-carrier Access Act
- Soc Sec Income - Equal Employ Opp for Am Act
- Voter Accessibility
- Supported

Advocacy

- Dole Foundation

Personal level

- It is easy to forget quote
- I know that many have questioned why I'm not on the Bill & I'm here to tell you why
- Because of 3 perspectives my understanding + commitment is to assure not simply the enactment of legislation but the enactment of legislation that "works"....
I can be overwhelmed

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GOOD MORNING. I WOULD LIKE TO THANK MY COLLEAGUES FOR THIS OPPORTUNITY TO PRESENT MY THOUGHTS TO THE COMMITTEE, TO THE DISABILITY COMMUNITY, AND TO OTHERS COMMITTED TO BUILDING THE BEST AMERICA POSSIBLE FOR PERSONS WITH DISABILITIES.

I COME TO YOU THIS MORNING AS A MAN WITH THREE PERSPECTIVES WHICH I BELIEVE ARE SIGNIFICANT AS WE BEGIN TO EXAMINE HOW TO FURTHER REMOVE BARRIERS TO FULL PARTICIPATION IN SOCIETY FOR PERSONS WITH DISABILITIES. I COME TO YOU AS A COLLEAGUE IN THE UNITED STATES SENATE; I COME TO YOU AS AN ADVOCATE FOR PERSONS WITH DISABILITIES; AND I COME TO YOU AS A PERSON WITH A DISABILITY MYSELF.

LET ME TALK FOR A MINUTE ABOUT MY ROLE AS YOUR COLLEAGUE. AS A FELLOW LEGISLATOR IN THIS BODY I BELIEVE THAT MY RECORD ON LEGISLATION FOR PERSONS WITH DISABILITIES SPEAKS FOR ITSELF. I HAVE INTRODUCED AND SEEN ENACTED LEGISLATION TO MAKE AIRPLANES ACCESSIBLE FOR PERSONS WITH DISABILITIES. PERSONS WITH DISABILITIES NO LONGER MUST FACE DISCRIMINATION IN AIR TRAVEL

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EVIDENCED BY LONG DELAYS WONDERING WHETHER OR NOT THEY WILL BE ALLOWED TO BOARD THE PLANE OR FORCED TO LEAVE WHEELCHAIR BATTERIES BEHIND. THEY CAN NOW TRAVEL IN THE SAME MANNER OTHER AMERICANS DO.

I HAVE INTRODUCED AND SEEN ENACTED LEGISLATION TO REQUIRE VOTING PLACES TO BE ACCESSIBLE FOR PERSONS WITH DISABILITIES. AS A RESULT OF THE ENACTMENT OF THIS LEGISLATION, PERSONS WITH DISABILITIES CAN NO LONGER BE TURNED AWAY FROM POLLS AND TOLD THAT THEY CANNOT EXERCISE THEIR RIGHT TO VOTE. THEY NOW VOTE IN THE SAME MANNER THAT OTHER AMERICANS DO. THE TURNOUT AT THE POLLS THIS PAST NOVEMBER OF A RECORD NUMBER OF PERSONS WITH DISABILITIES EXERCISING THEIR RIGHT TO VOTE IS TESTIMONY TO THE EFFECT OF THAT LEGISLATION.

I HAVE INTRODUCED AND SEEN ENACTED LEGISLATION TO REMOVE DISINCENTIVES TO EMPLOYMENT FROM THE SOCIAL SECURITY PROGRAM. PERSONS WITH DISABILITIES NO LONGER MUST CHOOSE BETWEEN A JOB AND HEALTH BENEFITS. NOW PERSONS WITH DISABILITIES CAN HAVE BOTH, JUST LIKE OTHER AMERICANS.

I HAVE SUPPORTED NUMEROUS OTHER PIECES OF LEGISLATION ALONG WITH MY COLLEAGUES TO PROMOTE THE INDEPENDENCE, INTEGRATION AND FULL PARTICIPATION IN SOCIETY OF PERSONS WITH DISABILITIES.

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THE SECOND PERSPECTIVE I BRING HERE TODAY IS THE PERSPECTIVE OF A DISABILITY ADVOCATE. IN 1983 I DECIDED IT WAS TIME TO TURN MY ADVOCACY TO THE PRIVATE SECTOR AND ESTABLISH A FOUNDATION DEDICATED TO THE ECONOMIC INDEPENDENCE OF PERSONS WITH DISABILITIES. THE DOLE FOUNDATION PROVIDES OPPORTUNITIES FOR PERSONS WITH DISABILITIES IN COMPETITIVE EMPLOYMENT. FUNDS THROUGH THE DOLE FOUNDATION HAVE TOUCHED THE LIVES OF OVER 400,000 AMERICANS WITH DISABILITIES IN THE LAST SIX YEARS. OPPORTUNITIES HAVE BEEN CREATED WHERE ONCE THERE WERE NONE. DOORS HAVE BEEN OPEN WHERE ONCE THEY WERE SHUT.

FINALLY, I BRING HERE TODAY THE PERSPECTIVE OF A PERSON WITH A DISABILITY. AS YOU KNOW I WAS DISABLED FROM A BULLET IN WORLD WAR II, A BULLET WHICH TEMPORARILY PARALYZED BOTH OF MY LEGS AND BOTH OF MY ARMS. IT IS EASY TO FORGET THAT POLITICIANS ARE FLESH AND BLOOD PEOPLE, THAT LONG BEFORE THE SENATE VOTES AND PRESIDENTIAL CAMPAIGNS THERE CAN BE HARDER BATTLES THAT FOREVER CHANGE A MAN. LET THERE BE NO QUESTION ABOUT MY SOLIDARITY WITH THE DISABILITY COMMUNITY. IT WAS DURING THE PERIOD OF MY REHABILITATION WHEN I LEARNED THAT COURAGE IS MENTAL AS WELL AS PHYSICAL, THAT IT MEANS RESISTANCE TO FEAR RATHER THAN THE ABSENCE OF FEAR. I KNOW THAT MANY OF MY FELLOW AMERICANS WITH DISABILITIES HAVE FOUGHT THEIR OWN BATTLES; FACED THEIR OWN CHALLENGES; AND HAVE COME TO THEIR OWN PERSONAL UNDERSTANDING OF COURAGE.

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I MENTION ALL OF THESE EXPERIENCES BECAUSE IT IS IN THIS CONTEXT I WANT TO FRAME MY COMMENTS ABOUT THE AMERICANS WITH DISABILITIES ACT. THE INTRODUCTION OF THIS BILL AND THESE HEARINGS MARK THE BEGINNING OF THE EXAMINATION OF A VERY SIGNIFICANT AND COMPLEX ISSUE: CIVIL RIGHTS PROTECTIONS FOR PERSONS WITH DISABILITIES. I BELIEVE THAT OUR COMPLEX AND EXTENSIVE LEGISLATIVE PROCESS WAS DESIGNED TO PERMIT THE FULL EXAMINATION OF ISSUES AS COMPLEX AND SIGNIFICANT AS THIS ONE IS, AND I AM PLEASED THAT THIS PROCESS IS FINALLY BEGINNING. I INTEND TO USE THIS PROCESS TO REVIEW THE ISSUES RAISED SO THAT WE ARE ASSURED THAT THE LEGISLATION WE ENACT IS LEGISLATION WHICH CAN BE IMPLEMENTED, LEGISLATION THAT WILL WORK TO REMOVE OBSTACLES AND PROMOTE OPPORTUNITIES.

LET ME TALK NOW ABOUT SOME OF THE PROBLEM AREAS WITH THE BILL. FIRST, THERE IS THE ISSUE OF COST. NOW I KNOW PEOPLE GROAN WHEN THIS ISSUE IS RAISED AND I HAVE EVEN HEARD IT SAID THAT YOU CAN'T PUT A PRICE TAG ON CIVIL RIGHTS. WELL, LET ME SAY THAT TO STICK OUR HEADS IN THE SAND AND PRETEND THAT THE COST OF IMPLEMENTING THIS LEGISLATION IS NOT AN AREA WHICH NEEDS CONSIDERABLE EXAMINATION IS ONLY ASKING FOR TROUBLE. HOW CAN WE POSSIBLY EXPECT A SMALL BUSINESSMAN TO BE PREPARED TO ENDORSE THIS LEGISLATION; AND SUCCESSFULLY COMPLY WITH THIS LEGISLATION; IF WE CAN'T PROVIDE INFORMATION ABOUT WHAT IT WILL COST HIM? EQUALLY IMPORTANT, HOW CAN WE EXPECT SUPPORT WITHOUT EXTENSIVE EDUCATION AND TECHNOLOGICAL ASSISTANCE BEING GIVEN TO THE SMALL BUSINESS COMMUNITY.

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RAISING THE QUESTION OF COST DOES NOT MEAN I SUPPORT DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES. NOT TO RAISE THIS QUESTION, TO EXAMINE IT, TO PONDER OVER IT, IS A DISSERVICE TO PERSONS WITH DISABILITIES AND AN INVITATION TO DISASTER IN THE FUTURE.

A SECOND AREA RELATES TO THE REMEDIES AVAILABLE UNDER ADA. THESE PROVISIONS ARE COMPLEX BY ANY STANDARD AND A SOURCE OF CONTROVERSY TO THOSE WHO ARE NOT YET APPRISED OF ITS IMPLICATION. WE MUST NOT HIDE FROM THIS PROBLEM. LET ME ASSURE YOU THAT MY GOAL IS TO SEE THAT THE PROVISIONS ENACTED RESULT IN THE DESIRED OUTCOME: PROTECTION AGAINST DISCRIMINATION. ACHIEVING THIS GOAL HOWEVER, WILL REQUIRE CONSIDERATION OF THE EFFECT ADA HAS ON OTHER ANTI-DISCRIMINATION STATUTES AS WELL AS OTHER APPLICABLE LAWS. COORDINATION OF ENFORCEMENT AND INVESTIGATION MECHANISMS WILL NEED TO BE CONSISTENT AND CHanneled APPROPRIATELY FOR EFFECTIVE IMPLEMENTATION OF THIS LANDMARK LEGISLATION. PERHAPS A LEAD ENFORCEMENT AGENCY COULD BE DESIGNATED TO ENSURE THAT ANTI DISCRIMINATION ANTI-DISCRIMINATION LAWS ARE EXERTED.

DEFINING THE LIMITATIONS ON THE DUTY TO ACCOMMODATE IS A DIFFICULT TASK BUT ONE THAT SHOULD BE ATTEMPTED BY CONGRESS. BECAUSE I FULLY SUPPORT THE GOAL OF A BARRIER FREE SOCIETY, I BELIEVE THAT WE HAVE A GREAT EDUCATIONAL TASK BEFORE US. BUILDING A PARTNERSHIP BETWEEN THE DISABILITY COMMUNITY, THE

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LABOR COMMUNITY, THE BUSINESS COMMUNITY AND THE STATE AND LOCAL GOVERNMENTS IS ESSENTIAL AND MUST BE ACCOMPLISHED IF THE SPIRIT OF THIS LEGISLATION IS TO BE REALIZED.

OPEN DIALOGUE AND DEBATE AMONG ALL PARTIES INVOLVED WILL RESULT IN SOLUTIONS TO SHARED PROBLEMS WHICH CAN BE EMBRACED BY ALL. IT IS IN THIS MANNER, AND AS A RESULT OF THIS TYPE OF PROCESS THAT DISCRIMINATION AGAINST AMERICANS WITH DISABILITIES WILL BECOME A THING OF THE PAST.

THE ADA'S EXPANSION OF MANDATORY COVERAGE AND REMEDIES ARE CAUSE FOR FURTHER STUDY AND A WELL BALANCED APPROACH IS NEEDED IN UNDERSTANDING THE RAMIFICATIONS OF SUCH NEEDED PROTECTIONS WILL HAVE ON OUR ECONOMY, SMALL BUSINESS AND RURAL AREAS.

THERE IS LANGUAGE CONTAINED IN THE BILL WHICH I FEEL IS TOO VAGUE AND COULD HAVE SERIOUS IMPLICATIONS FOR EXCESSIVE LITIGATION (I.E "ABOUT TO BE DISCRIMINATED AGAINST") -- BUT I AM CERTAIN THAT LANGUAGE CAN BE EASILY NEGOTIATED -- WHAT I AM NOT CERTAIN ABOUT ARE THE CONCERNS THAT WILL BE RAISED THROUGH THE COURSE OF HEARINGS AND FEEDBACK AFTER THE BILL HAS BEEN DISSEMINATED. THE ADMINISTRATION TOO, WILL HAVE RECOMMENDATIONS AFTER SUFFICIENT STUDIES AND COST ANALYSIS HAVE BEEN COMPLETED THAT WILL NEED TO BE BALANCED AND INCORPORATED INTO COMPREHENSIVE LEGISLATION.

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I WILL BE DEEPLY INTERESTED IN THE TESTIMONY THAT ORGANIZATIONS AND INDIVIDUALS WILL PRESENT TO CONGRESS ON LEGISLATION TO ESTABLISH COMPREHENSIVE CIVIL RIGHTS PROTECTIONS FOR ALL AMERICANS WITH DISABILITIES. IT WILL BE AN HONOR AND I LOOK FORWARD TO WORKING WITH ALL MEMBERS OF THIS COMMITTEE AND OTHER SENATE AND HOUSE COLLEAGUES IN DEVELOPING A COMPREHENSIVE CIVIL RIGHTS LAW THAT WILL BE ENACTED.



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

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

GOOD MORNING

MY NAME IS SANDRA SWIFT PARRINO.

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

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

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

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

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

LEGISLATION WE DESIGNED AFTER IN-DEPTH ANALYSIS AND STUDY. LEGISLATION
THAT IS OF CLEAR IMPORTANCE TO PERSONS WITH DISABILITIES AND TO FEDERAL
POLICY REGARDING DISABILITY PROGRAMS. LEGISLATION THAT OFFERS
CONSTRUCTIVE, REALISTIC AND FISCALLY SOUND SOLUTIONS TO ENHANCE
INDEPENDENCE AND PRODUCTIVITY OF PEOPLE WITH DISABILITIES.

LANDMARK LEGISLATION THAT IS A CIVIL RIGHTS, EQUAL OPPORTUNITY BILL FOR
36 MILLION DISABLED AMERICANS. LEGISLATION THAT WILL, IN ESSENCE, NO
LONGER ALLOW 36 MILLION AMERICANS TO BE LEFT OUT OF THE AMERICAN
DREAM SCENARIO.

THE AMERICANS WITH DISABILITIES ACT OF 1988 IS NOT ONLY IMPORTANT TO
36 MILLION CITIZENS WITH DISABILITIES....IT IS ALSO....AS I WILL
ILLUSTRATE A BIT LATER...IMPERISHABLY IMPORTANT TO OUR NATION.

FROM THE QUADRIPLAGIC AS THE RESULT OF A FOOTBALL INJURY....TO THE CHILD
IN A HOSPITAL CRIB....FROM RAPIDLY GROWING NUMBERS OF SENIOR CITIZENS...TO
75 THOUSANDS VIETNAM VETERANS...THE BASIC NUGGET OF TRUTH IS THAT.... DUE
TO DISCRIMINATORY PRACTICES....PERSONS WITH DISABILITIES CONTINUE TO
SUFFER FROM THE HIGHEST RATES OF UNEMPLOYMENT AND POVERTY THAN ANY OTHER
GROUP OF AMERICANS. LESS ACCESS TO DECENT SCHOOLING..HOUSING..WORK AND
TRANSPORTATION THAN ANYONE IN THIS COUNTRY....INCLUDING NON-CITIZENS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AMERICA CAN NOT AFFORD TO DISCARD HER DISABLED BROTHERS AND SISTERS. ADVANCING AGE, ECONOMIC CIRCUMSTANCES, ILLNESS, ACCIDENT WILL SOMEDAY, ACCORDING TO REPUTABLE STATISTICS, PUT ALL OF US, OR A LOVED ONE, IN THE CATEGORY OF A PERSON WITH A DISABILITY.

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

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

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Soon after the Labor Day recess, it is likely that there will be a flurry of legislative activity surrounding the "Americans with Disabilities Act of 1989." The National Council believes it is critically important to act swiftly to make certain that there is a strong government-wide technical assistance program and to establish a National Commission on the Implementation of ADA. These two activities will assure that the dreams envisioned in ADA become a reality for persons with disabilities and their families.

REMARKS OF THE HONORABLE STEVE BARTLETT
BEFORE
THE JOINT HEARING OF THE SUBCOMMITTEES ON
SELECT EDUCATION
AND
EMPLOYMENT OPPORTUNITIES
ON CIVIL RIGHTS FOR
INDIVIDUALS WITH DISABILITIES
JULY 18, 1989

Mr. Chairman, I believe there is universal support for extending the civil rights of individuals with disabilities. The current debate centers around **how** -- primarily how fast and in what terms. My statement includes three areas of comment:

a review of the record to date on the Americans with Disabilities Act of 1989 (ADA);

second, an outline of some concerns that have surfaced;

and third, observations on the implications of our failure to attend to these concerns.

The Record

The National Council on Disability

The record for extending the civil rights of persons with disabilities has been building rapidly in the last two years. Mrs. Parrino, Chair of the National Council on Disability, and Council Members deserve credit, recognition, and thanks for drafting the first Americans with Disabilities Act introduced by Mr. Coelho and Senator Weicker in April of last year, and for beginning the educational process that must accompany such legislation.

Task Force on the Rights and Empowerment People with Disabilities

man Owens, in May of last year, asked Justin Dart to Chair Task Force on the Rights and Empowerment of People with Disabilities. Mr. Dart held public forums in every State, Guam, Puerto Rico, and heard about the need for the legislation from over 8,000 people with disabilities. Mr. Dart's efforts have firmly established the social, moral, and economic imperative of extending the civil rights of those with disabilities. This imperative was dramatically reinforced and captured on video by the joint House-Senate Hearing on the ADA last September.

in Congress

This Congress progress continues. Early in May of this year, Republican Leader Michel, my colleague Bill Goodling, and I wrote to Mr. Coelho expressing our willingness to work with him toward developing a bipartisan ADA bill. An ADA bill was introduced by Mr. Coelho and Senator Harkin on May 9, 1989, and although the bill did not reflect specific input from a large number of House Republicans, Mr. Coelho did agree to work with us to take a bipartisan bill to the House Floor. The first meeting toward this end was scheduled for May 31, 1989, but was definitely postponed with Mr. Coelho's decision to resign. It is my understanding that Mr. Hoyer, Mr. Bonier, and Mr. Mineta have assumed Mr. Coelho's role in facilitating passage of an ADA on which there would be broad consensus. I look forward to working with our Democrat colleagues to make this happen. I know the business community has the same interest.

Evolution of Civil Rights for Those with Disabilities

Attention to comprehensive civil rights as a matter of National policy began with the enactment of the Civil Rights Act of 1964. This Act, although it did not protect those with disabilities, laid the ground work, gave us the principles and experiences, that led to the enactment of title V of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicap by Federal Agencies, recipients of Federal grant funds, and Federal contractors. And thus, just as the Civil Rights Act of 1964 influenced the shaping of title V of the Rehabilitation Act, so should our experience with title V influence our crafting of the ADA to extend civil rights in the private sector for those with disabilities.

Thirty-five States have legislation which prohibits discrimination against and promotes accessibility by those with disabilities, that to varying degrees impact on the private sector. It is important that new Federal policy that would set the acceptable standard for providing civil rights to those with disabilities, take into account such State variation, and provide reasonable and effective ways of achieving nationwide consistency given the scope of the ADA -- private sector employment, services, transportation, public accommodations, and telecommunications, as well as areas of the public sector not now covered by Federal statutes.

President Bush strongly supports the extension of civil rights of individuals with disabilities, and Attorney General Thornburgh, in a recent Senate hearing, reiterated the President's commitment to achieve bipartisan consensus on the ADA.

Concerns

I understand that we are here today to begin the House record on the need to extend the civil rights of individuals with disabilities through legislation, and to establish such legislation as a moral imperative of equal importance to the Civil Rights Act of 1964. May I respectfully suggest that such a parallel between the ADA and the 1964 Act has been drawn and broadly endorsed already. *At issues is not the intent, but the method.*

The issues that have emerged as problematic can be resolved in and with good faith, especially if we keep the central purpose of the legislation in focus -- **ensuring civil rights of the individual with disabilities.**

Such an end can be achieved if we accept that establishing such rights:

includes statutory language which is clear as to its application and its relationship to other laws; and

reflects the recognition that civil rights laws for those with disabilities, by their very nature, impose requirements and burdens that are unique, and therefore should be accompanied by incentives, accommodations, and penalties that are economically viable and effective for *those who must comply as well as for those who may benefit.*

The ADA as currently drafted does not meet these criteria. I hope the witnesses today will help us explore and establish some practical guidance for ensuring that the final version of the ADA meets such criteria.

Implications

The ADA, as introduced, includes novel legal concepts and ambiguous terms that will cause confusion and promote litigation.

It does not allow for different levels of penalties for intentional and unintentional discrimination.

In employment discrimination cases it allows access to jury trials which could result in substantial monetary awards.

The ADA fails to address the impact of its provisions on other State and Federal laws that prohibit discrimination on the basis of disability.

The ADA mandates a substantial degree of immediate compliance without time for education or preparation.

It fails to provide a flexible waiver system or alternative service system option to accommodate entities that are small in size and the sole source of certain types of service, especially in the area of transportation.

It has been widely viewed to be inconsistent with the drug-free workplace requirements that were enacted last year.

Will the ADA in its present form encourage employers to hire people with disabilities and provide them with reasonable accommodation, or will this version of the ADA cause employers to avoid hiring those with disabilities?

If the ADA is enacted, without amendment, will it take many years to clarify and thus undermine the expectations of those it is intended to benefit? The impact of the current version of the ADA on the individual with disabilities who --

wants a job,

seeks access to the full range of leisure time activities,

expects to be able to visit any doctor of his or her choice,

wants fully accessible public transportation, and

wants to be able to use the telephone any time and any where --

will not be established by the law, but by the courts in which the principal beneficiaries will be attorneys.

We have it within our power to ensure that the ADA will not cause employers to avoid hiring people with disabilities. We have it within our power to ensure that such individuals will not have to wait for courts to define the extent and conditions of their civil rights. Reasonable methods of correcting the problems with the ADA are available and warranted -- clarifications of terms and conditions, and inclusion of reasonable penalties, phase-ins and waivers.

Conclusion

Since joining Congress in 1983, I have had a sustained interest in promoting increased opportunities of and independence for persons with disabilities. My legislative record is a concrete reflection of that interest. I intend to work for the expansion of civil rights for individuals with disabilities." However, given the unique requirements that must accompany such rights, consideration must be given to their impact on society as a whole. I am fully committed to educating that society and holding it accountable for the civil rights due to individuals with disabilities, but I am equally committed to working for laws that do not turn society away from those with disabilities through the use of excessively punitive penalties, unclear standards and conditions, or requirements that offer no flexibility, incentives, or relief in certain circumstances."

Barclay

Thank you, Mr. Chairman.

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

JUNE 22, 1989

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THANK YOU.



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STATEMENT
OF
SANDRA SWIFT PARRINO
CHAIRPERSON
BEFORE
THE
COMMITTEE ON EDUCATION AND LABOR
U. S. HOUSE OF REPRESENTATIVES
CONCERNING
THE AMERICANS WITH DISABILITIES ACT
ON
JULY 18, 1989

STATEMENT OF SANDRA SWIFT PARRINO, CHAIRPERSON, NATIONAL COUNCIL ON
DISABILITY, WASHINGTON, D.C.

Good Morning, Mr. Chairman and distinguished members of the
Committee.

I am Sandra Swift Parrino, Chairperson of the National Council on
Disability. It is an honor to be invited to testify today before the
House Subcommittee on Select Education on this, your first day of hearings
on H.R. 2273, the "Americans With Disabilities Act of 1989" (ADA).

I am, in private life, a mother of two children with significant
disabilities. I am, in public life, the Chairperson of the National
Council on Disability, an independent Federal agency whose board is
comprised of 15 knowledgeable persons, many of them with disabilities,
parents and experts on disability service programs. All of us are
appointed by the President and confirmed by the Senate. We are an
independent Federal agency with a statutory mandate to analyze issues
related to public policy affecting Americans with disabilities and make
recommendations. The major thrust of our efforts is towards eliminating
barriers which prevent persons with disabilities from full participation
in the mainstream of American life.

The National Council on Disability has not been timid in its efforts
in both originating and spearheading the Americans With Disabilities
Act (ADA). We first recommended this legislation in the report entitled
Toward Independence that was submitted to the President and Congress in
1986.

In our 1988 report to the President and the Congress, On the Threshold of Independence, we submitted draft legislation of the Americans With Disabilities Act (ADA). As you know this was the legislation introduced in the 100th Congress. H.R. 2273, which you have before you today represents the second generation of the Americans With Disabilities Act (ADA).

The National Council is heartened by the progress on the Americans With Disabilities Act (ADA) in the 101st Congress. On the Senate side, the leadership of Senator Harkin, Chairman of the Subcommittee on the Handicapped, has been key in bringing the bill close to full committee consideration. The initiative taken by President Bush, Attorney General Thornburgh, White House staff and others in the Administration has been an essential component of the momentum that is building toward enactment. We are pleased that the House is beginning legislative consideration of the bill, and we look forward, Mr. Chairman and Subcommittee members, to your leadership as we move through the legislative process.

While this piece of legislation that you have before you today is not the exact same piece the National Council originally drafted, the intentions are the same. Flexibility, but also persistence is most essential in accomplishment of our goals. We believe the quotation that President Reagan had on his desk says it best, "There is no limit to how far you can go or how much you can accomplish, if you don't care who gets the credit."

The goal that we all share is the removal of attitudinal, architectural and communication barriers in employment, transportation, public accommodations and telecommunications which denies persons with disabilities an equal opportunity to contribute to and benefit from the richness of the American society.

Before proceeding to give you a sense of the Council's perspective in developing the legislation, I would like to share with you a recent experience of the Council's and a recommendation which has grown out of that experience.

As you know, Mr. Chairman, the National Council has been participating in the dialogue surrounding the legislative progress of the ADA. As many others have been doing, we too have been combing through the many detailed provisions of the current bill, analyzing specific phrases, constructing case law history and pondering the precise meaning and impact of the various statutory requirements. As we have engaged in this process, we began to wonder what it was going to be like for businesses, government entities, and other organizations which would be held accountable under the bill to try to figure out precisely what their responsibilities were in order to comply. If we, as the originators of the legislation and persons knowledgeable about disability policy, needed to expend such energy understanding the legislation, what sort of position would they be in?

Most employers today have no experience with accommodating a job for a person with a disability. Where are they to turn for information, for knowledge and for assistance in their efforts to ensure that they comply with this legislation? How are they to know they are doing what needs to be done?

We recommend that you consider adding a technical assistance provision to the legislation so that those responsible for complying with the legislation will be able to understand and receive guidance in how they are to fulfill their responsibility. History shows us that technical assistance can be a powerful and effective tool for educating and enabling compliance. The technical assistance available in the mid 1970's, upon enactment of our current civil rights statute for persons with disabilities, Section 504 of the Rehabilitation Act, was considered especially valuable as it often provided recipients with practical solutions to difficult problems such as developing physical accessibility in older buildings and accommodating services for persons with sensory impairments.

There are many ways to construct a technical assistance package to accompany this legislation and the Council is currently exploring a number of alternatives. There are numerous existing organizations and networks with expertise in the technical aspects of accommodation for disabilities

which should be utilized in such an effort. We would be happy to work with this Subcommittee and any other Representatives who might be interested in such a provision or additional legislation.

Mr. Chairman, the intention in drafting the original ADA was to offer constructive, realistic and fiscally sound policy to enhance independence and productivity of people with disabilities, and to ensure that Americans with disabilities would no longer be second class citizens.

The Americans With Disabilities Act of 1989 (ADA) is not only important to the over 43 million citizens with disabilities, it is also, as I will illustrate a bit later, of the highest importance to our nation. From the person who becomes quadriplegic as the result of a football injury to the infant with spina bifida in a hospital crib; from rapidly growing numbers of senior citizens to 75,000 Vietnam veterans the basic nugget of truth is that, due to discriminatory practices, persons with disabilities continue to suffer from the highest rates of unemployment and poverty compare to any other group of Americans. Americans with disabilities have less access to decent schooling, housing, employment, health care and transportation than any other persons in this country, including non-citizens.

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

These hearings will provide you with a vital source of information to assess the scope and meaning of the Americans With Disabilities Act of 1989 (ADA). On behalf of the millions of citizens with disabilities, I ask you to keep in mind that for decades people with disabilities have been waiting. For decades people with disabilities have seen laws enacted by their elected representatives that prohibit discrimination for other groups of individuals. For decades, Americans with disabilities, have had to live with the realization that there are no similarly effective laws to protect them.

Today, I am proud to say, there is an emerging group-consciousness on the part of Americans with disabilities, their families, friends and advocates. This consciousness represents a mounting political activism.

The over 43 million Americans our nation's largest and no longer silent minority.

Martin Luther King had a dream. We have a vision. Dr. King dreamed of an America where people are judged not by the color of their skin, but by the content of their character. ADA's vision is of an America where persons are judged by their abilities, not their disabilities.

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

In the 1984 report to Congress by the Rehabilitation Services Administration, it was indicated that for every \$1 spent to return a

disabled person to work, \$18 were returned to the tax base upon their placement. This would include not only taxes paid by the individual, but money saved from the removal of public expenditures.

The majority of persons with disabilities "not working" said they want to work. The Louis Harris poll which we sponsored in 1985, indicated that persons with disabilities in the workplace are rated "good" to "excellent" by an overwhelming majority of their employers. Disability does not mean incompetence. The perception that persons with disabilities are dependent by nature is the result of discriminatory attitudes, not the result of disability.

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

As Louis Harris discovered in the poll commissioned by the Council in 1985, people with disabilities want to become involved in their communities as taxpaying contributors.

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

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

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

Advancing age, economic circumstances, illness, and accident will someday, according to reputable statistics, put most of us, in the category of a person with a disability. We are all potential beneficiaries of the ADA.

The goals espoused in the Americans with Disabilities Act are economically practical as well as morally correct and humanely necessary. The ADA is legislation that does away troubling historical echoes, echoes that are no longer tolerable in a society committed to equal opportunity for all its citizens.

Esteemed members of Congress, in closing, I wish to relay a message from our National Council on Disability and the over 43 million Americans with disabilities. For decades, we have retained a faith in the reformability and adaptability of our Government. For decades we have been told to have patience, but patience is not an inexhaustible commodity. People with disabilities have waited long enough. America has waited long enough. The Americans with Disabilities Act (ADA) must be enacted now.

The vision of equality for 43 million of Americans with disabilities now rests with you.

Thank you for this opportunity to testify. The National Council on Disability looks forward to working with you on this most important piece of legislation.



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**An Independent
Federal Agency**

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

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

GOOD MORNING

MY NAME IS SANDRA SWIFT PARRINO.

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

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

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

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

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

LEGISLATION WE DESIGNED AFTER IN-DEPTH ANALYSIS AND STUDY. LEGISLATION
THAT IS OF CLEAR IMPORTANCE TO PERSONS WITH DISABILITIES AND TO FEDERAL
POLICY REGARDING DISABILITY PROGRAMS. LEGISLATION THAT OFFERS
CONSTRUCTIVE, REALISTIC AND FISCALLY SOUND SOLUTIONS TO ENHANCE
INDEPENDENCE AND PRODUCTIVITY OF PEOPLE WITH DISABILITIES.

LANDMARK LEGISLATION THAT IS A CIVIL RIGHTS, EQUAL OPPORTUNITY BILL FOR
36 MILLION DISABLED AMERICANS. LEGISLATION THAT WILL, IN ESSENCE, NO
LONGER ALLOW 36 MILLION AMERICANS TO BE LEFT OUT OF THE AMERICAN
DREAM SCENARIO.

THE AMERICANS WITH DISABILITIES ACT OF 1988 IS NOT ONLY IMPORTANT TO
36 MILLION CITIZENS WITH DISABILITIES....IT IS ALSO....AS I WILL
ILLUSTRATE A BIT LATER...IMPERISHABLY IMPORTANT TO OUR NATION.

FROM THE QUADRIPEGIC AS THE RESULT OF A FOOTBALL INJURY....TO THE CHILD
IN A HOSPITAL CRIB....FROM RAPIDLY GROWING NUMBERS OF SENIOR CITIZENS...TO
75 THOUSANDS VIETNAM VETERANS...THE BASIC NUGGET OF TRUTH IS THAT.... DUE
TO DISCRIMINATORY PRACTICES....PERSONS WITH DISABILITIES CONTINUE TO
SUFFER FROM THE HIGHEST RATES OF UNEMPLOYMENT AND POVERTY THAN ANY OTHER
GROUP OF AMERICANS. LESS ACCESS TO DECENT SCHOOLING..HOUSING..WORK AND
TRANSPORTATION THAN ANYONE IN THIS COUNTRY....INCLUDING NON-CITIZENS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AMERICA CAN NOT AFFORD TO DISCARD HER DISABLED BROTHERS AND SISTERS. ADVANCING AGE, ECONOMIC CIRCUMSTANCES, ILLNESS, ACCIDENT WILL SOMEDAY, ACCORDING TO REPUTABLE STATISTICS, PUT ALL OF US, OR A LOVED ONE, IN THE CATEGORY OF A PERSON WITH A DISABILITY.

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

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

Summary of the Americans with Disabilities Act

The Americans with Disabilities Act was introduced in the 100th Congress by Senators Weicker and Harkin and was cosponsored by 26 members, including you, and 7 other Republicans. On the House side the ADA was introduced by Rep. Coehlo with 124 cosponsors.

Senator Harkin has shared a draft bill with Senator Hatch which other Senate staff are to receive soon. Senator Hatch had concerns with the original version of ADA and has philosophical differences with the disability community on fundamental components of the bill that the disability community cannot accept.

The Americans with Disabilities Act of 1988 originated with a proposal from the National Council on Disability for legislation to establish a comprehensive nationwide prohibition against discrimination on the basis of a handicap.

Although federal legislation, (Section 504 of the Rehabilitation Act of 1973) already exists concerning discrimination against individuals with disabilities, the existing law is limited to programs or activities receiving federal financial assistance, executive agencies, and the U.S. Postal Service.

The ADA would provide broader coverage since it would apply to the private sector as well. The ADA uses basically the same conceptual framework as section 504 but is much more specific in its statutory requirements.

The Act prohibits discrimination on the basis of handicap in employment, public accommodations, transportation, communications; and State and local governments.

The Act covers employers engaged in commerce who have 15 or more employees; transportation companies; those engaged in broadcasting and communications; and State and local governments.

The Act specifically defines discrimination, including various types of intentional and unintentional exclusion; segregation; inferior or less effective services; benefits or activities; architectural, transportation, and communications barriers; failing to make reasonable accommodations; and discriminatory qualifications and performance standards.

The Act specifies those actions that do not constitute discrimination. They include unequal treatment wholly unrelated to a disability or that which is the result of legitimate application of qualifications and performance standards necessary and substantially related to the ability to perform or participate in the essential components of a job or activity.

The Architectural and Transportation Barriers Compliance Board will issue minimum accessibility guidelines. Other regulations will be issued by the Attorney General, the U.S. Equal Employment Opportunity Commission, the Secretary of Transportation, the Federal Communications Commission, and the Secretary of Commerce.

The Act builds upon section 504 of the Rehabilitation Act, which requires nondiscrimination on the basis of a handicap only in programs receiving federal financial assistance. Regulations under this section, which have been hard fought in their development, will remain in full force and effect.

Enforcement procedures include administration remedies, a private right of action in Federal Court, monetary damages, and attorney's fees and cut offs of Federal funds.

CONGRESSIONAL TASK FORCE ON THE RIGHTS AND
EMPOWERMENT OF AMERICANS WITH DISABILITIES

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Senator Dole Vocational/Developmental REHABILITATION REVIEW

A weekly analysis of issues for rehabilitation facility professionals

July 17, 1989 • Volume 6 No. 28

Senator Dole Addresses Annual Conference

Senator Robert Dole (R-KS), commenting that he maybe the only elected official left in Washington during the July 4 break, gave a memorable presentation to conference attendees covering such areas as the national debt, employment opportunities for persons with disabilities, the Americans with Disabilities Act (ADA), and work incentives legislation.

In praising the accomplishments of NARF's members during the 20th Anniversary celebration, Senator Dole said: "For two decades, you have pioneered creative programming and political advocacy for disabled Americans. In the process you have opened doors of opportunity for countless thousands of Americans—giving new hope to their lives and in the process enriching our nation with their talents and creativity."

Senator Dole emphasized the need for President Bush to continue to be active in both word and deed on programs that serve persons with disabilities. Assuring the attendees of his own commitment to these issues Senator Dole stated, "You can be sure this is one area where I will never let down."

Senator Dole outlined his views on the major priorities facing Congress regarding disability issues: access, opportunity, independence and integration. Commenting on the access issue he said: "The disabled want to work...they deserve a chance to work. It's part of what we all call being an American. If we can get them to work--it's not only the disabled, but this whole country which will benefit. Congress should focus on creating incentives for employment of the disabled, and

—equally important—eliminating the disincentives that currently exist." The Senator cited legislation which he will introduce shortly with Senator Riegle (D-MI), called the Social Security Work Incentives Act, which will allow persons receiving Social Security Disability Insurance (SSDI) to continue to work and receive their benefits and access to health care.

The Senator also touched on the problem of serving persons with disabilities through the Medicaid program. Commenting that people with severe disabilities deserve full access to quality services, he referenced Senator John Chafee's (R-RI) bill, S.384, the Medicaid Reform Act, to develop quality community services in support of states participating in the institutional aspects of the Medicaid program. "It is part of an effort a number of us in Congress are spearheading to provide a real choice - choice among various available services, and choice among a variety of living situations."

Commenting on the ADA bill, he said: "There is also one overriding problem which must always remain at the top of our agenda, until it is finally resolved — discrimination against the disabled. Nearly sixteen years ago the Congress took an important initial step in addressing this problem by enacting Title V of the Rehabilitation Act of 1973. That legislation prohibits recipients of Federal funds and contracts from discriminating against people with disabilities. Recent Supreme Court cases and the enactment of several important pieces of civil rights legislation such as the Civil Rights Restoration Act and the Fair Housing Amendments of 1988

have strengthened the legal base of our struggle against discrimination. Today, on Capitol Hill, the issue is manifest in the debate over the Americans with Disabilities Act".

Although in strong support of the concept of the bill, Senator Dole stopped just short of supporting the legislation as written. He and his staff are in the process of collaborating with other members in Congress and the Administration to clarify specific provisions of the legislation.

"I want to ensure that as we remove the barriers now facing persons with disabilities—as we must—we do not place an unfair and unreasonable burden on the private sector, which must accommodate to the mandates of this worthwhile legislation. I want the private sector to join in enthusiastically—because they see the benefits they will derive from being able to utilize the resource represented by the disabled; not to be dragged in kicking and screaming, because we have totally ignored their legitimate concerns, or failed to understand the real dollar costs that they will bear."

Calling for a balanced phase-in of the

(Continued on page 2)

This Week's Watch

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NARF Voc Committee Approves Plan for Futures Conference

At NARF's Annual Conference, the Vocational/Developmental Facilities Committee met and approved a motion to recommend to the Board a plan for an overall futures forum for facilities. The motion was later approved by the full Board.

The Committee had a spirited discussion regarding the future of facilities, how they will operate and what types of services they will provide as we head into the 21st century. It is expected that further plans for a futures conference will be outlined before and during the fall meeting, which will be held in San Francisco, CA.

The Committee also approved a number of other motions that originated from the Residential Task Force. The motions below were all adopted by the Board.

- o The adoption of the Medicaid reform positions contained in the Residential Task Force report;
- o A residential recruitment plan;
- o A Residential Planning Subcommittee made up of a chair, co-chair, and two or three residential members.

John Niederman, Chairman of the new Residential Committee, also presented a long list of issues that the Committee will begin to evaluate.

In addition, members attending the Vocational Committee meeting were presented with brief overviews from staff on Capitol Hill regarding the National Affordable Housing Act, Title XX, and the Job Training Partnership Act.

Seven Rehab Agencies & Individuals Win Honors

Seven individuals received national honors recently at NARF's Conference for exemplary contributions to community rehabilitation for persons with disabilities.

Marnette Hatchett, Chair of the Awards Committee, said of the presentations, "This is NARF's way of honoring those who have distinguished themselves, demonstrated leadership and made important changes in the field." The 1989 award winners were:

Mae Hightower-Vandamm, Executive Director of the Delaware Curative Workshop, Inc., Wilmington, Delaware, received the Milton Cohen Distinguished Career Award for over 30 years of outstanding service and leadership to the field for physical rehab. She has served on numerous state and national committees, including presidency of the American Occupational Therapy Association and has lectured throughout the world.

Sheltering Arms Day Rehabilitation program located in Richmond, Virginia was given the Outstanding Medical Rehabilitation Program for 1989 for providing dynamic rehabilitation for community reentry through the integration of patients' lives in the community and the restorative rehabilitation process.

The Outstanding Achievement in Vocational Rehabilitation Award was given to the Production Sewing Program of Vocational Guidance Services in Cleveland, Ohio. For 12 years the production sewing program has been mass producing the WINGS line of adaptive clothing, which has been sold through both J.C. Penny and Sears Roebuck catalogs as well as in hospital and nursing home gift shops.

Indianapolis Colts received NARF's Community Service Award for substantial annual contributions to Noble Centers of Indiana. Their personal involvement has made a significant change in how the community views persons with developmental disabilities.

Michigan Association of Rehabilitation Facilities located in Okemos, Michigan, received the Outstanding State Chapter Award for improvements in public policy by helping to establish a responsive and responsible community-based network. NARF has provided leadership in joint planning and major coalition initiatives throughout the State of Michigan.

William A. Spencer, President of the Texas Institute of Rehabilitation Research (TIRR) Foundation and Chair of the Department of Rehabilitation at Baylor College of Medicine since 1957, received the Individual Outstanding Achievement Award. He established the National Foundation for Infantile Paralysis and expanded that program to the present TIRR, now internationally-known as a model for comprehensive rehab.

Weicker Receives NARF President's Award

Former Connecticut Senator Lowell Weicker, Jr. received NARF's President's Award at the Annual Conference for his exemplary contributions to advance rehabilitation nationally for persons with disabilities. The honor was presented in the form of an engraved plaque recognizing his human service achievements and professional accomplishments.

Senator Weicker received the President's Award for authoring milestone legislation that improved the quality of life for all citizens and increased employment opportunities for persons with disabilities through Projects with Industries. He was the second Senator to chair the Senate Subcommittee on the Handicapped and has been the primary author of the Rehabilitation Amendments of 1983, the Education of the Handicapped Amendments of 1983 and the Fair Housing Act of 1988.

Senator Dole (Cont'd from pg. 1)

requirements of the legislation, Senator Dole also mentioned his interest in seeing that technical assistance be provided for the private sector in order to help them administer the changes that this bill would require.

Asking facilities to get involved in the drafting of the ADA bill, Senator Dole concluded by saying "It is going to be up to you. I don't have to tell you to stay involved, but I can assure you that your involvement can pay off. It can pay off not only as you directly deal with the issues...but it can pay off, too, in the political arena. I'm not talking about partisan politics. Disabled issues know no partisanship. But I am talking about letting your Senators and Congressman know what you think, what you want."

1. Dale X
2. Pugh
3. Hark
4. Mayrha
5. Burr X
6. Matzger
7. Rock
8. Chaffee X
9. Cranston
10. Pelan
11. Levin
12. Luger X
13. Sasser
14. Innaye
15. Metz
16. Simon
17. Dodd
18. Joss X
19. Egan
20. Pnest X
21. Lieb
22. Ford
23. Burdock X
24. McConnell
25. Heinz
26. Gher
27. Armstrong
28. Wilson

(7) R

STATEMENT OF THE HONORABLE ROBERT J. DOLE
ON THE AMERICANS WITH DISABILITIES ACT
BEFORE THE SENATE COMMITTEE ON LABOR & HUMAN RESOURCES
MAY 9, 1989

Good Morning: I greatly appreciate the opportunity of providing me time on this distinguished panel to comment on (an approach to a comprehensive civil rights bill) the Americans with Disabilities Act. I am honored to preceed two long time advocates who have worked hard to eliminate barriers which prevent people with disabilities from full participation in the mainstream of American life. Dr. I King Jordan and Justin Dart have been instrumental in educating the world on judging individuals on the basis of their abilities and not their disabilities.

The hearing today is a beginning step toward securing comprehensive civil rights protections to approximately 43 million Americans with disabilities. Although we have made much progress in expanding opportunities for people with disabilities over the past two decades, physical and mental barriers to full participation in our society remain. The price of such exclusion is high. Every year we spend billions of taxpayer dollars to support those Americans with disabilities who are unwillingly and unnecessarily trapped in dependency. The human cost is higher still. Too many citizens with disabilities face a tragic loss of dignity and independence because people fail to see beyond their disabilities to the underlying human potential.

The Americans with Disabilities Act is intended to ensure that people with disabilities have an equal opportunity to contribute to and succeed in our society. I fully support this goal, although I anticipate that some of the specific provisions of the bill will have to be refined in the course of the legislative process.

The primary Federal statute prohibiting discrimination on the basis of a disability, Section 504, of the Rehabilitation Act of 1973, has had a tremendous impact in reducing discrimination against persons with disabilities. Our Nation went further with it's commitment to equality of opportunity for its citizens, with the enactment of the Civil Rights Restoration Act and the Fair Housing Amendments last Congress.

Let me note at the outset that I remain dedicated to the enactment of comprehensive civil rights with vigorous enforcement laws assured for people with disabilities. However, I have concerns that address the costs and ramifications this complex legislation will have on small businesses and America's rural areas. In my view, there are at least two key factors that I believe Congress will need to bear in mind (want explored).

First, we will expand current federal civil rights statutes afforded women and minorities to the private sector to rightfully include people with disabilities to assure equality of opportunity. While doing so we expand the costs and obligate all private and public entities to coverage.

The ADA's expansion of mandatory coverage and remedies are cause for further study and a well balanced approach to understanding the ramifications such needed protections will have on our economy, small businesses and rural areas.

There is language contained in the bill which I feel is too vague and could have serious implications for excessive litigation (i.e. "about to be discriminated against") -- but I am certain that could be easily negotiated. -- What I am not certain about are the concerns that will be raised through the course of hearings and feedback after the bill has been disseminated. The Administration too, will have recommendations after sufficient studies and cost analysis have been completed that will need to be balanced and incorporated into comprehensive legislation.

I will be deeply interested in the testimony that organizations and individuals will present to Congress throughout the year on the bills introduced which establish comprehensive civil rights protections for all Americans with disabilities. It will be an honor and I look forward to working with all members of this Committee and other Senate and House colleagues in developing a comprehensive civil rights law that will be enacted.

SUPPORTED EMPLOYMENT FROM THE EMPLOYERS' POINT OF VIEW

by Sally Weiss

When I first considered hiring two young men with disabilities, my main concern was whether or not Kenny and Dan could perform the job duties that were typically part of the job. But I felt the idea of Supported Employment offered a fantastic opportunity for individuals in MY community who may not otherwise be given a chance for employment.

Politeness and friendliness are two qualities much needed to be a worker here at Winn-Dixie. Both Dan and Kenny are extremely friendly--sometimes too friendly which was something we had to work on and still do. Kenny truly enjoys talking to the customers when he bags their groceries, so much so that he forgets that when all their groceries are bagged they are supposed to leave the store. He just keeps talking!

Their work speed was another area of constant attention. For the first 4-5 months at work, both employees were consistently slow performing their job duties. But their job coaches were really great at motivating them and creating a competitive game to see who could bag the correct way in the fastest time. It must have worked; now Kenny is the best bagger in the store. I wish all of my workers were as motivated as he is.

Kenny and Dan knew some of their co-workers from church and family friends, but the rest of the crew took right to them, and they all get along great!

The community has really shown its support for both employees. I've had many customers come up to me and comment on how caring Winn-Dixie must be in order to give these guys a chance at a real job. Then some continue to say how Kenny and Dan are much more conscientious and happy about their jobs than other workers. I feel that many people continue to shop here because they know Kenny will offer to take their groceries out to the car, unload the groceries, and thank them for shopping here every time they come in the store.

The story above is typical of the experience employers have had when they have hired men and women with severe disabilities through Supported Employment programs run by UCP affiliates. In Supported Employment, a job coach provided by UCP accompanies the employee with a disability on the job until he or she is able to do the job independently. UCP staff also suggest ways to modify the worksite, whether through rearranging the work space or by providing assistive technology in the form of such things as head sets, adaptive switches, computer software and other devices that enable the worker to perform the essential functions of the job.

For this issue of the **NETWORKER**, we asked UCP affiliates in Austin (TX), Boston (MA), Mobile (AL) and Los Angeles (CA) to interview employers about their experiences in hiring persons with severe disabilities. What were their initial concerns or apprehensions? What accommodations did they make, and how much did these accommodations cost? What was the skill level of the men and women they hired through the Supported Employment program? How did co-workers react? And what are the benefits of hiring a person with a disability?

What we learned was that when it comes to reliability, productivity and positive

attitude, men and women with disabilities make excellent employees who are valued and respected by employers and co-workers alike.

Concerns or Apprehensions

Employers' primary concerns centered around issues of safety, productivity and training. *"Our concern was about safety issues--would Hertis be aware of the numerous fork lifts constantly operating around the plant during the day?"*

Employers wondered if workers would be able to "carry their own weight" and keep up with the fast paced demands of a busy worksite. *"Being one of Austin's largest law firms, we have a fast paced office. Our support staff, of whom Stephen is a member, has to work with a variety of personalities during the day. All of our attorneys depend on us to be accurate, quick, and reliable. Sometimes casework may require that support staff work extra hard, and it is important that everyone takes a turn."*

The presence of an on-site job coach alleviated many of the concerns about training an employee who had a severe disability:

"When Joseph came to work for our company, I lacked the understanding of the extent of training that would be required. Although there was a genuine desire to give him an opportunity to perform, there were not, quite honestly, enough hours in my day to train him adequately to ensure his success. Without the support persons from UCP, Joseph would not have been able to develop the skills necessary to keep his job."

"Scott's skill level is limited. He is able to complete the tasks assigned in his present job description, but has needed on-the-job training from his job coach. It appears that this will be on-going for the next month or two."

Concerns were also expressed about how to communicate with an employee who had a speech, hearing or cognitive disability. *"We were mainly concerned about Erma's ability to let us know what she needed, especially once the job coach was not around."* *"I was worried about Mark's communication skills. How would he talk with us? I found out that we needed to learn to communicate with Mark."*

Employers were also candid about their lack of experience with people who have disabilities: *"Because I had never worked with anyone with a disability before, I didn't know if problems would arise that I couldn't handle. I knew I should treat Phil like everyone else, and I was afraid of not doing that."*

Level of Skill

The employees hired through UCP affiliate Supported Employment programs had a variety of disabilities: some had cerebral palsy or another physical disability; some had hearing, speech or visual impairments; others had cognitive or mental disabilities. The employees varied also in the level of skills and work experiences that they brought to their jobs:

"This individual had no prior skill for the job (housekeeper at a hotel). She went through training similar to that given other employees, the difference being the presence of UCP's job coach. On-the-job training provided by the job coach was essential."

"She possessed some child care skills but needed training on our day care center's policy and procedures."

"Bobby had performed many of the job duties previously as a volunteer in the community."

"Hertis has the same skill level as the other sorters in this plant."

In short, the employees hired through UCP's Supported Employment were typical of "new hires" for entry level positions. There was one major difference, however:

"Mark's habits, abilities--and excuses--are just what I'd expect from any other high school employees; the difference is that I know Mark will perform the job asked of him. Some high school kids would sweep three aisles and forget the rest exist. Mark will do it his own way, at his own time, but I know the basic functions of the job will be done."

Accommodations--What Were They and How Much Did They Cost?

"\$0.00! That's a big saving compared to what we were prepared to do!"

Most of the accommodations involved making changes in the duties involved in the job:

"As a child care provider, one of the duties included putting up the cots after nap time while another person assists with restroom detail. Because Mary Jo had difficulty putting up the cots, an accommodation was made to have Mary Jo assist with the restroom detail on a permanent basis."

"Stephen has cerebral palsy. He is great at the tasks we eventually assigned to him, but we did assign tasks requiring handwriting to other employees."

"The job of service rep was modified. The more technical calls were eliminated, and he has been given a longer amount of time in which to meet his quota of calls. He is allowed to meet his quota somewhat at his own pace. There was no cost involved in changing the job description. We also got him a headset for the phone and stamps for initialling, cancelling or changing installations. All of these were inexpensive, reasonable accommodations."

Other accommodations involved modifications to the workplace: *"Our office is reasonably accessible due to other employees who have disabilities. We did have to move a few items around to make Bobby's specific work areas more accessible. As a result, we have a cleaner and neater work room. To accommodate his slight visual impairment, we have begun printing some materials in large print. Also, due to his hearing loss, we now have an interpreter present during staff meetings. Costs have been minimal."*

In two instances substantial modifications were required to allow access into the building. In both cases, however, the employers noted that the benefits of these changes extended beyond simply meeting a single employee's access needs:

"A ramp was built outside to allow Phil access into the building. I am unsure about the cost, but guess it was a couple thousand. The ramp is good for the guys in the field bringing supplies for installation in and out. It helps more than just Phil getting in the building."

"A computer table was custom-made for Bob so he could move around and be able to perform his duties. We put in an automatic door out front, but we needed to do that anyway to accommodate customers who use wheelchairs."

Reasons for Deciding to Hire Someone with a Disability

Reasons given for hiring someone with a disability ranged from a desire "to give a person an opportunity to work and be productive," to a willingness to "give Supported Employment a try," to being in the right place at the right time ("UCP approached us, and the timing was just right. We happened to have a position open in Housekeeping that we felt Scott could perform with assistance from the on-site coach.") In several instances, the potential employee's attitude was the deciding factor:

"Stephen and the UCP job developer had such a great attitude. It was clear from the beginning that this fellow wanted to work and that UCP was going to be there to support him as well as us! Besides this, orientation and training are a major expense for employers these days. With every new hire, we look for stability--someone who will be with us for a while!"

"Bobby has a terrific personality. It was clear from the interview that he wanted this job and had the ability to do it."

Corporate philosophy also played a part in the decision to hire someone who has a disability:

"[Our company] prides itself in developing young people. If they are physically and mentally able to do a job, we'll do what we can to make them part of the team because they deserve a job like anyone else. It also promotes a positive involvement with the community."

Co-workers Reaction

As employees with disabilities become part of the team and demonstrate their ability to "carry their own weight," the response from their fellow workers has been extremely positive:

"The entire staff has responded very well. Trent is so enthusiastic and happy all of the time that everyone does everything they can to make him feel at home and part of the 'family.'"

"Everyone's been very helpful. People are willing to help out but know not to do anything not necessary."

"In May, Hertis was voted employee of the month by his peers."

Like some employers, a few co-workers were initially apprehensive about working with someone who had a disability:

"Joseph's acceptance by his co-workers was mixed, from solid support to absolute belief in his certain doom. He now has the respect and affection of all who work with him. The most negative person of all volunteered the comment that 'no one works as hard as Joseph.'"

Few of the companies had provided disability awareness training for their employees, but those that did found it to be helpful:

"A video regarding how to work with the different disabilities people may have is shown at every Orientation to familiarize staff members in how to treat our guests. The video has helped our employees' 'comfort zone' in working with people with disabilities as well."

In short, once they are established on the job, employees with disabilities perform, and are treated, like any other valued worker. Good management practices call for assigning specific tasks and projects on the basis of an employee's strengths, and that is what the supervisors and co-workers have done in the businesses we surveyed for this article:

"Everyone has learned what Bobby's skills are, and we are learning to funnel

work his way. We want to use his talents and abilities to their fullest."

"Stephen is in a high pressure position, but he is expected to perform his job and carry his own weight. We are a team, and we depend on each other."

Benefits to Company of Hiring a Person with a Disability

The benefits of hiring a person with a disability are multiple and varied: stability and dependability, positive attitude, boost to employee morale, enhanced community image, equal opportunity and fairness. Several employers pointed out that working with someone with a disability has increased other employees' appreciation of their own situations. Other employers take pride in the learning that takes place between people with and without disabilities:

Yes, Erma learns from other employees, but they also learn from her. The benefit to our day care center is that children and co-workers are made aware of, and interact with, people with disabilities."

"Hiring Phil shows equal opportunity and fair share for those able to do the job. It gives everyone a chance to work with people with a disability and shows they can get work done like those without a disability."

One employer shared the opinions expressed above but an added pragmatic twist: *"Demonstrating support to persons with disabilities will, we hope, help other companies 'open their doors' to employing persons with disabilities. Of course, the tax credit is a plus for the hotel as well."*

Employers have learned to look to the bottom line when making decisions that impact their business. For the employers interviewed, hiring qualified workers who have disabilities is good business practice:

"The bottom line is that Stephen has all the characteristics and traits that an employer would look for in an employee."

"The benefit of hiring this person is the same as with any employee: we get the job done, we get the job done on time, and it is done accurately."

In sum, employers have found that hiring people with disabilities promotes a win/win situation for all concerned: *"Working with Bobby over the past year has been beneficial for all concerned: for him as he expands his working skills and knowledge, and for the staff as they have learned to value him as both a responsible co-work and a true friend."*

ADA ACCESS REPORT CARD: IS AMERICA READY FOR THE ADA?
United Cerebral Palsy Association's 11-City Survey of Public Accommodations
Conducted in January 1992
Testimony Presented to the National Council on Disability ADA Watch
June 15, 1992 by Robert Watson and Sally Weiss

Early in December of last year, staff at the national office of United Cerebral Palsy Associations were concerned about the apparent lack of public awareness about the implementation of the Americans with Disabilities Act. There was very little about the Act and its implementation in the media--and, as far as we could determine, no national disability organization had any plans to generate publicity about the January 26th implementation date. Therefore, on December 11, we asked some of our affiliates, chosen for geographic diversity, to join us in taking a "snap shot" of America's readiness for implementing Title III of the ADA. Although the timing was not ideal--the holiday season was fast approaching and so was the January date for our annual telethon--affiliates in 11 cities agreed to participate in the survey. The cities surveyed were Boston, New York City, Pittsburgh, Washington, DC, Birmingham, Atlanta, Dallas, Oklahoma City, Detroit, Denver and San Francisco.

Our goals for the survey were:

- o to create public awareness about the ADA and the January 26th implementation deadline for access to public accommodations;
- o to take a look at what businesses have done--or what they were planning to do--to ensure access; and
- o to develop a dialogue and partnership between the business and the disability communities to improve access for all of us.

We designed a "quick and easy" survey form based on the Department of Justice's four priorities--namely,

1. Can we get into your place of business?
2. Can we do what we came to do?
3. Can we use your rest rooms, drinking fountains, telephones and other amenities? and
4. How were we treated?

We looked at public accommodations in terms of access by people with physical disabilities and also looked at accommodations and access for persons with speech, hearing and vision disabilities--including having someone with a speech disability telephone each business to see how staff responded.

Our survey teams selected between 6 and 8 sites in each city that reflected typical, everyday access needs. We asked them to include grocery stores, banks, retail stores, restaurants, fast food chains, hotels and movie theaters, and our survey forms had separate, additional checklists for restaurants and fast food chains, hotels, movie theaters and banks. All sites were rated on their approach (parking, curb cuts,

entrance); their interior space, amenities, and access to goods and services, as well as alternative services offered; and on customer service. Sites were rated as A--Accessible; B--Basically barrier-free; C--Can be maneuvered; or D--Difficult or inaccessible.

The survey teams consisted of between 5 to 10 members, most of whom had disabilities. For example, our team in Pittsburgh included a person using an Amigo; one person who uses a motorized chair and a voice communicator; two people who use manual chairs; two people who use crutches; one person who is blind; a child in a wheelchair and her mom who also uses a wheelchair; and two people without disabilities. In all 11 cities, our survey teams were accompanied by members of the media.

Because one of our objectives was to demonstrate what it is like to go about taking care of our normal, daily activities, we deliberately chose to survey sites that we knew had at least a basic level of accessibility. As a result, what the public saw on tv or read about in the newspapers was a snap shot of basically good access--and a bird's eye view of some of the pitfalls that we still encounter. For example, the greatest hurdles for people with physical disabilities were entries--where no curb cut or a two-inch threshold or a door too narrow or too heavy made entrance difficult. Once in the door, however, we found that our teams were able to do what they wanted to do--to eat a meal; select and purchase groceries or buy a shirt; make a deposit; or watch a movie.

In most instances, businesses received a grade of B--basically barrier free--because we could either make a purchase directly or alternative services were in place and readily available. In several instances, sites that a year or so ago had been inaccessible or difficult to access were now accessible. One team visited a restaurant where, three years ago, two team members had had to enter through the kitchen because the entrance was not wheelchair accessible; this time they entered through the front door.

Staff and management were eager to make changes suggested by our survey teams. For instance, at one otherwise very accessible hotel, the manager was stunned to learn that we could not use the "space age" elevators--with their accessible control panels, tactile signage and audible floor tones--because the call buttons were blocked by large marble ashtrays. Staff was summoned and the ashtrays were moved to the side. In another city, a bank asked one team to return to a site to check out how their suggested changes had been implemented--and to visit other locations to see what changes needed to be made.

Scores were determined on a four-point system with the highest score--an A--equal to four points and the lowest score ranking 1 point or a D. Scores for the 11 cities surveyed averaged B. There were few A's--accessible--in the overall grading in

each city, and those were shared by retail stores and hotels. C's were rare and, because of our selection criteria, only a few businesses received a D--primarily because their accessible entrance was so difficult to find or use or because their accessible interior space was so very limited.

Accessible parking spaces proved to be an issue nationally. In most cities, accessible parking spaces were less than 13 feet in width which poses problems for persons using vans with lifts, and very often designated parking places weren't enforced and were used by persons without disabilities. Rest rooms were also a problem. In most instances, the commodes were accessible but sinks, soaps, hand towels/blowers and dispensers were out of reach--or had round knobs or faucets that could not be manipulated. In addition we found a need for more telecommunications devices--and better awareness and training for staff in responding to phone calls from persons with speech or hearing disabilities.

On a more positive note, however, one of the greatest pluses in all cities was the rating of customer service. Nearly all businesses surveyed nationally ranked an A in customer service--both in the way they responded to persons with disabilities and in the alternative services offered as needed. Since management at all sites had been contacted prior to the survey, this result is not particularly surprising but what was surprising was management's willingness to have a team of people with disabilities take a look at their facility. Almost every business contacted agreed readily to be surveyed--although there was some corporate nervousness expressed as our requests were relayed up the ladder, particularly since management was aware that the media would probably accompany our teams.

The survey received excellent and favorable national and local media coverage. We arranged an exclusive with the New York Times which sent a reporter to Oklahoma City to cover the survey and assigned stringers to cover the story in New York City and San Francisco. The story ran 36 column inches and appeared on page one of the New York Times on January 27. NBC's Today Show featured the survey on January 24; a segment on the survey appeared on ABC's Business World on January 26; and ABC News National covered the story on January 27. Voice of America did an interview with our executive director John D. Kemp about the ADA and our survey which aired on February 7 in over 300 European and Asian markets.

The survey generated a great deal of positive television, radio and newspaper coverage in each of the cities surveyed. Between January 10 and January 27th, local ABC, NBC, CBS and independent television stations featured stories about our survey, ranging in length from 1 1/2 minutes to 4 minutes; stories about the survey appeared in the major newspapers in all 11 cities; and stories or interviews were aired on radio stations in Dallas, Denver, and Oklahoma City. In short, as a result of our survey, members of each city's print and broadcast media "came on board" in reporting and creating awareness around the ada and access issues.

In addition, a major result of the survey has been the constructive dialogue and partnership between people with disabilities and leaders in the business/retail communities. Our affiliates report that not only were the businesses surveyed eager to work with them to increase their accessibility, but also that they have been contacted by other businesses asking for help in making their facilities accessible.

The manager of a hotel in Birmingham, AL told our survey team that they had saved him \$1500 in consultants' fees--and probably more in actual construction costs--because of the team's practical, common-sense approach to access. Our executive director in Oklahoma reported that ADA awareness had been almost nonexistent prior to the survey but that his phone has been ringing off the hook since the survey with local businesses asking for help in making their facilities more accessible.

Our Boston affiliate reports that media coverage of the survey of businesses in Harvard Square definitely increased public awareness, but more education is still needed: although signs directing patrons to accessible entrances or directing them to ring for assistance were posted on nearly every business a few days after the survey, some of them were posted at the top--or the bottom--of steep flights of stairs.

There have been a number of other positive results as well:

1. Not only do affiliates that did the survey continue to receive requests from businesses to come out to do a survey, but affiliates in other cities as well have also been asked to help businesses assess their accessibility. Our affiliate in Baltimore, for example, is now working with the federal credit unions in that area to make their facilities accessible. In addition, the president of a chain of discount department stores has not only implemented the changes suggested by the survey team in all his stores nationally but he has also instructed his store managers to invite people with disabilities from the community to inspect each local store and suggest other ways of improving access.
2. Although the focus of this survey was on access and not on employment, the survey generated interest in hiring persons with disabilities and our affiliates are working with these employers to make the worksites accessible and to place men and women with disabilities in competitive employment.
3. Finally, an important result of the survey was the impact it had on the members of the survey teams. In every city, the men, women and children with disabilities who made up the survey teams felt that they had influenced change in their own community. They were proud to have worked one-on-one with business leaders and to have given them suggestions for change based on their needs as a person with a disability. As one site reported, "even the eight year old child was very serious when he went with his mom to survey the library: he checked out everything from the parking lot to the computer desk and then made

suggestions as to what needed to be changed so that he could use the facility." Because of the ADA, this third grader in Birmingham, Alabama now knows that he has the right to reasonable accommodations--and that he can ask for what he needs.

As the result of our survey, conducted in a very short amount of time, we were able to

- o create a very significant amount of public awareness about the ADa and the January 26th implementation deadline for ADA access;
- o show what businesses have done--or what they were planning to do--to ensure access; and
- o contribute effectively to a dialogue and partnership between the business and the disability communities to improve access for all.

We are in the process of conducting a second Report Card on America's readiness for the ADA--this time we are surveying employers in 19 cities to see what they are doing to attract and employ qualified workers with disabilities.

4/27/88

Spoke with Sheila Bair and gave her the basic outline of the ADA. She had not gotten the package I sent over the last time. Based on my summary she felt it was something the Senator could get onto with some statemnet that there are things here I don't necessarily agree with.

Called Liz Savage to clarify points.
Called Bob Bergdorf as well.
Telexed the materials to heila Bair.

2440704

ARGUMENTS AGAINST CONGRESSIONAL COVERAGE:

CHARGE:

The Speech and Debate Clause Protects the personnel practices of Members of Congress

RESPONSE:

* The Supreme Court tells us that if the Member's actions are not shielded by the Speech and Debate Clause, "legislators ought...generally to be bound by [the law] as are ordinary persons." Gravel v. United States, 408 U.S. 306, 320 (1973)

*The Clause protects only Congressional activities that are "integral to the legislative process". The Court has defined the scope of the Clause broadly but has never extended it to cover hiring practices.

*in fact, IN DAVIS V. PASSMAN, the SUPREME COURT has ruled that the 5th Amendment protects Congressional employees from discrimination. THIS CASE STANDS FOR THE PROPOSITION THAT CONGRESSIONAL EMPLOYEES HAVE A 5TH AMENDMENT DUE PROCESS RIGHT TO A PRIVATE CAUSE OF ACTION FOR EMPLOYMENT DISCRIMINATION AGAINST MEMBERS OF CONGRESS.

CHARGE:

Separation of Powers is violated

RESPONSE:

FIRST, THE CONFERENCE REPORT PRECLUDES EXECUTIVE CONTROL OVER LEGISLATIVE ENTITIES, THUS AVOIDING ANY SEPARATION OF POWERS DEFECTS. RATHER, THE CONFEREES CONTEMPLATE A LEGISLATIVE ADMINISTRATIVE REMEDY WITH THE RIGHT TO A PRIVATE CAUSE OF ACTION IN FEDERAL DISTRICT COURT. THERE IS NO EXECUTIVE BRANCH INTRUSION ON THE CONGRESS.

SECOND, Separation of powers arguments can only be made through the Speech and Debate clause and the Clause does not apply in this case [a separation of powers argument could be that the other branches cannot intrude into Congressional activities by proscribing discrimination in employment in Congress. The argument would have to claim that only Congress can regulate Congress, not the Judiciary or Executive branches.] However, I do not believe the Clause protects hiring practices and therefore, Congress has no shield to hide behind.

***IN 1972, CONGRESS AMENDED TITLE VII TO APPLY TO THE EXECUTIVE BRANCH. NO ONE HAS CLAIMED A SEPARATION OF POWERS VIOLATION HERE!!!

CHARGE:

Historically, Congress has treated its employees differently from the arrangements for other Governments employees Staffs of Members have been considered intimately a part of the policy-making and political process that they are not subject to being selected, compensated, or tenured as others who serve the Government. There's an imperative need for loyalty, confidentiality, and political compatibility-not simply to a political party, an institution, or an administration, but to the individual Member. [C.J. Burger, dissenting, Passman, at p. 249.] The Speech and Debate clause is invoked in this regard.

RESPONSE:

Private employers also have a crucial interest in hiring employees who are loyal to the business, loyal to the employer. Loyalty and confidentiality are not qualities unique to Congress-they are integral to private employers too. Private employers must have the right to hire people they deem to be loyal and trustworthy, free from governmental intrusion, as long as these decisions do not violate the mandates of the Constitution or civil rights statutes.

Legislative branch employees are no different from workers in the private sector: both have the constitutional right to be free from discrimination. My amendment will give Congressional employees the statutory right as well.

Private sector employers are no different from Members of Congress in that they both have the right and the need to hire the most qualified, loyal, and trustworthy employees.

***Consider the small business owner who must entrust the store key to his employee. The owner understandably wants to hire an individual he or she deems most reliable, honest, and able. Does the employer have an interest in hiring a trustworthy and loyal employee? Is this interest illegal? No and it should never be illegal. Distinctions based on merit and qualification, or political ideology, are lawful distinctions. It is the unlawful distinctions based on DISABILITY, race, religion, gender, and national origin that are proscribed and should be proscribed for Congress too!

There is no doubt that Congress' intent was clear when it enacted the Civil Rights laws, to exempt itself from coverage. There's no quarrel with that interpretation. The quarrel is with the fact that every other American must abide by the law or face the penalties while Congress has conveniently excluded itself from the law. The time is now for Congress to live by the laws it to which it subjects the rest of America. If this so called "Civil Rights" bill is alleged to be crucial in the fight against discrimination, why isn't Congress joining in the fight, other than in the capacity of saying its good for everyone else "but not for us!"

CHARGE:

The Fair Employment Practices proposal [as currently operating in the House] is the right way to go in order to provide protections to Congressional employees; OR

THE SENATE RULES COMMITTEE, THROUGH RULE 42 SHOULD ENFORCE CIVIL RIGHTS REGULATIONS, NOT THE COURTS.

RESPONSE:

That's true if you'd also allow a fox to guard a henhouse.
[see folder section on the OFEP]

its a matter of simple justice. To suggest otherwise is to question the very foundation of our governmental system: three distinct branches with different constitutional mandates.

CHARGE: THE ETHICS COMMITTEE ALREADY PROVIDES AN EFFECTIVE,
EXCLUSIVE REMEDY.

RESPONSE: I HAVE NO QUARREL WITH THE ETHICS COMMITTEE CREATING
AN ADMINISTRATIVE REMEDY -- AS LONG AS IT PROVIDES
MEANINGFUL REDRESS. SENATOR RUDMAN AND THAT
COMMITTEE CAN CONTINUE TO DO WHATEVER THEY WISH. BUT
IF AN AGGRIEVED PARTY GETS TURNED AWAY BY THAT
ENTIRELY IN-HOUSE BODY, A VICTIM OF DISCRIMINATION
OUGHT TO HAVE THE RIGHT TO HAVE HER DAY IN COURT.
LET ME ASK MY COLLEAGUE: ARE YOU SAYING THAT FOR
THIS NARROW CLASS OF EMPLOYEES THAT THEY CAN'T HAVE
THEIR FUNDAMENTAL RIGHT TO A DAY IN COURT?

WHAT KIND OF CIVIL RIGHTS BILL IS THIS ? ?

06/01/89 13:04

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FAX COVER SHEET

From

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(not including this cover sheet)

Technical Assistance.

(a) Architectural and Transportation Barriers Compliance Board. The Architectural and Transportation Barriers Compliance Board shall provide technical assistance to individuals and entities affected by this Act with respect to making buildings, facilities, and vehicles readily accessible to and usable by individuals with disabilities, in terms of architecture and design, operation, and communication. Such technical assistance shall emphasize low-cost alternatives for removing architectural, transportation, and communication barriers in existing buildings, facilities, and vehicles.

(b) President's Committee on Employment of People With Disabilities. The President's Committee on Employment of People With Disabilities shall provide technical assistance to employers, employment agencies, and joint labor-management committees affected by this Act with respect to the employment of individuals with disabilities. (Discuss areas of emphasis with President's Committee.)



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF ADMINISTRATION
Washington, D.C. 20503

TO: ~~Robert Dole~~ Chris Bolten

LOCATION: Robert Dole's Office

FAX NUMBER: 224-8952

FROM: Roger Porter

ROOM NUMBER: WW-2nd

PHONE EXT: 456-~~1111~~ 2705

PLEASE DELIVER AS SOON AS POSSIBLE.

DISABILITY

Issues Needing A

1. Costs and Benefits

What are the costs and benefits associated with the Americans with Disabilities Act (ADA)? Many visions 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 with a 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 use wheelchairs, making the proposed ramp a monument to useless regulation.

3. Implementation and the Courts

ADA contains many ambiguities that statutory language. Because ADA is silent definitive elaboration would be left to the courts. In effect, the question of whether transvestites are protected would not be known for years until a number of cases move through the courts applying "undue hardship" and other legal concepts to specific fact patterns. ample, and of ADA

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 be 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?

WENDELL H. FORD, KENTUCKY, CHAIRMAN
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United States Senate

COMMITTEE ON
RULES AND ADMINISTRATION
WASHINGTON, DC 20510-6325

TELEFAX TRANSMITTAL SHEET

XXX Urgent - deliver immediately.

FROM: Chuck Konigsberg
Counsel, Senate Rules Committee
479 Russell Senate Office Bldg.
Washington, DC 20510-6325
Phone: 202-224-3699 / 202-224-8923
Fax: 202-224-3036

TO: Tom Polgar (Rudman)
Kennie Gill (Ford)
Wilson Abney (Ethics)
Mansel Long (Heflin)
Mo. (Dole)

Date: 6/27/90 Time: 3:40

Number of pages (including this cover sheet): 5 pages

If you do not receive all pages, please call Chuck at 202-224-8923.

Following are two versions of the Senate coverage resolution:
1st version includes only ADA; 2d version adds Civil Rights Act;
Age Discrimination Act and Rehab Act.

Members will have to decide which of the two they wish to go with;
my recommendation is to do ADA only at this time, because
Govt Affairs and Rules will be marking up congressional coverage
legislation this summer/fall (substitute to Glenn bill S.1165).

Need to know if Dole, Heflin will cosponsor either of the
versions of the resolution.

Additional issue: when will this be raised? Helms may seek a vote
on a motion to recommit to conference to consider the Chapman
amendment. we need to work out a procedure where we can be assured

021012.565

S.L.C.

101st CONGRESS
2d Session

S. RES. _____

IN THE SENATE OF THE UNITED STATES

Mr. Ford (for himself, Mr. Stevens and Mr. Rudman) submitted the following resolution; which was

RESOLUTION

Applying the rights and remedies of the Americans with Disabilities Act to the Senate.

- 1 ~~Resolved~~, That the Senate reaffirms its commitment to
2 Rule XLII of the Standing Rules of the Senate which provides
3 as follows:
4 ''No member, officer, or employee of the Senate shall, with
5 respect to employment by the Senate or any office thereof--
6 ''(a) fail or refuse to hire an individual;
7 ''(b) discharge an individual; or
8 ''(c) otherwise discriminate against an individual
9 with respect to promotion, compensation, or terms,
10 conditions, or privileges of employment

021012.565

S.L.C.

2

1 on the basis of such individual's race, color, religion, sex,
2 national origin, age, or state of physical handicap.''.
3

4 Sec. 2. All of the rights and protections provided
5 pursuant to the Americans with Disabilities Act (S. 933,
6 101st Congress) shall apply to employees of the United States
7 Senate. Enforcement and adjudication with respect to such
8 rights and protections shall be the exclusive responsibility
9 of the United States Senate.

10 Sec. 3. All claims raised by any Senate employee pursuant
11 to the Americans with Disabilities Act shall be investigated
12 and adjudicated by the Select Committee on Ethics, pursuant
13 to S. Res. 338, 88th Congress, as amended.

14 Sec. 4. The Committee on Rules and Administration shall
15 ensure that Senate employees are informed of their rights
16 under the Americans with Disabilities Act.

17 Sec. 5. When assigning remedies to individuals found to
18 have a valid claim under the Americans with Disabilities Act,
19 the Select Committee on Ethics should apply the same remedies
20 applicable to all other employees covered by the Americans
21 with Disabilities Act.

021012.568

S.L.C.

101st CONGRESS
2d Session

S. RES. _____

IN THE SENATE OF THE UNITED STATES

Mr. Ford (for himself, Mr. Stevens and Mr. Rudman) submitted the following resolution; which was

RESOLUTION

Applying the rights and remedies of the Americans With Disabilities Act, the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1976, and the Rehabilitation Act of 1973 to the Senate.

- 1 Resolved, That the Senate reaffirms its commitment to
- 2 Rule XLII of the Standing Rules of the Senate which provides
- 3 as follows:
- 4 " No member, officer, or employee of the Senate shall, with
- 5 respect to employment by the Senate or any office thereof--
- 6 "(a) fail or refuse to hire an individual;
- 7 "(b) discharge an individual; or
- 8 "(c) otherwise discriminate against an individual

021012.568

S.L.C.

2

1 with respect to promotion, compensation, or terms,
2 conditions, or privileges of employment
3 on the basis of such individual's race, color, religion, sex,
4 national origin, age, or state of physical handicap.''.
5

6 Sec. 2. All of the rights and protections provided
7 pursuant to the Americans with Disabilities Act (S. 933,
8 101st Congress), the Civil Rights Act of 1964, the Age
9 Discrimination in Employment Act of 1976, and the
10 Rehabilitation Act of 1973 shall apply to employees of the
11 United States Senate. Enforcement and adjudication with
12 respect to such rights and protections shall be the exclusive
13 responsibility of the United States Senate.

14 Sec. 3. All claims raised by any Senate employee pursuant
15 to the Acts referred to in section 2 shall be investigated
16 and adjudicated by the Select Committee on Ethics, pursuant
17 to S. Res. 338, 88th Congress, as amended.

18 Sec. 4. The Committee on Rules and Administration shall
19 ensure that Senate employees are informed of their rights
20 under the Acts referred to in section 2.

21 Sec. 5. When assigning remedies to individuals found to
22 have a valid claim under the Acts referred to in section 2,
23 the Select Committee on Ethics should apply the same remedies
24 applicable to all other employees covered by the Acts
25 referred to in section 2.

DRAFT, as of Wednesday, 10am

S.RES. _____

IN THE SENATE OF THE UNITED STATES
JUNE _____, 1990

Resolved, That the Senate reaffirms its commitment to Rule XLIII of the Standing Rules of the Senate which provides that:

"No Member, officer, or employee of the Senate shall, with respect to employment by the Senate or any office thereof--

- (a) fail or refuse to hire an individual;
- (b) discharge an individual; or
- (c) otherwise discriminate against an individual with respect to promotion, compensation, or terms, conditions, or privileges of employment

on the basis of such individual's race, color, religion, sex, national origin, age, or state of physical handicap."

Sec. 2. All of the rights and protections provided pursuant to The Americans with Disabilities Act, S. 933, 101st Congress,

[the Civil Rights Act of 1964;
the Age Discrimination in Employment Act of 1976; and
the Rehabilitation Act of 1973]

shall apply to employees of the United States Senate, *provided* that enforcement and adjudication with respect to such rights and protections shall be the exclusive responsibility of the United States Senate.

Sec. 3. All claims raised by any Senate employee pursuant to such Act[s] shall be investigated and adjudicated by the Select Committee on Ethics, pursuant to S.Res. 338, 88th Congress, as amended.

Sec. 4. The Committee on Rules and Administration shall ensure that Senate employees are informed of their rights under such Act[s].

Sec. 5. When assigning remedies to individuals found to have a valid claim under such Act[s], the Select Committee on Ethics should apply the same remedies applicable to all other employees covered by such Act[s].

06:27.90 09:40AM * RULES COMM

P O 1

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United States Senate

COMMITTEE ON
RULES AND ADMINISTRATION
WASHINGTON, DC 20510-8325

TELEFAX TRANSMITTAL SHEET

✓ Urgent - deliver immediately.

FROM: Chuck Konigsberg
Counsel, Senate Rules Committee
479 Russell Senate Office Bldg.
Washington, DC 20510-8325
Phone: 202-224-3699 / 202-224-8923
Fax: 202-224-3036

TO:

Tom Polgar - (Sen. Rudman)
Kennie Gill - (Sen. Ford)
Wilson Abney / Dave Apol (Ethics Comm.)
Mo - (Sen. Dole's Office)
Bill Jensen - (Leg. Counsel)

Date:

6/27/90

Time:

10 am

Number of pages (including this cover sheet): 2 pages

If you do not receive all pages, please call Chuck at
202-224-8923.

Latest version of the Senate
Coverage resolution. Let me
know where Rudman, Ford, Heflin, & Dole
Stand on including the other
3 bills (Civil Rights; Age Discrimination)

S.RES. _____

DRAFT

IN THE SENATE OF THE UNITED STATES
JUNE _____, 1990

Resolved, That the Senate reaffirms its commitment to Rule XLII of the Standing Rules of the Senate which provides that:

"No Member, officer, or employee of the Senate shall, with respect to employment by the Senate or any office thereof--

- (a) fail or refuse to hire an individual;
- (b) discharge an individual; or
- (c) otherwise discriminate against an individual with respect to promotion, compensation, or terms, conditions, or privileges of employment

on the basis of such individual's race, color, religion, sex, national origin, age, or state of physical handicap."

Sec. 2. All of the rights and protections provided pursuant to The Americans with Disabilities Act, S. 933, 101st Congress,

[the Civil Rights Act of 1964;
the Age Discrimination in Employment Act of 1976; and
the Rehabilitation Act of 1973]

shall apply to employees of the United States Senate, *provided* that enforcement and adjudication with respect to such rights and protections shall be the exclusive responsibility of the United States Senate.

Sec. 3. All claims raised by any Senate employee pursuant to such Act[s] shall be investigated and adjudicated by the Select Committee on Ethics.

Sec. 4. The Select Committee on Ethics shall ensure that every Senate employee is informed of their rights under such Act[s].

Sec. 5. When assigning remedies to individuals found to have a valid claim under such Act[s], the Select Committee on Ethics should apply the same remedies applicable to all other employees covered by such Act[s].

RAISING CONSTITUTIONAL POINT OF ORDER

A point of order may be raised against a conference report at any time during its consideration prior to its adoption; however, if there is a UC governing debate, the point of order must be raised at the point when all time under the UC has expired.

MR. PRESIDENT, I MAKE A POINT OF ORDER THAT SECTION 509 OF THE CONFERENCE REPORT ON S. 933, THE AMERICANS WITH DISABILITIES ACT, VIOLATES ARTICLE I, SECTION 6, CLAUSE 1 OF THE UNITED STATES CONSTITUTION WHICH PROVIDES THAT "FOR ANY SPEECH OR DEBATE IN EITHER HOUSE, [SENATORS] SHALL NOT BE QUESTIONED IN ANY OTHER PLACE." BECAUSE SECTION 509 OF THE CONFERENCE REPORT PERMITS THE EMPLOYMENT DECISIONS OF SENATORS TO BE CHALLENGED IN COURT, IT VIOLATES THE SPEECH OR DEBATE CLAUSE OF THE CONSTITUTION.

The Chair will automatically submit the question of sustaining the point of order to the Senate.

If the point of order is sustained, and the Senate is acting first on the conference report, the bill would go back to conference; if the House has already acted, the conference report will fall, and the bill will be back in the stage of amendments between the houses--and a new conference can be requested.

STATEMENT OF SENATOR ROBERT J. DOLE
AMENDMENT TO THE CABLE BILL ON
CABLE CLOSED CAPTIONING

MR PRESIDENT: Just over a year ago Congress passed the Television Circuitry Act which will require that all television sets beginning in July, 1993 must be capable of providing closed captioning. There are approximately 20 million television sets sold annually. As a result of this Act, more than 24 million Americans who are hearing impaired will be able to access television coverage via captioning.

With passage of the Americans with Disabilities Act and more recently the installation of closed captioning of Senate floor proceedings, Congress has become more sensitized to the needs of hearing impaired citizens who deserve and want to take part in the democratic process. We must go one step further to ensure that the same consideration is given to all cable viewers. The amendment I am offering today will provide greater guarantees of captioning -- which is so vital to hearing impaired viewers -- by ensuring that cable television "scrambling" does not interfere with the provision of captioning coverage.

January 29, 1992

TO: Senator Dole/Jim Wholey
FROM: Mo West
SUBJECT: FYI -- Cable Bill Amendment re Deaf

Senator Innouye will offer an amendment to S.12 the Cable bill that will strengthen cable operators to carry captions. Specifically, the amendment will prohibit intentional "scrambling" of cable signals if such scrambling has the effect of precluding consumers from making full use of premium features on their television sets.

Deaf and hard of hearing consumers have expressed concerns that the intentional cable "scrambling" interferes with the provision of captioning on their television sets. In addition, "scrambling" has the effect of precluding consumers from making full use of the premium features on their television sets such as picture-in-picture, on-screen display, stereo surround sound, and closed captioning, to name just a few.

Last year you cosponsored the Television Decoder Circuitry Act requiring that all television sets beginning in July, 1993 be capable of providing closed captioning. If cable companies continue to intentionally scramble the provision of closed captioning will be jeopardized. Senator Innouye's amendment would prevent this from happening.

Carly

Language for Cable Legislation

Sec. 614 Carriage of Local Commercial Television Signals

(b)(3)(A) A cable operator shall carry in its entirety, on the cable system of that operator, the primary video, accompanying audio, and Line 21 closed caption transmission of each of the local commercial television stations carried on the cable system and, to the extent technically feasible, program-related material carried in the vertical blanking interval, or on subcarriers. Retransmission of other material in the vertical blanking interval or other non-program-related material (including teletext and other subscription and advertiser-supported information services) shall be at the discretion of the operator. Where appropriate and feasible, the operator may delete signal enhancements, such as ghost-canceling, from the broadcast signal and employ such enhancements at the system headend or headends.

Sec. 615 Carriage of Noncommercial Educational Television Signals

(g)(1) An operator shall retransmit in its entirety the primary video, accompanying audio, and Line 21 closed caption transmission of each qualified local noncommercial educational television station whose signal is carried on the cable system and, to the extent technically feasible, program-related material carried in the vertical blanking interval, or on subcarriers, that may be necessary for receipt of programming by handicapped persons or for educational or language purposes. Retransmission of other material in the vertical blanking interval or on subcarriers shall be within the discretion of the operator.

Add in the appropriate alphabetical position in Sec. 620 the definition of "Line 21 closed caption" using language from FCC rules:

The term "Line 21 closed caption" means a data signal which, when decoded, provides a visual depiction of information simultaneously being presented on the aural channel of a television signal;

STATEMENT OF SENATOR ROBERT J. DOLE
PASSAGE OF THE REHABILITATION ACT CONFERENCE REPORT
H.R.5482 -- OCTOBER 3, 1992

MR. PRESIDENT: I SUPPORT PASSAGE OF H.R. 5428, THE CONFERENCE REPORT TO THE REHABILITATION ACT AMENDMENTS OF 1992. THIS CONFERENCE REPORT REPRESENTS MANY LONG HOURS OF BIPARTISAN WORK IN BOTH THE HOUSE AND SENATE AS WELL AS CRUCIAL SUPPORT FROM THE ADMINISTRATION AND THE DISABILITY COMMUNITY IN CRAFTING A CONSENSUS BILL THAT ENHANCES DISABILITY POLICY -- AIMED AT CONSUMER CHOICE AND SUPPORT.

WHILE MANY PEOPLE WITH DISABILITIES NEED ONLY THE OPPORTUNITY TO BECOME FULL CITIZENS, OTHERS NEED SUPPORTIVE SERVICES AND ACCESS TO BE A PART OF THE MAINSTREAM OF LIFE. THE REHABILITATION ACT AMENDMENTS CORRECTLY PLACE THE FOCUS OF THE LAW ON -- STREAMLINING ACCESS TO VOCATIONAL REHABILITATION SERVICES FOR PEOPLE WITH SEVERE DISABILITIES -- ON ACHIEVING APPROPRIATE JOB PLACEMENTS AS WELL AS THE PROVISION OF REHABILITATION TECHNOLOGY THE INDIVIDUAL WITH A DISABILITY MAY NEED IN ORDER TO SUCCEED AT WORK -- AND IN STRENGTHENING THE ROLE INDEPENDENT LIVING CENTERS PLAY IN ASSISTING CONSUMERS TO LEAD SELF DIRECTED LIVES.

HAVING A STABLE AND REWARDING JOB IS A BASIC COMPONENT OF THE AMERICAN DREAM. EVERY INDIVIDUAL WOULD LIKE TO BE EMPLOYED IN A JOB THAT IS ENJOYABLE AND STIMULATING WHILE PROVIDING ONE WITH SUFFICIENT INCOME TO MEET HIS/HER NEEDS. THIS CONFERENCE REPORT REPRESENTS A VARIETY OF OCCUPATIONAL CHOICES TO EMPOWER PEOPLE WITH DISABILITIES TO PURSUE PRODUCTIVE LIVES AND THE AMERICAN DREAM. SUPPORTED EMPLOYMENT, THE ENHANCEMENT OF ASSISTIVE TECHNOLOGY APPLICATION IN THE WORKPLACE AND ACCESSING THE APPROPRIATE REHABILITATION TECHNOLOGY TO ENSURE WORKSITE PRODUCTIVITY ARE JUST A FEW EXAMPLES OF THE STRENGTHENING CHANGES MADE IN THIS YEAR'S REAUTHORIZATION BILL.

THE DIFFICULTY FACED BY MANY PEOPLE WITH DISABILITIES, HOWEVER, IS THAT THEY OFTEN ARE NOT GIVEN THE OPPORTUNITY TO DEMONSTRATE THEIR TALENTS AND ABILITIES TO PERFORM CERTAIN JOBS. INSTEAD MYTHS AND STEREOTYPES REGARDING THE PERSON'S INABILITY TO PERFORM THE JOB, OR FEARS ABOUT HIRING A PERSON WITH A DISABILITY FOR A PARTICULAR JOB, PRECLUDE THE INDIVIDUAL FROM RECEIVING OFFERS OF EMPLOYMENT OR PROMOTION.

WE ARE AT AN OPPORTUNE TIME TO BEGIN LOOKING AT ALL OUR LAWS WHICH AFFECT CITIZENS WITH DISABILITIES AND REFINING OUR STATUTES TO COMPLIMENT THE GOALS AND MANDATES OF THE AMERICANS WITH DISABILITIES ACT. NEVER HAS THERE BEEN A STRONGER DEMAND TO INTEGRATE DISABILITY POLICY INTO THE PHILOSOPHY AND GOALS SET FORTH IN THE AMERICANS WITH DISABILITIES ACT. I SUPPORT THIS CONFERENCE REPORT AND COMPLIMENT SENATORS HARKIN AND DURRENBERGER AND THEIR STAFFS FOR CRAFTING A REAUTHORIZATION BILL THAT WEAVES EMPLOYMENT POLICY FOR PEOPLE WITH DISABILITIES WITH POLICIES THAT PROMOTE PERSONAL CHOICE AND SELF DETERMINATION.

STATEMENT OF SENATOR ROBERT J. DOLE
DREDF ADA CELEBRATION
FEBRUARY 1, 1992

The ADA is an important beginning, giving us not only a framework from which to build, but also a mandate from which to proceed. To reinforce the ADA and to move disability policy forward into the next century, it is critical to maintain a solid partnership between the disability communities as well as the public and private sectors. DREDF has been instrumental in building this coalition. Working together, we can ensure that every American will be provided the access and opportunity to all that society offers.

More importantly, by increasing public awareness through education, we can break down the only real handicap -- that of ignorance leading to attitudinal barriers that prevent full participation in the American mainstream.

Like everyone involved with the ADA, I feel privileged to have played a role in its passage. However, passage alone does not guarantee that our job is complete. As we look ahead to the next century, I hope that there will be little need for government intervention to assure the rights of any segment of American society. But, if it is still necessary to redress discrimination, all of us in the disability community can continue to make a difference by working together and looking to DREDF for their solid advice and leadership.

DREDF has worked tirelessly to enhance the rights of people with disabilities and their families. Your mission insures that EVERY citizen has access to an all inclusive society. Many of us in Congress have and will continue to look to DREDF for assistance and guidance in improving our nation's policy towards people with disabilities.

The exemplary technical assistance and public policy advocacy, DREDF continues to provide has earned national respect as evidenced by passage of landmark policy victories. Your distinguished record on civil rights for ALL Americans will long be remembered and revered here and nationwide. I look forward to working with you as Congress continues to monitor the effective implementation of the Americans with Disabilities Act. DREDF's continued leadership will enable Congress to set enlightened disability policy into the next century.

BOB DOLE

KANSAS

141 SENATE HART BUILDING
(202) 224-6521

COMMITTEES:
AGRICULTURE, NUTRITION, AND FORESTRY
FINANCE
RULES

United States Senate

WASHINGTON, DC 20510-1601
August 22, 1990

TO: Senator Dole

FROM: Mo West

SUBJECT: Small Business Relief under the ADA

In the event you are asked how small businesses are to comply with and understand their new obligations under the ADA I suggest you share the following information.

During consideration of the Americans with Disabilities Act you authored a technical assistance amendment which was included in the law. In addition, you were successful in getting a \$1.8 million appropriation to carry out technical assistance.

Your government-wide technical assistance amendment will provide information by federal agencies for employers on how to comply with and understand their new obligations under ADA. In addition, information will be available to individuals with disabilities on protections available to them. Information dissemination will be made available through compliance manuals, pamphlets on what the ADA means, requires and provides as well as hearings to be held across the country by agency officials on problems and successes encountered with the new law.

You authored a tax incentive provision of the Internal Revenue Code (IRC) while Chairman of the Finance Committee. Section 190 of the IRC provides a \$35,000 tax incentive to businesses to make their facilities and vehicles accessible to persons who are disabled or elderly. This tax incentive will apply to the changes required of businesses under the ADA especially in the area of barrier removal.

The Dole Foundation has initiated a technical assistance program which will assist both employers and people with disabilities in enhancing employment of people with disabilities.

The President's Committee on Employment of People with Disabilities has a very successful hotline number which has been in operation for over ten years. The Job Accommodation Network (JAN) is available 24 hours a day to employers for information on accommodating people with disabilities in the workplace. The number should anyone want it is 1-800-526-7234. The Job Accommodation Network has a data base of over 10,000 specific accommodations to assist in solving difficult or unusual adaptation problems.



National Association for Music Therapy, Inc.

8455 COLESVILLE ROAD SILVER SPRING, MD 20910 (301) 589-3300 FAX (301) 589-5175

EXPERT WITNESS TESTIMONY

Therapeutic Uses of Music in the Elderly

August 1, 1991

Alicia Ann Clair, Ph.D.
Registered Music Therapist-Board Certified
Research Associate
Colmery O'Neil Veterans Affairs Medical Center (11-K)
2200 Gage Blvd.
Topeka, Kansas 66622
(913) 272-3111 X-266

Professor
Director of Music Therapy
Art and Music Education and Music Therapy Department
311 Bailey Hall
The University of Kansas
Lawrence, Kansas 66045
(913) 864-4784

EXECUTIVE SUMMARY

I give this testimony as a professional who has practiced music therapy with older Americans since 1977 and as a past President of the National Association of Music Therapy, Inc. I do not speak for the University of Kansas where I am a Professor and Director of Music Therapy, or for the Colmery-O'Neil Veterans Affairs Medical Center in Topeka, Kansas where I serve as a research associate.

- I. Therapeutic uses of music have a long history.
 - A. The music therapy profession began in the U.S. in Veterans Administration Hospitals in the 1940's to rehabilitate WW II American soldiers.
 - B. Research shows music therapy is effective in physical, emotional and social rehabilitation.
- II. Music Therapy with the older Americans is relatively new.
 - A. As persons age there is a need for interventions which contribute to life quality.
 - B. Most older persons like music and like to be involved in it in some way.
 - C. The characteristics of music make it viable to use in a broad array of ways.
 - D. Music can be designed to promote successful experiences even in those with no prior experiences.
 - E. Music can bring people together for common good; e. g. for social contact, emotional support, physical exercise and activity, mutual sharing and others.
- III. Music Therapy with well, elderly Americans is innovative.
 - A. Elderly persons have the abilities to learn new musical skills very late into life.
 - B. These persons have demonstrated these abilities through musical development.
 - C. Music therapy programs for well elderly persons can be preventive.
 1. Programs contribute to reminiscence and life satisfaction.
 2. Programs contribute to life quality.
 3. Programs are motivating and stimulating.
- IV. Music Therapy with chronically ill older Americans at home is in development.
 - A. Music therapy can serve to integrate the family members.
 - B. Music can be a form of expression and communication.
 - C. Music activities can be adjusted to facilitate success for persons who are very frail.
 - D. Music can provide relief from chronic pain.
 - E. Music can help people grieve.
- V. Music Therapy with frail, elderly American care home residents is ever growing.
 - A. Research shows these persons retain their musical abilities to learn.
 - B. Music therapists must design programs these persons can manage physically, socially and psychologically.
 - C. Music therapy helps to manage stress, insomnia, depression and isolation.
 - D. Music stimulates social interaction, sensory awareness and intellectual activities.
 - E. Music contributes to life quality and personal dignity.
- VI. Music Therapy is very effective with persons who have dementia and their families.
 - A. Interventions are direly needed in persons afflicted and their families.
 1. Over one-half of the residents in care homes have dementia of the Alzheimer's type.
 2. Prior to institutionalization these persons' lives and their families are devastated emtionally, socially, psychologically and financially.
 3. Caregivers lose their health and their life quality in the care process
 4. Lives of those afflicted and their caregivers will continually decline--there is no cure.
 - B. Music Therapy practice protocols have been developed.
 1. These are successful with those from early through late stages of dementia.
 2. These are designed to incorporate family caregivers into them.

3. These can be used to train family caregivers to use music with their loved one afflicted with dementia, including dementia of the Alzheimer's type.
- C. Music Therapy is greatly appreciated by caregivers and families desperate for interventions.
 1. Music Therapy provides ways for families and their afflicted ones to interact socially and emotionally.
 - a. Caregivers and families can no longer reach their loved one any other way.
 - b. Caregivers have uncertainties concerning how they fit/belong with a parent, sibling or spouse who can no longer communicate verbally with them.
 2. Music Therapy contributes greatly to life quality for caregivers, families and their loved ones afflicted with dementias.
- D. Research shows Music Therapy is effective with severely regressed persons with dementia.
 1. Music taps the residual skills and abilities no longer accessible through other interventions.
 - a. Caregivers say that the "real" person comes out through music and they get glimpses of the way their loved ones used to be.
 - b. Persons with dementias can exercise skills learned well in the past.
 - c. Persons with dementias can interact rhythmically until the very last.
 2. Through music persons with dementias can play rhythmically and dance, though singing discontinues as the disease progresses.
 - a. When dancing, caregivers can be held by their afflicted loved one, something which contributes to the intimacy in their relationship.
 - b. Persons with dementias are drawn to music activities which facilitates engaging them in the activities.
 3. Music stimulates attention and persons with dementias can participate for as long as 30 minutes at a time even in late stages.
 4. Music provides opportunities to interact with others socially, something severely regressed persons no longer can do.
 5. Through music activities, persons with dementias watch one another and indicate their awareness of others, something they do not do in other contexts.
 6. Music provides contact with the here and now, and persons with dementias seem more alert during and following music therapy sessions.
 7. Through music, persons with dementia can organize their responses and even learn new musical behaviors.
 - a. This occurs until the late stages of the disease.
 - b. Eventually this ability is lost.
 - c. To the last hours of life, persons with dementia open their eyes and turn their heads to locate the sound source of music.
- VII. Music Therapy is important for caregivers.
 - A. The terrible devastations suffered when one has a loved one with dementia lead to ill health.
 - B. Life satisfaction and life quality are destroyed.
 - C. Caregivers need options for self-care including relaxation and stress management through music.
 - D. Caregivers need ways to maintain relationships with their loved ones for as long as possible and music therapy can provide them.

THERAPEUTIC USES OF MUSIC WITH THE ELDERLY

Therapeutic uses of music throughout the life span have been incorporated into treatment since the beginning of recorded history. There was reference to them in ancient Greek literature, the Bible and other sources. Though not much is known of specific applications in those early times, a book written in the English language in the mid-1600's and finally published in 1729, presented the use of music as a therapeutic intervention (Gibbons & Heller, 1985). Its author discussed the use of music as therapy to 1) change and evoke moods, 2) trigger memories associated with the music, 3) influence and change physiological processes, and to 4) stimulate and sedate. This treatise was explicit about using music for persons even if they had no prior musical training or experience, and it stipulated designing the music to suit the needs of the individual person. This information is quite astounding when put in its historic perspective. At the time it was published in London, England, Handel had already lived in the city for 17 years, but he had not yet written the Messiah. Yet, these therapeutic uses of music are incorporated into music therapy practice today.

Literature indicates music has been used therapeutically in the United States since the turn of the century, and before. Music therapy began as a profession, however, in the Veterans Administration hospitals in the 1940's where it was incorporated into rehabilitation programs for American soldiers returning from World War II. By 1950 the National Association for Music Therapy, Inc. was established and colleges and universities across the country began offering degree programs to educate and train professional music therapists.

The contemporary definition of music therapy, in its rather broad sense, is the therapeutic use of music to change behaviors. This use depends on careful assessments of individual consumer's therapeutic needs and their musical tastes and preferences. It is also based on the principles of musical influences on physiological, social and emotional behaviors. With these considerations music therapists use their expertise to design, implement and continually evaluate programs for individuals. These programs may include individual or group sessions or a combination of these. They usually also include learning therapeutic music skills to use away from the music therapy session so that independence, and self care is developed. But, whatever the design of the music therapy program, the ultimate goal is to meet the needs of the individual consumer in the most effective, and efficient way and to promote and maintain that consumer's quality of life.

Some Principles of Music Therapy

Pervasiveness of Music

Persons of all ages generally experience music frequently in their lives, many on a daily basis. Many persons use music to relax and some persons have such frequent uses of music that they listen to it virtually all day. Music is almost always used in the celebrations and rituals associated with important life events; i.e., birthdays, anniversaries, weddings, funerals and others. Music is also used to set the environment for offices, work areas and to influence the mood of special occasions. With the other important uses of music, it is often a part of entertainment and is used to structure leisure time.

The frequent uses of music have led many to refer to music as a universal phenomenon. While some musical elements, such as rhythm, tempo timbre, and others, are universally found, the types of music preferred, understood and used are not the same for all persons in all cultures. There are even differences in the same culture when preferences of the old and the young are compared. The types of music within a community or even within a family from that community may vary according to individuals' ages, backgrounds and experiences. Therefore, music is universal but it is not a universal language.

Music Preference

Music which is preferred and most often used by individuals is the music which is integrated into their lives. This music could be that which was popular during their young adult years (Gibbons, 1977), that which was used in religious services and patriotic ceremonies and that which was used in other cultural and community contexts. Music which is not integrated into an individual's life may simply have no effect or may even be offensive resulting in inattention and disengagement. It is the preferred music which is most likely to stimulate cooperative responses in all persons.

The type or types of preferred music may be determined by interviewing persons, or their family members if they can no longer express themselves verbally. If interview responses are inconclusive or unavailable, it is possible to determine music preferences by using various types of music and observing reactions. Facial expressions, body postures, vocalizations and other overt responses to particular music will show either pleasure or discomfort associated with it. From these overt behaviors conclusions concerning preferences can be drawn.

Purposes for Using Music with the Elderly

Physical and Emotional Stimulation. Music can be used with elderly persons to evoke a wide range of responses. Depending upon how it is structured, music can be sedative to promote relaxation and calm or it can be stimulative to promote movement to other physical activity.

The research literature indicates clearly that the definitions of sedative and stimulative music are individualized and there is no consistent agreement among listeners. What may be calming and quieting to one person may be disturbing and disquieting to another. Individuals with whom the music is used must determine its sedative and stimulative effects.

The sedative and stimulative qualities of music not only evoke calmness or activity, they also evoke other physical responses. Research with subjects in a wide range of ages has shown that music can affect blood pressure, heart rate, respiration, galvanic skin response, pupil dilation, discomfort and/or pain tolerance (Standley, 1986). These reactions to music differ from individual to individual, but there is no question that music is a powerful influence over physiological responses. It may be these physical reactions that are the bases for quieting and active responses to sedative and stimulative music.

These physiological responses to music may also be integral to emotional responses to music. But, whatever the reason, music influences moods and emotions, and there is a large body of literature which supports this fact. A particular emotion can be triggered by certain music for a certain individual and these emotional reactions to specific music seem relatively consistent for that individual. These emotional reactions for persons who are disabled and who cannot communicate verbally can be unpredictable and are, therefore, discovered by chance unless persons or their family members provide information about them. Once these specific reactions in a individual are known, music can be used to facilitate a transition from one emotion to another or to stimulate an emotional response in someone with an otherwise flat affect.

Music as Communication. As with all art forms, music is unique communication. What it conveys cannot be better done in any other way or by any other medium. This communication may be either through words of a song in a melodic context or it may be completely nonverbal, relying totally upon one or more musical elements. Using music with persons who are nonverbal or who have communication deficits facilitates their social interaction with others. Music may be the only medium through which some persons can interact with others and feel a part of a group. For example, a person who has severe dementia and who has not spoken in several years can shake a maraca or hit a drum in rhythm to music. Because this response is in rhythm, it can occur within the context of a rhythm ensemble; i.e., the person participates successfully with others. The music, therefore, provides the structure necessary for interacting with others. Through its structure music taps residual communication skills and abilities, even in those who have severe dementia, which can be used for successful group participation. This success with others leads to

feelings of belonging and of being needed which are so essential to well being and life quality.

Emotional Expression. Since music can be used as a form of nonverbal communication, it is particularly helpful as a form of expression for those who have limited or no verbal communication skills. Music may be used to express a wide variety of emotions which range from anger and frustration to affection and tenderness. These expressions can take the form of vocalizations which may or may not require words. They can also be formalized through instrument playing, physical movements and facial expressions which are acceptable within the music therapy framework.

Associations with Music. One of the aspects of music which makes it unique to each individual person is the associations that person makes with a particular piece of music. The music may provoke memories of times, places and persons. The association may be direct or indirect. That is, the music may have been heard only in one context or situation and whenever it is heard it is a reminder of that particular moment in time. Or, a piece of music may have a certain style that is more generally associated with a time period in one's life. These associations may be very happy or very sad and even remorseful. They are so individual that they are impossible to predict, and one song that evokes smiles and apparent happiness for one person may trigger tears and apparent grief for another. As with music preferences, some information about a person's reactions to particular music may be obtained. Again, it is important to observe behavioral indications of reactions, whether they are verbal or nonverbal.

Because of strong associations with it, music is often used as a stimulus for reminiscence and life review in elderly persons. Music which was part of the participants' experiences throughout their lifetimes can be selected for this purpose. Observation shows that persons who have lost the communication skills to discuss their lifetimes, can sometimes still sing the songs which were part of their earlier lives and part of their young adult years. But, when those singing skills are also gone, the person may continue to enjoy hearing the songs, particularly if they are sung by someone sitting close who makes eye contact and communicates an attitude of acceptance.

Music and Relaxation. Because music has the capacity to affect physiological responses and because of pleasant associations persons may have with it, music can be a source of relaxation. The proper music played as background in certain settings can promote relief from tension and anxiety. It can quiet agitation and promote comfort. In addition, singing or playing music can function to divert attention from stressors and promote relaxation through relief from stress.

Music in Entertainment and Leisure. Some persons, including some elderly persons, have great amounts of unstructured time in their day. Music provides meaningful, purposeful activities which are enjoyable and constructive uses of time. If the person is emotionally or physically disabled, or if the person has a dementia, music can be used by the caregiver to provide diversion from routinized activities and as a pleasant way to interact with their care receivers.

Music used in entertainment and leisure can include singing, playing or listening activities which are structured around familiar music. Sitting in a chair listening to 20 or 30 minutes of music once or twice a day can provide some opportunity for purposeful activity which requires little effort or skill. While listening, an individual may sing along with certain songs, may tap a foot or a knee in rhythm with the music or may play an instrumental accompaniment.

Music videos provide another enjoyable and constructive use of leisure time. These may include video tapes of musical shows, movies which feature song and dance numbers, musical television programs such as Lawrence Welk or Hee Haw and any other musical programming the person has enjoyed.

While music can provide constructive, meaningful uses of leisure time, it can also lose its effectiveness if used continually. With the constant use of music, individuals become attenuated and lose interest. Consequently, the music becomes ineffective. If the use of music is interrupted periodically throughout the day with silence or other activities, the music maintains its effectiveness in focusing attention, providing sensory stimulation, offering diversion from routine and providing

meaningful uses of leisure time.

Why Music Works

Music is Flexible. Music activities can be designed to provide success for persons of various physiological, psychological and social response levels even when they are severely dysfunctional. Successful experiences are difficult for severely dysfunctional persons, yet, they are essential to feelings of well being. If a severely dysfunctional person cannot experience success in a music activity, then it is the music activity which is not properly designed and not the functioning level of the individual which prohibits the success.

Success in music activities can be defined in a variety of ways depending upon the skills and abilities of the individual for whom they were designed. Successful musical experiences can range from sitting quietly in a chair to actively playing an instrument or singing. For some, success is defined as staying in the room while a music activity is conducted; for others, success is defined as singing an original verse of a song.

Music is Structured and Occurs Through Time. Music is structured and, therefore, predictable. It has predictability whether or not it is familiar because one beat always follows the next. When the music is familiar, then not only the beats follow in a predictable manner but other musical elements also occur predictably. These elements include, among others, melody lines, rhythm patterns, harmonies, textures, timbres and dynamics.

Music can only occur through time and it is perceived only through time. The predictability inherent in music provides for structured time. It is this structure that provides opportunities for anxiety control in those who can no longer maintain their own structure. The predictability also provides opportunities for cooperation with others in reality oriented activities.

Cooperation with others leads to conjoint participation in activities with them. This results in relief from isolation. Opportunities to participate with others are rare in persons who are isolated due to their inability to initiate or respond to most social interactions. Through structured opportunities for cooperation individuals can accept responsibility for their behaviors in the activity and for their behaviors which relate to others. They become aware of what they contribute and they become aware of others. This awareness of others is quite rare in severely dysfunctional persons including those with dementia, but it is necessary for their feelings of belonging which are essential to their well being.

Music Therapy with the Elderly: An Overview

It has long been known that opportunities for social interaction and integration into communities contributes to the quality of life for most persons. Some persons maintain their opportunities for social interaction as they age, but some cannot due to caregiving responsibilities of a spouse or other family member, chronic physical disabilities, poor health, inadequate resources and other reasons. Those persons who have fewer and fewer opportunities for social interactions tend to become progressively more isolated. With isolation and feelings of helplessness there is a concomitant feeling of depression (Russell, et al., 1980). This depression increases inversely with increased losses of independence, home, friends, community, mobility, health and with other losses and disappointments. Hanser (1989 and 1990a) has demonstrated that music therapy techniques are very effective for older persons with depression. She provided a music listening program which served as a stimulus for relaxation and pleasant visual images. She reported that these elderly persons had a relief from anxiety symptoms and depression while their self-esteem improved as they participated once weekly for one hour over an eight-week music therapy program (Hanser, 1990b).

Music has always been a viable medium for bringing people together, young and old, for social interaction in a wide variety of contexts. The approach, however, with most persons is to use music in traditional ways, such as instrumental performances as soloists and as members of instrumental and vocal ensembles, church choirs and other choral singing opportunities. While

these traditional methods are viable for those who have had opportunities to study music as young persons and who have used these skills throughout their life times, there are often not entry opportunities for those who would like to develop skills as musical performers in later, or even late, life. There is evidence that these older persons are not satisfied with their current musical skill levels and would like better ones. They are also concerned about good musical products (Gibbons, 1982). They are not pleased with mediocre performances or instruction and are quick to respond with verbal displeasure when they perceive either. They are sensitive, as they should be, about their dignity and do not respond well to situations in which they are spoken "down to" or in which they feel they are treated without respect appropriate for an adult. Therefore, music programs which include "toy" instruments, kitchen pots and wooden spoons and songs of childhood, along with "silly" costumes and any other demeaning activities are totally unacceptable.

When given a supportive environment in which they are allowed and encouraged to develop, there is also research and practice evidence that older persons have the abilities to learn musical skills through their late life years (Gibbons, 1982). When they participate in these programs focused on musical skill development they demand challenging instruction and work eagerly to improve their performances. As a result they can learn new skills, or can relearn those acquired much earlier in life, quite successfully (Gibbons, 1984). Even when these persons are so frail that they must reside in a care home, research shows they still have the abilities to learn new musical skills, provided they have sufficient cognitive functioning (Gibbons, 1983a, 1983b).

So, what about music performance contributes therapeutically to elderly persons' quality of life? When asked this question those who use music make comments which include: "When I play/sing music with others, I have an opportunity to work together with them to do something I really enjoy." Or, "Music gives me a great excuse to call someone and get together". And, "Music just makes me feel so good, especially when our group sounds great!" Or, "I use music to pass the time, I have a lot of it on my hands and I don't get around like I used to. Music gives me a great way to fill my day." One 82-year-old man said, "I like to perform the music for others and I think it is important to do it in nursing homes, too, for those people who are less fortunate than us." One widow woman who lived alone in a stone farm house in Kansas said, "When I feel bad I play my guitar and wail the blues and when I feel good, I do more joyful songs." She said that it didn't matter how her music sounded, because the singing and playing was important to her-- besides, she said, the dog kind of seemed to like it.

These comments all came from people who learned musical skills when they were over 70, and some were over 80, years old. They continued regular music rehearsals and performances after the program in which they learned the skills was discontinued. They were able to develop enough independence and confidence through the music therapy program that they successfully organized themselves into a well determined group of musical performers.

Therapeutic Music Programs for the Elderly

The goals for life quality change according to individual needs and desires, and are conjointly dependent on the resources available. An extensive review of the literature indicates music is effective in a wide range of programming (Gibbons, 1988). The focus of this presentation is the therapeutic use of music with the elderly, a population that has a broad range of needs and concerns which shift as their lives change with age.

Music with the Well Elderly

My experience with elderly persons and the therapeutic uses of music began with an experimental program I developed at the University of Kansas, Lawrence, Kansas in 1977 for well, elderly persons who were interested in developing music skills. In this program elderly persons studied individually or in small groups with a music instructor to either develop new musical skills or to relearn those skills learned much earlier in life, sometimes more than 50 years earlier. These skills were applied in a weekly group music session in which as many as 25 to 30 people participated together in a vocal/instrumental ensemble. As individuals' skills developed in

the music sessions, they were incorporated at a comparable skill level in the music ensemble. This music ensemble gave 10 to 15 public performances each year of its existence in the Lawrence, Kansas community, and was invited to perform at the Kansas Governor's Conference on Aging in 1979.

This music therapy program was free to participants and was run entirely by volunteer instructors. Without funding and with demands on time, the program was discontinued. It served, however, as a useful resource in the community for eight years. Its goals were focused on life enrichment and intellectual stimulation, the development of social/musical networks, self-esteem and feelings of worth through successful experiences and opportunities for developing life satisfaction.

This preliminary work using music with well elderly has demonstrated that music can contribute to the life quality of this population. Further study of this area is needed to provide more comprehensive knowledge of the uses of music in personal development and fulfillment.

The Chronically Ill Elderly at Home

Most elderly persons do not require full time residential care and live at home. Many of these older persons are physically fit and active in a wide range of social contacts, but others become isolated at home because of various disabling diseases and physical changes. Many of these conditions become chronic and lead, eventually, to terminal illnesses.

Music therapy has long been a viable therapeutic approach with frail elderly in residential care facilities (Gibbons, 1988), and these applications are also possible in individuals' private homes. Problems come with access and availability, however. Programs to train family members or volunteers to use music therapy services with their elderly loved ones would be economically feasible, but these programs are in the conceptual stages. If family members/volunteers could be trained to implement programs under the supervision of a music therapist, music programming could be effective and efficient in the home setting. In addition, the music could provide opportunities for families to interact around activities for which the chronically ill, elderly member is capable socially, physically and psychologically.

As an alternative to residential care home placement, many families are considering maintaining their elderly loved one at home and placing them in day care during the work day. Day care can also provide respite for caregivers who need some time to perform household responsibilities or to just rest from the burdens of caregiving. Music therapy programs can be implemented in day care similar to the ones provided in residential care home facilities. They may or may not involve the individual's family members.

Yet, still other chronically ill elderly persons are afflicted with a terminal disease and choose to spend their last days in their own homes. Music therapy is new in the area of terminal illness management and treatment. Some preliminary clinical work has shown that music can provide diversion from chronic pain and provide for relaxation for those who are in the late stages of a terminal illness. Besides pain management and diversion, music therapy probably has an important role in managing and/or treating chronic illness as a medium which provides opportunities for families to deal with the emotional impact of the disease. It enables families to interact and reminisce together while including the ill family member. Music can provide a means for communicating those feelings and emotions which are painful, but also those which are associated with happier times throughout the family history. Through song writing and other approaches, music therapy can serve to record and communicate family information and emotions and can draw the family members together to share it.

Again, the full impact of music with the ill elderly at home will be known through additional study and research. Preliminary work has shown potential, but this area is generally unexplored.

Music Therapy with Frail Elderly Care Home Residents

In the eight years the music therapy /music development program was implemented for well

elderly, I was also developing other music therapy programming in residential care facilities, otherwise known as nursing homes. These programs focused on the maintenance of musical skills in those who were no longer living in their own homes, and the use of those skills to provide opportunities for social interaction, cooperation with others, awareness of self and others, and feelings of belonging. Though this population had clear indications of musical abilities (Gibbons, 1983a; 1983b), they had some difficulties executing them (Clair, 1991) probably because of their serious physical, and sometimes emotional, disabilities. Consequently, these elderly persons were not usually candidates to learn new music performance skills. They did, however, learn new ways to incorporate the skills they had into new music activities and contexts and often did not require the amount of supervision or assistance that care home staff indicated they needed (Clair, 1990). For them the program design entailed participation in small groups of 6 to 10 persons once or twice a week and involvement in a large, all resident, community music therapy session at least once weekly. Small group activities included using music to 1) reminisce and subsequently discuss life satisfaction and life quality, 2) manage stress and sleeplessness, 3) interact musically together in an ensemble, 4) stimulate the senses through auditory, tactile and visual media and to 5) motivate involvement and integration with others. Goals were often centered around the development of maintaining as much control and independence in life as possible through decision making, feeling needed by others, sensory and cognitive awareness, social integration into the care home community, self-esteem and feelings of respect and dignity, and satisfaction with current life.

Music Therapy with Elderly Persons with Dementia and their Families

Estimates indicate that half the elderly persons in the United States who require residential care suffer from an irreversible dementia called Alzheimer's disease (Reisberg, 1983; Schneider & Emr, 1985). This disease is on the upswing and epidemiological studies in the United States, Great Britain and Scandinavia estimate that five to seven percent of those persons over age 65 and 20 percent of those over age 80 have it (Mortimer & Hutton, In Press). With this diagnosis individuals can live 7 to 10 years, and sometimes more, with a disease that is terminal. As these persons progress through the disease, they become more and more dysfunctional. As a consequence, their quality of life and the quality of life of those who care for them deteriorates continually.

Family caregivers become isolated due to the strain of constant care when the person with dementia is maintained at home. And, even when the individual must be moved to a residential care facility, the family caregiver has the burden of emotional and financial support. These persons continue to experience the losses of social contacts in the community suffered through months and years of isolation. They also are at risk for physical illnesses (Light & Leibowitz, 1989) and depression (Boss, et al., 1990) due to the stresses of caregiving. The consequences of this disease, and other dementias, are devastating.

In the last four years I have been developing, along with my colleague, Barry Bernstein, RMT-BC, music therapy practice protocols and research with elderly persons diagnosed with dementias, primarily of the Alzheimer's type. In the last year we have expanded our work to include family members and have consulted with colleague Susan Tebb, MSW to develop a music therapy program for persons with dementia and their spouse caregivers.

The focus of the earliest work was the development of programs for those persons who were so severely regressed that they could no longer function in their homes, and they had to reside in a care facility where their needs for constant care and safety could best be met. This work included the development of music therapy programs which have involved these persons in participation with one another and with family members who visited the facility. Based on three years of clinical work, a music therapy practice protocol was developed. It will be published along with a music therapy practice protocol developed by Hanser for persons who are mildly afflicted with the disease in the early stages (Clair & Hanser, In Press).

Most of the severely regressed patients with whom we work are so debilitated that many of them do not speak, and if they do their speech is unintelligible. They are also emotionally labile and their emotional responses are often not appropriate or predictable. Many of them do not have

bowel or bladder control, some of them need help feeding themselves, they all need help with bathing and dressing and they are not going to get better. They will get more and more isolated and withdrawn, they will forget how to walk and eventually how to eat and how to swallow. They will probably get a respiratory disease and die. Until then, they will require complete and continuous care to merely exist.

The quality of these patients' lives will continue to decline. They do not remember the names of their children or their spouses. They no longer respond to the family dog when it is brought to visit at the hospital, even though it was once an endeared pet. But, they still seem to recognize a familiar face even though their ability to learn and remember names has long gone.

In the music therapy sessions, these persons play/make music together using percussion instruments and upon initial admission to the hospital some of them still sing. Eventually they become debilitated until they can no longer sing but they can and do still play a rhythm instrument (Clair & Bernstein, 1990). They also participate in moving their bodies in rhythm to the music, to dance at first, and later after much deterioration, in rhythmic arm swinging in response to music. Eventually they participate by just staying in the room and making eye contact. Even this very basic level of involvement is significant since these patients get to the point they can no longer participate in any other activities. One patient, who had gotten to the point that he could no longer communicate in any way, still came to the music therapy sessions. He always made eye contact when the music therapist sat close by and sang to him. Eventually he became very ill and was hospitalized with a critical respiratory infection. He appeared to be sleeping most of the time but when his wife sang to him, he opened his eyes and looked at her. On the last day he lived she was with him in his hospital room, she sang his favorite hymn, he opened his eyes and looked at her for the last time. It was, she said, something she will never forget--a moment that happened because she sang to him.

The persons with severe dementia with whom we have worked participate best in rhythm activities that involve vibrotactile stimulation, or the vibration that results from percussive sounds (Clair & Bernstein, 1990a; 1990b; Unpublished Paper b). The most viable activity to date has been the use of flat drums which can be held in the hand or placed in the lap and played either with hands or mallets. The drum playing seems rather reflexive in patients who are severely regressed in the disease. They quickly begin to strike the drum when it is handed to them, even if they have had no prior experience with it. This drum playing, when done with simple repeated beats, does not seem to require a high level of cognitive organization. But, even very regressed persons can cognitively organize well enough to learn new rhythm patterns, to imitate a pattern played by some one else or to play in some way other than his/her initial response (Clair & Bernstein, 1989). These persons illustrate well the principle that all persons can participate in music provided it is adjusted to suit their functional behaviors.

The clinical work we have done has indicated that persons with severe deterioration due to dementias can learn to participate in music activities particularly when they are included in small groups of five to seven persons for a period of several weeks. Their responses in the small groups seem to generalize and they can eventually participate in activities in much larger groups; i.e., when the entire hospital unit is included, 26 to 28 persons. Even in the small group activities, however, persons seem to be somewhat agitated initially. This may be due to the threat of a new environment, the change in routine or the presentation of a new activity. Once the individuals experience success with music in the small groups, they settle down and participate for as long as 30 minutes, a duration of attention that is quite unusual in this population (Clair & Bernstein, 1990c). The nurses on the unit where the sessions are held say that the only time the patients all come into the day room and sit down is when the music therapists come to do a session. Nursing staff and spouses who observe the music therapy sessions say that patients seem more alert during and following the music therapy sessions. They also say that the patients tend to settle down with music. There is no research which indicates music has lasting effects on persons with dementia, but preliminary observations indicate it is an area worthy of study. An initial study of the effects of music on agitated behaviors did not provide definitive results (Clair & Bernstein, Unpublished Paper a), and, subsequently, this is an area that requires further research.

In the last year the music therapy work has expanded to include spouses or other family caregivers in the sessions. Couples participate in groups in which singing, drum playing and dancing are programmed. These caregivers have told us that in music therapy their loved ones have reacted much the way they did in the past and that they could see snatches of who these people used to be. They were quite excited that we could tap the residual skills and abilities along with the personality traits they had watched disappear before their eyes. One wife told us after dancing with her husband for the first time in many years, "Oh, he held me in his arms. It has been such a long time since he just held me." The music provided the structure in which he could hold her and resume some of his behaviors from long ago, the behaviors that were such an integral part of the intimacy of their relationship. The parts that should still be there, but most of the time they are not, because her husband has a dementia, probably of the Alzheimer's type.

Most recently, Barry Bernstein, Susan Tebb, MSW and I tested our music therapy practice protocol for caregivers with persons who were diagnosed with dementia, probably of the Alzheimer's type, who still resided in their own homes. These persons were living with spouses who were their primary caregivers and who participated with them in the music therapy programming. Four caregivers and their spouses diagnosed with dementia in the middle stages participated successfully together in singing, rhythm drumming and dancing activities, for 30 minutes each week for six weeks.

The afflicted spouses in these sessions were still living at home, but were very dysfunctional. They needed help and/or supervision for even the most basic activities of daily living; i.e., eating, bathing, dressing and going to the toilet. They could no longer participate as a viable member of the couple, but could still be maintained at home as long as they had constant supervision. They could no longer participate in couple activities. Even so, when familiar songs were introduced in the sessions, all participants attempted to sing for some or all of the songs. They responded particularly well to playing drums, even though they had no prior experience playing them. The persons with dementia took the drums willingly and used them to interact, playing rhythmically within the group. When the dancing portion of the session came, afflicted spouses took their caregiving spouses in their arms, the ladies tucked their heads under the chins of their husbands, and they danced to big band music of their young adult years..., just as they had done in their early years together. Caregivers reported that they were using some of the activities at home with their spouses. One lady said that she and her husband had begun dancing in the kitchen, an activity they had long given up doing in public.

It is clear through our clinical work and research that music influences positively the activity levels of persons with dementia, even when they are severely regressed. Even though they do not participate in other activities, they can still play an instrument rhythmically and they can still dance. If they have had no experience with dancing, prior to the onset of the disease, they can still swing arms and move their feet in rhythm to the music. It is the music that seems to integrate them into activity with others. It reduces their isolation for a time, though it may be only a short time, and consequently it influences the quality of their lives. At the same time, it provides opportunities for family caregivers to participate with their afflicted family members in a purposeful, productive way. Through well-designed and implemented music therapy activities, they can again make contact with their loved ones. They can use the music to relate positively with whatever residual skills are left.

We think it is very possible that spouses and other family caregivers can learn to use music with their afflicted family members provided they have the appropriate training and supervision. We have established practice protocols, for both severely deteriorated and moderately deteriorated individuals, which could provide the framework for the training. With this training services can be extended to a much broader portion of the population afflicted with the disease. It is even possible that such training programs could make these services available to those in rural areas. This training, integrated with research to study its effectiveness, can make approaches to therapeutic uses of music available to families that are devastated by one of the most dreaded diseases in this country, dementia.

Music Therapy for the Caregiver

There is a growing body of literature which describes the terrible devastation suffered by those families, and particularly by those older caregivers of persons with dementia.. This literature indicates stress, depression, poor physical care, emotional distress and other factors which lead to the breakdown of health, life satisfaction and quality of life. The music therapy project we conducted in the past year has led to some preliminary program design for caregivers. The therapeutic uses of music to manage stress, promote relaxation and provide opportunities for self development and fulfillment are areas for study and program development. This work should be a priority along with the use of music in the treatment of persons with dementia.

Conclusion

I give this testimony as a professional music therapist, and I do not speak for the University of Kansas or for the Veterans Affairs Medical Center where I now do music therapy practice and research. This testimony is therefore limited to the work of one individual and some of the professional literature which supports it. There is much more research which points clearly to the positive, effects of therapeutic uses of music on the elderly. Even with its limited scope, the research and clinical practice reported here have demonstrated that music has therapeutic effects on elderly persons, and sometimes these effects are quite remarkable. Additional clinical work and research are needed to more fully describe the musical characteristics and the effects of music on elderly persons and their families so that appropriate programming may be designed and implemented in the most effective and efficient ways.

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MUSIC THERAPY RESEARCH AGENDA

The efficacy of music therapy has been demonstrated through extensive clinical practice. Model demonstration projects, basic research, and clinical outcome research can extend and further validate music therapy applications.

Future research will encompass populations of older Americans such as, but not limited to, those with Alzheimer's disease and other dementias, those with neurological disorders associated with aging such as stroke and Parkinson's disease, those with psychiatric disorders, and elderly persons institutionalized with other debilitating conditions. In addition, research is needed to study the effects of music with professional and family caregivers, and in preventive care for well, older Americans. Music's potential as a diagnostic tool, especially of cognitive functioning levels should also be explored.

Settings for clinical research include residential care, adult day care, inpatient and outpatient rehabilitation, home health care, senior citizen centers, and retirement communities. Areas of research may include, but not be limited to:

1. The effect of music on neurological functioning, communication skills, and physical rehabilitation in the elderly.
2. The effect of music therapy on perception of pain, the need for medication, and length of hospital stay.
3. The effect of music on cognitive, emotional, and social functioning in those with Alzheimer's disease and other dementias.
4. The effect of music on the emotional and social well-being of caregivers of those with Alzheimer's disease and other dementias.
5. The effect of music on life satisfaction and life quality in older adults.
6. The effect of music on nutrition and wellness of older adults.

The studies listed below are examples of research which would be facilitated from modest federal support. Many of the studies have already been piloted tested with positive results, and they await replication and expansion. The list contained herein is by no means exhaustive.

RESEARCH AREA ONE

The Effect of Music on Neurological Functioning, Communication Skills, and Physical Rehabilitation in the Elderly

Proposed Study #1: "The influence of music on brain wave activity in the severely regressed patient with dementia."

Observation and clinical case studies have shown that persons in the late stage of dementia, including dementia of the Alzheimer's type, are unresponsive to stimuli. That is, they give little to no outward indication that they are responding to stimuli. This study would examine the possibility of brain activity in response to musical stimuli, which would indicate whether or not the patient has potential for response.

Proposed Study #2: "Musical responses as indicators of function and dysfunction in late stage dementia."

Music therapy clinical work has shown that certain musical behaviors are indicative of musical participation in late stage dementia. These include: decreased singing and the eventual cessation of singing behaviors, playing around the periphery of a music instrument such as a drum, and rhythmic responses to rhythmic stimuli. A profile of these responses would be helpful in determining the progression of the disease and in planning appropriate music therapy programming.

Proposed Study #3: "The effects of melodic intonation therapy on communication skills of elderly stroke victims."

Melodic intonation therapy is effective in reestablishing communication skills in younger populations. Pilot tests using this technique with elderly stroke victims have been positive. Controlled studies with community and institutionalized elderly are needed.

Proposed Study #4: "Recall of song lyrics as indicative of memory functioning levels."

While most individuals will complain of problems remembering information, in the majority of cases these difficulties would not be classified as serious. The recall of song lyrics might provide a means for assessing the severity of memory impairment, as well as a context for learning adaptive memory strategies.

Proposed Study #5: "The effect of music on gait training for those in stroke rehabilitation programs."

Music has been shown to be effective in prolonging physical activity, facilitating efficient muscle firing, reducing the perception of pain, and equalizing stride width and length. Music may be effective in improving the gait of stroke victims with partial paralysis by facilitating endurance in physical activity and equidistance of footfalls, and by improving the older adult's mental attitude about rehabilitation.

Proposed Study #6: "The effects of music performance skill development in the rehabilitation of elderly stroke victims."

Case studies have shown music skill instruction on the piano to be an effective means to regain the use of muscles mildly paralyzed by stroke in community dwelling elderly individuals. Information concerning the role of previous musical experience and motivation, instruction on various instruments, and the extent of paralysis on rehabilitation need to be explored.

Proposed Study #7: "The use of musical stimuli and music activities in the reality orientation of older adults."

Pilot data have shown that the principles of reality orientation (orientation to person, place, and time) can be integrated into individual and group music activities. Musical stimuli (i.e., songs about the season, the place, a particular holiday) and structured musical activities that require attention to person, place, and time offer numerous opportunities for reality orientation in a natural social environment. Additional investigation can help determine those interventions most effective for persons at different levels of cognitive functioning both in group and individual therapy.

RESEARCH AREA TWO

The Effect of Music Therapy on Perception of Pain, the Need for Medication, and Length of Hospital Stay

Proposed Study #1: "The influence of music on pain perception in elderly patients with rheumatoid arthritis."

Pilot study results indicate that music vibrations may be a significant factor in the relief of rheumatoid arthritis pain. It is theorized that specific skin sensors, which block pain reception at the spinal level when stimulated, can be activated by specific sound frequencies and amplitudes.

Proposed Study #2: "The influence of music on the amount of post-operative pain medication."

Surgical procedures are followed with pain management medications. This study would examine the influence of music as an alternative to, or as an accompaniment to medication to reduce the amount of medication needed to promote comfort.

Proposed Study #3: "The influence of music on the amount of medication required to maintain comfort in outpatient surgery."

Some preliminary work has shown that music therapy is effective in managing pain in outpatient surgeries. Patients with less medication have lower probabilities of complications resulting from it, consequently, they have less need for hospital care following surgery.

RESEARCH AREA THREE

The Effect of Music on Cognitive, Emotional, and Social Functioning in Those with Alzheimer's Disease and Other Dementias

Proposed Study #1: "Musical task performance as an indication of dementia: A comparison of individual responses."

None of the cognitive assessment tools that are presently in use contain musical components. However, the possibility of musical tasks being able to provide an equal or greater amount of information concerning cognitive functioning is very real. This

study could provide important information concerning the suitability of musical tasks as early predictors of dementia.

Proposed Study #2: "The influence of music on agitated behaviors in persons diagnosed with late stage dementia."

This study is significant in that agitated behaviors are deleterious to those diagnosed with dementias and those around them. Drugs can be used to calm these persons, but often are not adequate in dosages which allow the persons to be alert. Individually designed music programs may serve to manage agitation and provide relief for persons with dementia.

Proposed Study #3: "The influence of rhythm and melody to promote responses in persons diagnosed with late stage dementia."

This study is important so that appropriate music therapy programming can be implemented. Much of the literature says that persons with dementia can sing when they can do nothing else. Clinical observation demonstrates that persons do not sing as their disease progresses, but that they tend to respond consistently in rhythmic activities, particularly those which require tactile responses.

Proposed Study #4: "The effect of music on memory, retention of information, and learning in older adults and those with Alzheimer's disease."

Prior research has shown that music functions to enhance learning rates and memory of children, even those with developmental disabilities. Pilot studies with older adults have shown that these music and learning principles may be effective in assisting older adults with retention of skills and information and in the acquisition of new abilities. Habituated, synchronized music/skills routines may be effective in prolonging the period of time during which those with dementia are able to maintain self-care skills and the memory of their relationships to others.

RESEARCH AREA FOUR

The Effect of Music on the Emotional and Social Well-Being of Caregivers of Those With Alzheimer's Disease and Other Dementias

Proposed Study #1: "The effect of music therapy on social interactions between caregivers and their loved ones diagnosed with dementia of the Alzheimer's type."

This study is important due to the inability of caregivers to relate to their loved ones who they have observed disintegrate before their eyes. They have lost the usual avenues of communication and are desperate for ways to socially interact with their family member who is afflicted with dementia. Pilot tests have shown that music can provide a means for verbal and nonverbal communication which is integral to the maintenance of the relationship.

Proposed Study #2: "The effect of music therapy interventions on well-being of caregivers for those with dementia."

This study would provide essential information to the care and well-being of the caregiver. These persons sacrifice all of themselves, including their health, to provide care for persons who are continually demanding. Music therapy could provide some stress management strategies which could contribute to the quality of their lives.

Proposed Study #3: "The use of group music activities to promote social behaviors and reduce isolation."

Isolation has been described by some experts in gerontology as one of the most debilitating factors facing the elderly. Not only can isolation contribute to feelings of depression, but failure to engage in meaningful activities can contribute to helplessness and deterioration. This study would examine those adaptations and organizational factors most important in sustaining active and meaningful involvement.

RESEARCH AREA FIVE

The Effect of Music on Life Satisfaction and Life Quality in Older Adults

Proposed Study #1: "The influence of music therapy programming on depression in older adults."

This study can be conducted with older adults living in their own homes and with those institutionalized in residential care. Both populations of older persons have high incidence of depression. There is some argument that those persons who have experienced losses due to aging have depression. Preliminary research has shown that opportunities to be involved in music therapy activities lowers depression levels.

Proposed Study #2: "The effects of developing new and previously learned music skills on self-esteem and self-efficacy in elderly adults."

This study would examine the development of musical skills in persons who had, or did not have, previous opportunities. There has been some preliminary work which shows older persons are capable of developing musical skills well into their 80's provided they have the appropriate opportunities to do so. There has been no research, however, of the effects of those skill developments on self-esteem and self-efficacy.

Proposed Study #3: "Music activities as a venue for increasing voluntarism and community involvement in older adults."

Many older adults have music training and abilities that would be beneficial to others. If the older adult chose to volunteer or participate in community activities, it is theorized that self-esteem would be increased and quality of life improved. A program would be coordinated to identify musical abilities of older adults and refer them to an appropriate volunteer or community participation site. Since older adults are often on a fixed income, minimal funding for transportation or support resources would be necessary for some participants. Effects studied would be contact/participation hours, life satisfaction, and community benefit.

Proposed Study #4: "The effect of music in counseling those who are bereaved or depressed due to the death of a loved one, trauma or personal injury, or terminal illness."

Music has been shown to be effective in facilitating counseling relationships and objectives. Older adults often are severely depressed or grieving due to a traumatic event in their life. Music and counseling techniques might relieve depression, increase interest in social relationships, or provide a structure for the resolution of grief.

Proposed Study #5: "The effect of music-based life review on life satisfaction of institutionalized elderly."

A study can be designed to evaluate the effectiveness of music-based life review programs in promoting life satisfaction of institutionalized elderly persons. There is some research that has shown life review programs using music as the primary stimulus to be more effective in increasing life satisfaction over verbal life review programs. In addition, there is evidence to suggest that even the most severely disabled elderly individuals, those who have lost short-term memory capabilities, are able to participate successfully in life review programs that access long-term memory.

Proposed Study #6: "An examination of attitudes toward elderly mentally retarded members of a community chorus."

While the number of mentally retarded individuals who reach old age is increasing, their support systems in most cases are decreasing. Whether living in group homes, with family members, or in institutional facilities, membership in a community organization would appear to be a viable means of broadening their support base. Information concerning the suitability of this kind of mainstreaming is necessary, especially as it relates to community attitude toward the mentally retarded elderly.

Proposed Study #7: "The effects of aging on musical performance skills in the mentally retarded elderly."

Increases in the number of mentally retarded individuals living in group homes in the community have not resulted in increases in socialization opportunities for these individuals. Community music organizations generally require higher musical performance skills than many mentally retarded individuals are capable of attaining. Research aimed at identifying performance

skill levels, and educational capabilities of these individuals, as well as the effects of aging on these two areas is vital to their successful participation in the community.

RESEARCH AREA SIX

The Effect of Music on Nutrition and Wellness of Older Adults

Proposed Study #1: "The effect of background music during mealtime on caloric and nutritional intake of older adults."

Prior research has shown that adults listening to music during weight loss programs consume fewer calories. It is theorized that music may reduce anxiety and create a more leisurely environment, the individual may then eat slower and have time to achieve a replete sensation before consuming a large number of calories. The relationship between music, socialization, and the motivation to eat or feed oneself could be investigated with subjects who are no longer consuming nutritionally balanced diets, who are socially isolated during meals, or who have lost the will to consume food.

Proposed Study #2: "The effect of music on endurance, motivation, and physical benefit in exercise programs for older adults."

Exercise prolongs life and maintains wellness, independence and mobility in older adults. Research has suggested that music would increase endurance, motivation, and social interaction during exercise programs.

TESTIMONY BEFORE THE
U.S. SENATE SPECIAL COMMITTEE ON AGING

August 1, 1991

by

LOIS JOHNSON

Mr. Chairman and members of the committee: Thank you for this opportunity to tell you of my experience with music therapy as I witnessed with my husband and other Alzheimer's patients.

My name is Lois Johnson. I live in McDonald, Kansas, a small town of 150 people in northwest Kansas. I own and operate a small grocery store, the only retail business in town.

When my husband, Tom, was just 48 years old, our last three children were in college. He enjoyed his job as a grain elevator manager, and the grocery store I managed was paid for and doing well. Our first grandchild was on the way. Tom was a wonderful family man who never missed a sports event that his children were involved in. Many times he drove 300 miles to watch his son-in-law coach. Our daughter was on a dance drill team in another college, and many times we would leave one event and drive to watch her perform. Tom was a very proud father.

Tom was also proud of being a volunteer fireman. He was very skilled with his hands, remodeling our house several times and making gifts for our children. He could repair anything from a motor to a car. He was always a prankster, enjoying pulling a joke on family or friends. One time he even had a 2 ton rock delivered to his brother's door step!

Slowly, the nightmare began. We first noticed that he would make any excuse to stay home from a sporting event or discourage family get-togethers. He became more withdrawn and thought only of himself. His jokes and puns became more of the cruel kind, telling people they were fat or they had grey hair. He began pinching people and pulling their hair, even strangers.

Suddenly one day he announced that he had quit his job. When I asked him how we were going to pay the bills, he said, "You can do it."

Tom had always been an affectionate, caring husband with lots of hugs, but he started drawing away from us. He began retreating to bed every chance he had as if he could sleep away

what was happening. When our sons were home from college on vacation, they commented on the blank look in their dad's eyes. They could not believe the changes in their dad.

Our youngest daughter was living with us, but his constant tormenting was too much. She told me one day that she had to move before she began hating her dad. I understood and helped her move. Can you imagine how we felt? To me it was a never ending nightmare.

Two years passed before we got a diagnosis. Several months of this time was spent in mental hospitals. When we finally got the diagnosis, Tom was no longer the husband or father we used to know. This was a strange person that needed constant care and supervision. I now call this the death of a personality.

We now know why these strange things were happening. Alzheimer's disease attacks the short term memory banks first. Their personality and social graces are the first to go, then slowly, everything they learned disappears. It was as if Tom actually returned to infancy.

When I could no longer take care of Tom, I placed him in the Topeka Veterans Hospital. I visited several days each month even though it was 300 miles from our home. At this time, he was so agitated that he slept or sat in a chair only for brief moments. Often I would visit him and he would not even recognize me. I finally resorted to walking the endless halls with him because all forms of communication were gone. He could no longer speak, and it was impossible to get eye contact.

I noticed that Tom developed what I would call the "caged animal syndrome". He seemed fearful all the time, as if he were fleeing from the unknown. Even with the locked door wards he was able to escape on three occasions.

After Tom had been ill for six years, the V.A. hospital called to tell me that Tom was selected to participate in Dr. Clair's study on the effects of music therapy on Alzheimer's patients. My first thought was selfish: "Good, he will be there for at least two more months and I won't need to worry about finding another place for him." The second thought I had was: "What do they hope to accomplish?"

The first few sessions went as I expected. He wouldn't stay seated long and did not participate. Any instrument they handed he would put down on the floor. Several sessions later I happened to visit during the music therapy session and saw a wonderful thing happening. Tom was looking at Dr. Clair and

trying to make sounds in his throat as if he were trying to talk. In later sessions I saw him reach for the guitar and strum it. He played maracas, touching first Dr. Clair's knee then his head, then his knee rhythmically as long as the music played.

I could see tears in Tom's eyes when hymns or patriotic songs were played. The thrill of seeing a little glimpse of the Tom I used to know was overwhelming. I knew he would never be well again, but music seemed to be the "window to his soul."

I also observed the change in another dementia patient at the hospital when I visited Tom. A man who had not spoken a full sentence for several months stood up and sang a complete jazz song without missing a beat.

My daughter is a registered nurse. She noticed a patient who is normally very violent and aggressive calm down when his daughters sang to him.

My mother developed a malignant brain tumor at the same time my husband was sick. I noticed her symptoms were similar to his. She was in her childhood most of the time and very fearful. She would come back to reality briefly when she heard old hymns.

During the last several months of Tom's life, he became an infant who was bedfast and needed total care. Fear was always in his eyes. Music therapy gave me one last key to opening a small part of his long term memory that I thought was lost forever.

I could always reach Tom with music. If he became agitated or fearful, I could hold his hands, get him to look at me and sing the old songs. You could see him relax and the fear leave his eyes.

One day in particular, Tom seemed more aware. I remember singing the hymn "Amazing Grace" several times that afternoon. This was the only song that I could remember all the words. I left the hospital for the evening and within the hour, I received a call telling me he had passed away.

I will always cherish the last moments I had with him. The music made him more at peace and gave me a special memory.

I do not believe music therapy is a cure for the dementia, but I do believe anything that can reach the past term memory can stimulate the brain and slow the process of the disease just a little longer, and I feel music therapy can do this very thing.

I am convinced that music therapy is a very important link

to the past for Alzheimer's patients and their family members. After my husband was diagnosed with Pick's disease, a severe dementia related to Alzheimer's, I was invited to serve on the Governor's Task Force for Alzheimers and related diseases in the state of Kansas. I continued to serve as a spokeswoman from 1985 to 1989.

During this time, I testified with in hearings that resulted in legislation that provided some support and help for patients and families. The "Helpline" was installed in the Department of Aging. Insurance for long term care was improved to include people diagnosed with Alzheimer's disease. A Division of Assets bill was passed to help the spouse of a long term care patient.

I continue to give workshops in Kansas and Colorado to nursing home staff and family members about coping with a longterm degenerative disease.

I appreciate your scheduling a hearing about music therapy and giving me a chance to share my views. Thank you.

S. 933, the Americans With Disabilities Act
THE HELMS MOTION TO INSTRUCT CONFEREES

Senator Helms will attempt to have the Senate put on record in support of the Chapman Amendment which the House agreed to on May 17, 1990 by a vote of 199-to-187. The Chapman amendment (which added subsection 103(d) to the House bill, H.R. 2273) gives an employer a defense against a charge of discrimination "for an employer to refuse to assign or continue to assign any employee with an infectious or communicable disease of public health significance to a job involving food handling, provided that the employer shall make reasonable accommodation that would offer an alternative employment opportunity for which the employee is qualified and for which the employee would sustain no economic damage."

The debate will probably focus on AIDS, but the amendment applies to any infectious or communicable disease.

In the House, the debate made a critical distinction between facts and appearances. Even the amendment's advocates did not assert that AIDS can be spread by food handlers. They did assert that restaurants could be driven out of business by fears that their food handlers had AIDS. (Other diseases can certainly be spread by food handlers, of course.)

((Note to RPC: This appears to be the only instruction on which a vote will be requested.)))

S. 933, the Americans With Disabilities Act
THE GRASSLEY MOTION TO INSTRUCT CONFEREES

The Senate-passed version of ADA (S. 933, adopted Sept. 7, 1989 by a vote of 76-to-8) contained a Grassley amendment that extended the provisions of the ADA "in their entirety" to each House of Congress and any instrumentality of Congress. The amendment was adopted on a division vote. 135 Cong. Rec. S 10780-82 (daily ed. Sept. 7, 1989).

The Grassley amendment became section 509 of the Senate bill.

The House made substantial changes in the Grassley amendment. See, section 509 of H.R. 2273, 136 Cong. REC. H 2652 (daily ed. May 22, 1990). In brief, the chief thrust of the House amendment seems to be that the ADA will be enforced in the House, the Capitol grounds and office buildings, and in instrumentalities of Congress by congressional officials and not through the regular administrative (i.e. executive branch) proceedings that private entities are subject to. Senator Grassley is likely to argue that by making ADA applicable to Congress but having Congress enforce the provisions of the Act against itself that Congress is once again exempting itself from the same rules that apply to everyone else in the country. All the other entities that will be covered by the Act will be subject to administrative and judicial enforcement mechanisms that will not apply to Congress.

Senator Grassley will move to instruct the Senate conferees to adopt a provision allowing aggrieved persons to sue Senators. His motion will not incorporate his original amendment but will provide a more comprehensive remedy than in the House version.

((NOTE TO RPC: Grassley will likely introduce his motion then withdraw it and have a chatty colloquy with Harkin)))

Boschwitz not to proceed

Senator Boschwitz's office informs us that he will not
offer a motion to instruct.

Major Issues
Americans with Disabilities Act
April 24, 1989

1. **Definition of disability** -- Includes a provision which would allow an individual "regarded as having an impairment" to be considered an individual with a disability. (April 14, 1989 draft, page 6, lines 3-10). *has been*
2. **General standards for judging whether discrimination has occurred** -- requires that equal and as effective means be applied and the same result/outcome be achieved in the case of the individual with a disability, not comparable means and outcomes. (Page 7, lines 16-24, and page 8, lines 1-24, and page 9, lines 1-2) *comparable (guar. flexibility)*
3. **Coverage extended to individuals with contagious disease or infection** -- unless such an individual, including one with AIDS, poses a direct threat to the health and safety of others he/she could not be excluded based on qualification standards. (Page 11, lines 12-16)
No!
4. **Anticipated discrimination** -- Under title II pertaining to employment, an individual, based on disability, could pursue a private cause of action if he/she believed that he/she is about to be discriminated against in the basis of disability. (Page 16, lines 1-5)
on?
5. **Access to multiple remedies** -- Under title II an individual pursuing a private cause of action may use title VII of the Civil Right Act of 1964 and section 1981 of the Civil Rights Act of 1866. Such options would give access to injunctive relief, compensatory and punitive damages. (Page 15, lines 20-24)
6. **Use of failure standard in employment** -- An individual, based on disability, can pursue a private cause of action in several titles (II and III (primarily transportation related)) if a covered entity fails to provide/accommodate etc. This would allow an individual to sue in both in cases of intentional and unintentional discrimination. (Example page 18, lines 18-25) *put in refusal (only in intentional cases can sue)*
★ Keep factor
7. **Inclusion of section 504** -- In several provisions pertaining to transportation, the ADA includes not only a reference to the ADA itself but also section 504, possibly changing the standards that now apply to section 504. (Example page 19, lines 8-21) *take out 504 - (if it is why include it?)*
8. **Use of failure standard in public services and accommodations offered by a private entity** -- An individual, on the basis of disability, could pursue a private right of action in a case of discrimination, and if successful receive actual costs, punitive damages, and attorney's fees. This option, like in #6 would cover intentional and unintentional discrimination. (Page 30, lines 18-21)
9. **Use of different remedies in different titles** -- Each title uses differing combinations of remedies and procedures in cases of private causes of action. *make consistent with title V?*

10. *Burden of proof - on the defending*

Punitive - too difficult

*intentional
unintentional*

functions too difficult

*307
965
9952/57/54
2634
for
pick up*